ADDIS ABABA UNIVERSITY

INSTITUTE FOR PEACE AND SECURITY STUDIES

Practicing Restorative Justice in Ethiopia: The Case of *Gumaa* Traditional Conflict Resolution Mechanism among the Sebeta and Burayou Oromo

By: Melatwork Hailu

May, 2016

Addis Ababa, Ethiopia

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A Thesis Submitted to the School of Graduate Studies of Addis Ababa University in Partial Fulfillment of Requirements for the Degree of Master of Arts in Peace and Security Studies.

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Abbreviations

Art. Article.

FDRE Federal Democratic Republic of Ethiopia.

FLS Formal Legal System.

ILS Informal Legal System.

RJ Restorative Justice.

TCRM Traditional Conflict Resolution Mechanism.

UNDHR Universal Declaration on Human Rights.

Abstract

Restorative Justice System came as a new approach and way to respond to crime and developed as an alternative move towards complimenting the failure of traditional criminal law which mainly focuses on punishment. Restorative Justice (RJ), by fostering dialog among the victim, the offender and the community ultimately leads to reconciliation and restoration whereas, the Ethiopian Criminal Law from the very first inscription in Fewuse Menfessawi up to the current criminal law is highly embodied with the theory of punishing and retribution of offenders. The law takes the state as the chief victim of the crime and disregards the actual victim and the community. This shows that the concepts and notions of RJ are not primarily included or incorporated in the criminal law. Though the formal legal system fails to give enough space to restorative justice system, its principles and values are highly loaded and embodied in the traditional conflict resolution mechanisms which are widely exercised in the different parts of the country. Gumaa, as one of the institutions of conflict resolution of the Oromo people, has been practiced and widely exercised on almost equal footing with the formal legal system. As a system, it is mainly based on oral narration that passes from generation to generation and lacks inscription and structural arrangement. However, its objectives, principles and values are related and they overlap with that of RJ. Thus, this research examines the nexus, compatibility and divergence of the three criminal legal systems: Restorative Justice, Ethiopian Criminal Law and gumaa. It attempts to substantiate arguments and comparisons through their objectives, principles and values. Furthermore, the study points out how the informal legal system (Gumaa affects the formal legal system in terms of its practice and acceptance by the people at large. Based on these findings, the research shows the need for implementing a mix or a kind of hybrid criminal legal system which incorporates the existing formal and informal legal systems. Moreover, it emphasises the need for the enhancement of gumaa as it seems to be the best, most compatible and so up-to-date conflict resolution mechanism.

Key words: Restorative Justice, Gumaa, Ethiopian Criminal Law, Traditional Conflict Resolution Mechanism.

Chapter ONE
Introduction

1.1 Background

Restorative Justice (RJ) acts in response to crime by attending to the harm caused to the victim and by holding the offender responsible and accountable so as to restore relationship in the community (Zehr, 1997). The purposes and objectives of RJ are to bring back the losses sustained by victims of crime; mend the relationship between victims and offenders; and reintegrate the offender into the community (Zehr, 1995; Van Ness and Strong, 1997). Restorative Justice is centered on the relationship between victims, offenders, and the community (ibid). It underlines the involvement of all three stakeholders in mending the broken relation.

In RJ victims get the opportunity to meet face to face with the offender and speak out and express the harm caused to them (Liebmann, 2007). It is a forum that helps victims to find out the reason for the harm and why it is targeted on them or their family. On the other hand, it also provides opportunity to the offenders to express their regrets and acknowledge their responsibility as well as amend the harm they caused to the victims (Braithwaite, 2003). The community, understanding the pain of the victims and the situation of the offender, becomes part of the reconciliation, restoration and reintegration process (ibid).

Like most other criminal justice systems, the criminal justice system of the Federal Democratic Republic of Ethiopia (FDRE), though recognizes rehabilitation as one of its purposes, tends to emphasize more on punishment (Art, 1). As a principle, any crime is considered to be a violation against the state. Based on this principle, the state prosecutes and penalizes the individual offender. (Enyew, 2014). The interconnected and related stakeholders like the victim and the offender have less recognition in the process. However, looking into the efforts made to introduce new justice with some elements of RJ is an encouraging and promising endeavor in the justice system (ibid).

The Constitution of Federal Democratic Republic of Ethiopia (FDRE), in Article 14, states that "every person has inviolable and inalienable right to life"; however these rights will be affected in case of punishment for criminal offence determined by law. Starting from this

Article all the way through Article 21 of the Constitution, issues related to arrest, accusation and conviction of offender have been stipulated. The recognition of customary law has been indicated very slightly in relation to dispute related to personal and family affairs in Article 78 of the Constitution. The absence of the concept of RJ in the supreme law of the nation shows the insignificance attached to RJ in the Ethiopian legal system. When we proceed to examine the Ethiopian Criminal Law, some scholars argue that the concepts of pardon, amnesty and parole show some elements of RJ (ibid). However, when we see pardon in Article 229, sentences can be remitted in whole or in part for grave or less penalty, but it doesn't abolish the crime committed from the judgment registry (Janka, 2013). In the case of Amnesty, Article 230 provides the provision of amnesty for certain crimes or group of criminals and in contrast to pardon, criminal records are entirely deleted (Ethiopian Criminal Code, Article 230). Parole or conditional release, on the other hand, is the discontinuation of enforcement of penalty (Article 202).

The above mentioned legal provisions which are considered to have some components of RJ do not exactly convey the idea of RJ. Thus we can say that the Ethiopian criminal justice system does not give due consideration, enough space and frequent practice to RJ. In countries like the US and Canada RJ has been introduced and practiced in their criminal justice system since 1970 (Zehr, 2002). A growing need is coming for the implementation of RJ in the other parts of the world too.

Despite the absence of substantive law providing the concept of RJ, the practical implementation of the informal, customary or traditional conflict resolution mechanisms (TCRM) with the notion of RJ have flourished among the different groups of the society (Yintiso, Azeze and Fiseha, 2011). The Amhara, the Afar, the Oromo, and others have informal or TCRMs that have grown and nourished for centuries. These traditional or informal legal systems (ILS) are highly loaded with the concept of RJ and are widely implemented throughout the country. They are widely used not only in the rural parts of the county but are also sometimes practiced in the urban areas.

Though the formal legal system (FLS) does not give due consideration to the informal legal system, the rural population uses it from time to time in small, serious and complex criminal cases and finds it very relevant, appropriate and effective in addressing the victims' needs, dealing with the offenders' responsibility and building lasting peace.

With this understanding, this research tries to define, examine and analyze the theoretical overview of RJ, its place in the Ethiopian Criminal Law as well as the objectives and purposes of the Ethiopian Criminal Law. On the other hand, it examines the practice of traditional or informal legal system specifically known as *gumaa,* which serves as one of the institutions of conflict resolution mechanisms of the *Gada* system of the Oromo people. In addition, its outcome and implication on the formal criminal law is assessed. Furthermore, it compares RJ with the informal legal system, examines their correlation and compatibility and recommends the renaissance, recognition and inclusion of *gumaa* (representing other Traditional Conflict Resolution Mechanisms or ILS) in the formal legal system. The research also attempts to create a kind of hybrid criminal legal system which embraces the informal and formal legal system with the principles and values of Restorative Justice (RJ), which will enhance the building of lasting peace and security.

1.2 Objectives

This study has the following general and specific objectives.

1.2.1 General Objectives

The General Objective of the study is

- To look for the link between RJ and *gumaa,* an informal legal system (ILS) for conflict resolution.
- To show how the informal legal system affects the formal legal system (FLS) even though the latter does not recognize the former.
- To look for ways of developing a criminal legal system which incorporates the principles and values of RJ and *gumaa* which are vital and essential in bringing lasting peace to the society.

1.2.2. Specific Objectives

Specific objectives of this study are to:

1. Discuss what Restorative Justice means and its place in the Ethiopian Criminal Legal System.
2. Examine the practice of *gumaa* as one form of Restorative Justice.
3. Show the shortfall of the formal legal system because of its deficiency of receptions and inclusions of the informal legal system like that of *gumaa*.

4. Find possible modality and way to incorporate the values and principles of RJ and *gumaa* in the formal legal system.

1.3 Statement of the Problem

The Ethiopian Criminal Law, though recognizes reformative principle in handling criminals, is mainly focused on punishment. Researches show that punishment is not the preferred option in crime prevention and reduction. That Restorative Justice, as a new approach of criminal justice, is more valuable, effective and efficient in preventing recidivism and provides lasting solution to conflict is not adequately recognized or incorporated in the Ethiopian Legal system. Though the formal legal system does not give due consideration to the principles and values of RJ, the informal legal system integrates them and widely practices them across the nation. Lack of formal acknowledgment of Restorative Justice and *gumaa* could not deter their application via the informal legal system. Rather the latter has become rivalry to the formal legal system.

1.4 Research questions

1. What is the overall understanding, recognition and practice of RJ in the Ethiopian Legal System?
2. What elements/principles of RJ are reflected in *gumaa*? What lesson can we learn from traditional *gumaa* as a mechanism of conflict resolution?
3. How can we incorporate the values, principles and practices of RJ and *gumaa* (as Traditional conflict resolution mechanism) into the formal Legal System to be specific in the Criminal Justice System?

1.5 Methodology

The research design applied in this research is the qualitative method. Both primary and secondary sources of data were utilized.

For primary data collection, in-depth interview, focus group discussion and observation were used. In-depth interview, as method of data collection, helps to explore in detail the feelings and experiences of the people concerned and obtain detailed information. It was employed to explore the views of the selected informants like *Caffeetatichaa* judges, elders, lawyers' prosecutors, judges and police officers.

Purposive sampling technique was employed as it enables me to select targeted or appropriate persons based on their experience, position and expertise in areas relevant to the study without fixing the number of participants in advance.

Twenty informants with different educational background, gender and age group participated in the interview as well as in the two focus group discussions. They were from two towns of *Oromia* Regional State.

Secondary data were obtained from different books and articles written on Restorative Justice, *gada* system, *gumaa*, FDRE Constitution, proclamations, regulations and policies.

Data collected through interview and focus group discussion were validated and triangulated:

- by checking them against each other and involving individuals from different professions and walks of life like judges, lawyers, prosecutors, elders, police officers, and residents.
- by checkng them against literature and reports from different researches.
- through personal encounter and my legal educational background and current practice.

Concerning Ethical consideration, confidentiality and privacy of the interviewees and participants in focus group discussion were strictly observed. Serious ethical consideration was made due to the nature of the subject in the FGD and interview. Due respect has been given to the culture, tradition and belief of the interviewees and participants in focus group discussion.

1.6 The Study Area

This study was conducted in two towns of *Oromia* Regional State: *Sebeta* and *Burayou*. *Gumaa* as Traditional Conflict Resolution Mechanism is not limited to *Oromia* alone; it is practiced by other regions with different namings and procedures. Coming back to *Oromia*, the reason for choosing the two towns is that they are newly developing towns around the metropolitan, Addis Ababa. Further, they have a mixed nature of habitats, although they are mainly rural with some urban touch. Moreover, six years ago this researcher got the opportunity to attend the *gumaa* process and came to testify *gumaa*'s practical implementation and its effect on the life of the conflicting parties.

According to the information secured from the Government's Communication Office of Sebeta Town, Sebeta is a small town located at about of 25 kilometers from the center of Addis Ababa on the way to Jimma. The first master plan of the town was issued in 1972, the second in 1988, the third in 1998 and the final one in 2001. The population composition is a mix of Amhara, Oromo, Tigre and other nationalities consisting of 92,396 men and 84,369 women that make a total of 175,565. The economic basis of the population is trade and agriculture. A large number of foreign and local investors are engaged in different businesses. A separate industrial zone has also been established by the state.

The second town, Burayou, is also a small town found at about 20 kilometers from the center of Addis Ababa on the way to Wollega. According to the Town's Government Communication Office, the population is a mix of different ethnic groups. The economy of this town is also based on trade and agriculture. Both local and foreign investors are engaged in different businesses.

1.7 Limitations of the Study

It is clear that the study has its limitations. Primarily, the researcher is not an Oromo language speaker. This has its own shortcomings as the interview for the study was conducted using an interpreter and this would naturally interrupt the flow of information and possibly create some distortion. Due to language constraint, understanding the culture and tradition, and comprehending the ethos of the people was a big challenge. The other limitation was the inability of the researcher to read materials written in the Oromo language and understand them properly.

To overcome these limitations, the researcher had to validate the recorded interviews of key informants and that of the focus group discussions getting the materials verified by lawyers, educators and other individuals well versed in the Oromo language. In addition, counter checking of facts an information has been done using secondary data collected on *gumaa*

There was also lack of concerted data in terms of number of cases closed or dropped by the prosecutor's office or files closed by the court due to settlement via *gumaa.* In addition, there was also lack of data on the overall criminal cases and on those not reported to the police. An in-depth interview conducted with the police, prosecutors and even the judges revealed that

they did not have actual data in their hands although they perceived the existence of such cases.

1.8 Organization of the Study

The study has been organized into seven chapters. The first chapter is the introduction including the background, objective of the study, statement of the problem, research questions and other topics. The second chapter presents the theoretical framework and deals mainly with definition, values, principles and limitation of Restorative Justice (RJ). The different models of RJ are also examined.

The third chapter deals with the development, objectives and purposes of the Ethiopian Criminal Law and the different types of related punishment. It also presents Restorative Justice in comparison with the Ethiopian Criminal Law. In the fourth chapter, *gumaa* as a traditional conflict resolution mechanism, its definition, principles and values, implementing institutions and its shortcomings are discussed.

Chapter Five dwells on the presentation and analysis of data gathered on *gumaa.* The procedures, parties involved and their role are examined and findings of the study are discussed. The link between *gumaa* and Restorative Justice is assessed and its implication for the formal legal system is touched up on.

Chapter Six deals with analysis and discussion of the theory of Restorative Justice versus the Ethiopian Criminal Law, Restorative Justice versus *gumaa*, and the Ethiopian Criminal Law versus *gumaa*. Here an attempt is made to see the theoretical sketch of each concept and its implication for each other. The final chapter, Chapter Seven, presents the conclusions and recommendations.

CHAPTER TWO
THEORETICAL FRAMEWORK

2.1 Definition of Restorative Justice

Due to the growing nature of the field, there is no one universally accepted definition of Restorative Justice (RJ) (Johnstone and Van Ness, 2007). It is explained and known in different ways in diverse cultures and regions. There are also many expressions that are used to describe RJ in different languages. Some of the terms used are *positive justice, communitarian Justice, making amends,* and *reparative justice* (Miers, 2001b, p.88). Some definitions focus on promotion of healing, others on the elements of RJ, and still others on the value of RJ. On the extreme, some see it as a "holistic approach to life and relationships". Restorative Justice is a collaborative and peacemaking approach to conflict resolution, and can be employed in a variety of settings at home and business (ibid).

The Restorative Justice Consortium (2006), a national charity whose members are national organizations and individuals interested in promoting Restorative Justice, uses the following definition:

> *Restorative Justice works to resolve conflict and repair harm. It encourages those who have caused harm to acknowledge the impact of what they have done and gives them an opportunity to make reparation. It offers those who have suffered harm the opportunity to have their harm or loss acknowledged and amends made* (page no??).

Definitions of RJ can be categorized as "process-based" and "justice-based" (Van Ness and Strong, 2002)."Process-based" definition focuses on the stakeholder of the crime and its aftermath while the "justice-based" definition focuses on the outcome of Restorative Justice.

United Nations Office on Drugs and Crime (UNODC) handbook of Restorative Justice program defines RJ as "…a way of responding to criminal behavior by balancing the needs of the community, the victims and the offenders"(2006:99). Among the scholars, Zehr (2002) defines RJ as a process where those who are hurt by certain offences cooperatively identify the offence and the damage it causes so as to heal and reinstate or restore things as it were before.

For Cormier (2012:p. no.), Restorative Justice is:

> *… an approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for*

> *the parties directly affected by a crime – victim(s), offender and community – to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm.*

According to Braithwaite (2004:28.), RJ is:

> *...a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, Restorative Justice is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have afflicted the harm must be central to the process.*

Van Ness' (2004) definition includes both categories of definition. For him RJ is "a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through inclusive and cooperative processes" (p. 68) Marshall (1999) described it as "a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future."(P. 5)

The Declaration of Basic Principles on the use of Restorative Justice Program in Criminal Matters ("UN Basic Principles") defines RJ in a way different from the above categories. It gives a broader definition by introducing new terms such as "restorative outcome" and "parties".

The above definition shows that RJ is a system of bringing together all stakeholders and individuals involved in a certain crime in order to address the harm caused and restore the parties to their earlier relationships. It gives a chance for the offender to take responsibility for the act and meet the victim or his/her family. It also assists in reducing the harm by solving the issue peacefully and reintegrating the offender into the community.

2.2 Principles of Restorative Justice

Restorative Justice (RJ) in a wider view is a way of changing the legal system, our day to day life style and the justice system of the world. (Zehr, 1995; Van Ness and Strong, 1997). It focuses on building and restoring the relationship among the victims of crime, offenders and the community. With the above definitions and premises, RJ is guided by its own key principles (ibid).

The first principle is giving priority for the healing and support of the victims (Liebmann, 2007). In most legal systems, crime is considered as a matter of the state and the victims are not given proper attention (ibid). Most resource is allocated to bringing the offenders to justice. They focus on chasing, catching, arresting and prosecuting the criminals and punishing them (Ibid). But RJ focuses on healing and addressing the damage sustained by the victim (Jonstone and Van Ness, 2007).

The second principle is that offenders take the full responsibility of their wrong doing (Van Ness and Strong, 1997). This also requires amending or repairing the offence. Taking punishment imposed by court is not similar to taking responsibility voluntarily for the offence or crime one committed. Taking responsibility is the first step in restoring the relationship and it follows with making things right (Ibid). Zehr (2003) states that RJ puts emphasis on amending or repairing the harm caused by the crime and putting obligation on the offenders and on the community. When the offenders are not able to repair the damage by themselves, the community might help and get involved since it is also damaged by the offence in different forms (Ibid). The amendment or repair can be in two forms. The first one stresses that the offenders repair or reinstitute the damage s/he caused to the victim and to the community. The offender will return the property or pay for the damage (Van Ness & Strong, 2015). The other form can be a simple apology or performing community services (Schmid, 2002). This principle requires the willingness of the parties to deal with the issue without any external pressure.

The third principle is involving stakeholders of the crime in the process of RJ. According to McCold (2010), 'what brings the most healing and the best way for individuals affected by a crime to reliably meet their needs is the very act of participating in the process and in deciding what will happen' (p.168). But usually the process of the Criminal Justice System makes the victims, the community and the offenders passive. Since it is the state that is considered as the main victim, the state controls the process of bringing offenders to justice. Moreover; due to the principle of presumption of innocence until the criminals are found guilty; offenders or defendants usually are not willing to take responsibility. The victims and the community are not part of the Criminal Justice System and have limited control over the case (Van Ness & Strong, 2015; Zehr, 2002).

On the other hand; in Restorative Justice, as Zehr (2002) puts, “the parties affected by the crime, offenders, their respective family members, and members of the community are given significant roles in the justice process” (p. 22). RJ assumes the victims and the community as the principal victims and requires the involvement of all parties. The parties have control over the issues and there is a dialogue to achieve understanding of the crime, the harm done and response to it (McCold, 2010). The victims will get answers to the questions relating to the crimes. Many victims have a lot of questions that they want answers to: questions like “why me? Why my house? Is it likely to happen again? and so on. There is only one person who can answer these questions, “It is the offender. (Liebmann, 2007, p. 26). In the same way, the offenders will understand the harm they have done and the outcome of the offences. The community also involves in repairing the damage and reinforcing its values. (ibid).

The fourth principle deals with helping offenders to be law abiding citizens. This is achieved by “a collaborative sanctioning process”(Schmid, 2002, p. 96). In RJ system it is the parties who decide on the outcome of the crime rather than a third person assigned by the state and who follows rigid criminal procedures. This mutually agreed on process will help the parties to discover the whole truth about the offence and their future relationships (Zahr, 2002, Van Ness 2002). Since the repair and amendment process is mutually decided by the parties; it is presumed that the offenders will improve their behavior and will not engage in similar offences. Nevertheless, there are situations like homelessness, drug or alcohol problems that might lead offenders to repeat the crime (Liebmann, 2007). In order to avoid this, offenders need essential help so that they can live a different and productive life. Hence the RJ requires substantial resource that can be contributed from the community or the state so that offenders can be rehabilitated and helped to avoid future harm (ibid).

The fifth principle is reintegrating the parties into the community (Braithwaite, 1989). RJ aims at restoring the relationship of the parties and the community. Hence offenders who are sent to prison are helped to reintegrate to the community after the prison sentence. On the same way victims might feel alienated from the community because of the crime and might encounter psychological and emotional problems (ibid). Victim support programs are aimed at dealing with such kind of issues (Liebmann, 2007). In general, as Braithwaite (1989) noted, RJ process makes it possible to reintegrate shaming the crime to happen. This involves disapproving the act of the offender and “reintegrating the offender back into the community of law abiding citizens through words or gestures of forgiveness, or ceremonies to decertify

the offender as deviant' (p. 55). The process leads the offenders to be ashamed of the crime and the disapproval of the wrong doing by his close families and the community will make the shaming process re-integrative. Through all the processes, the offender will be helped to change his/her life style and to be a useful member of the community (ibid).

2.3 Values of Restorative Justice

It is clear that the process of RJ would not be possible without the use of the values and principles of RJ. Unless there is a guideline wholly accepted by participants using the values of RJ, is goals will not be achieved.(Van Ness,2002). For example, if the participants humiliate the wrongdoer or if there is favoritism, it will be difficult for the wrongdoer to repent or to reach to mutual agreement. However, according to the definition of RJ, there is no generally accepted list of RJ values but lots of them. Scholars and authors on the subject have articulated the values in different ways (Van Ness and Strong, 2010; Johnstone and Van Ness, 2007). Hence, for the purpose of this research, it is necessary to state the most known and used values of RJ in order to compare them with the concept and values of *gumaa* which is practiced among Sebeta and Burayou *Oromo*.

Braithwaite (2003) outlined three values of RJ. The first value deals with applying the restorative value equally to all parties and avoiding the process from being "abusive" or "discriminatory". This includes what he calls constraining values which comprise "Non-domination" ,"empowerment" ,"respectfully listening", "accountability", and appealability" (p. 9). The second value deals with the success or outcome of the restorative process. The values in this category include "restoration of property loss and emotional restoration, and more abstract ones like restoration of dignity, compassion, and social support" (p. 11). The third values are "emergent" values which are results of good restorative process. This includes remorse, forgiveness and reconciliation.

Pranis (2007) divided RJ values in to "process" and "individual" values. He argued that "process values" (e.g. inclusion) deals with the quality of the process of RJ while "individual values" (e.g. honesty) address the positive effect of the process value on parties to the process (P. 60). Out of a number of listed values, scholars like Van Ness and Strong consider amendment, encounter, inclusion and reintegration as the most important ones. The concept of encounter deals with bringing the parties together so that they can discuss the causes, harms and outcome of the offence. In inclusion, all the affected parties are invited to be part of the

RJ process; and in Amendment, the offender/s takes the responsibility for the harm and to make it right. Reintegration is about making the parties rejoin to the community.

Zehr (2002) attempts to define RJ values by comparing retrbutive and restorative justice. The values that came out of the comparison are dialogue, mutuality, healing, repair, repentance, responsibility, honesty and sincerity. For Dyck (2004), inclusion, respect, self-determination, responsibility, equality, truth-telling, listening and understanding, humility, safety, renewal and reintegration are the values of RJ. Boyack *et al*. (2004) noted that the RJ values are "those values that are essential to healthy, equitable and just relationships." For him 'Core Restorative Justice Values' are respect, participation, humility, honesty, and interconnectedness(P. 61). For Wonshe (2004), the values of RJ begin with 'respect, seek reconciliation and are based on love' (p. 255) while 'Empathy, mutual understanding, restitution and accountability' are the main guidelines of Restorative Justice (RJ) values for Herman (2004, p. 75).

2.4 Critiques and limitations of Restorative Justice

As there are pro RJ movements and huge supporters, there are also those who are skeptical about its practicability. They argue that the concept of RJ has limitations and they doubt RJ viability. Due to its limitations, they argue that the public and policy makers will not acknowledge the concept as a response to crime (Hirsc *et al*, 2003).

The critiques note that RJ goals are "unclear" and "multiple" (ibid). The goal of RJ is to 'restore' the offender, to recognize and repair the harm, to heal the conflict, to reintegrate the parties to the community, and to make the offender guarantee not to repeat his/her offence (Bratihwaite, 1989); Zehr, 1995; Van Ness, 2002). Hirsc *et al* (2003) stated that RJ process is not clear on how to address its aim. For example, it is not clear whether the "consequential harms of the conduct" should be addressed or should it "involve normative response". It is not also clear what kind of bond or value of the community is damaged and how it should be restored. They also noted that different goals are proposed but without prioritizing the goals; some goals have "analogical meaning rather than literal meaning" (ibid).

The other critique Hirsc *et al* (2003) mentioned is its "Underspecified means and modalities''. They noted that there is no specific means to realize the objectives of RJ. It is not clear what intervention should be used or when apology by the offender is desirable or when

compensations are more suitable (p. 23). The third critique is that the RJ proceeding is open for participants to decide on what would be best to achieve the aim; which means RJ meetings are open to pursue any aim and use any means to achieve it (ibid). The fourth critique relates to RJ programs evaluation method. They noted that there are various means of evaluation and it is hardly explained how these means are used to achieve the purpose. On the other hand, RJ advocates argue that RJ is in its early stage and it will address these issues when the concept is developed (McCold, 2010).

In addition to the stated critique of the RJ programs, RJ has its shortcomings and limitations. Some of the limitations are:

- Expectation of the people from the criminal justice system: - The public expect protection from the criminal justice system and also to punish criminals. Proponents of RJ argue that the criminal justice system failed to protect the society. RJ might be acceptable for first time offenders or minor crimes; but according to Johnstone (2002) it is difficult to convince the public that RJ is an alternative to the normal punitive justice system in the majority of criminal cases. Ashworth (1986) also argues that reparation or compensation is inadequate for some serious crimes.
- Deterrence and protection from criminal behavior: It is believed that those who committed crime once are likely to involve or commit another crime. There is also another group of society that has the tendency to be exposed to committing crime but have not done so. For this reason, the criminal justice system is expected to deter the criminals and potential criminals by punishing offenders i.e. putting them in prison or restricting their rights. This shows to the public that certain behaviors are unacceptable and wrong (Bussmann, 1992). But if offenders go away without being penalized, it might create a kind of reluctant behavior on viewing crimes.

  As stated above, the RJ programs use shaming, reintegration and reforming the criminals by insuring the offender does not repeat his wrong doing. But as noted by different authors, this method might work for some criminals but not for all. In addition the RJ method requires a community with strong sense of unity which in current modern society is absent. As Johnston and Van Ness, (2007) put it, what we have in a current society is "…not community but associations of diverse strangers between whom moral ties and mutual concern are minimal"(p,29). In addition, the idea that a person who committed a crime

should avoid punishment and discourage criminals to repeat their offence (Johnstone, (2002); Bussmann, 1992).

- The essay by Retzinger and Scheff (1996), after studying many Australian RJ conferences, suggest that the RJ can be "a shaming machine that worsened the stigmatization of the offenders." In the same way Umbreit (1994) note that the terms which are used in RJ (like reconciliation and forgiveness) are highly judgmental and might lead to isolation and stigmatization of the offender. Hence, rather than reintegrating and reforming the offenders, the system might lead them to anger, isolation and into other crimes.

- In ethnic based and indigenous society, RJ is prone to be dominated by the prominent groups. The elders and interest group might protect their own and dominate the process of RJ. In addition families and relatives take the major share in making decisions in the RJ process rather than the offender or victim. Research shows that the most influence for decision comes from the families of the offender, then from professionals and the victims. (Maxwell and Morris, 1993).

2.5 Models of Restorative Justice

Along the line of the above principles and values; different models of RJ which are also called RJ programs or processes or encounter programs are developed in the world (Van Ness and Strong, 2010). The UNESC basic principles define the RJ process as "any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator." (P. 6)

The purpose of all the models is to put right the harm caused by the crime. All the methods are appropriate and can be used on particular issues as necessary. This is because the "essence of Restorative Justice is not the adoption of one form or process; rather it is the adoption of any form or process which reflects restorative values, and which aims to achieve restorative objectives and outcomes."(Mousourakis, 2012 P.47). Hence, the following listed models are just the most used not the list of all models.

2.5.1 Victim-Offender Mediation and Dialogue (VOM/D)

VOM/D model has been used for more than 30 years in US, Canada and Europe, which makes it the longest restorative intervention strategy used (Umbreit, 2001). It started as a faith-based justice process and grew to a source of justice system around the world (ibid). The main offences handled by VOM/D are less serious crimes and property damages (ibid). Umbreit (2009 P. 2) defines VOM as:

> *"Victim–Offender Mediation is a process which provides interested victims of primarily property crimes the opportunity to meet the offender, in a safe and structured setting, with the goal of holding the offender directly accountable for his\her behavior while providing important assistance and compensation to the victim."*

The process is intended to bring the parties together (face to face) to facilitate dialogue which usually is in community-based setting (Hirsch, *et al.*, 2003). This is done by impartial third person to bring the parties together either directly or indirectly (Liebmann, 2007). Usually the process includes that the mediator or the third party visits the offender and victims and shares all the possible options with them. If agreed, ground rules will be laid and there will be preparation for direct mediation.

VOM usually involves the victim and the offender but both parties might bring their supporters. It can also be done in large numbers (ibid). Research from around the world shows that victims and offenders participating in VOM/D are more satisfied with the process than the normal court process (Umbreit, 2001; Schiff, 2003; Miers, 2001). It also shows that victims who met offenders are likely to receive compensation and less likely fear re-victimization (Carr, 1998). In general research shows that RJ mechanism is more preferable by offenders and victims than the traditional court system.

2.5.2 Family Group Conferencing (FGC)

FGC was first developed in New Zealand based on Maori people's experience and was adopted by different countries (Pratt 2000). At first it was used for child welfare cases and young offenders. Cases involving young offenders (14-16 ages inclusive) are handled through FGC (ibid). The family Right Group (1998) act defines FGC as:

> *"….a decision-making process that focuses on who makes plans for children and how those plans are made. ……. the child and his or her family form the*

> *primary planning group, with professionals using their expertise to provide information to the family, enabling them to make a plan which meets the needs of the child/young person for whom the conference has been convened; and in the process of this, to meet the expectations of Social Services concerning good enough care..*" (p,14)

According to Liebmann (2007), the model consists of four stages which are "*preparation*" (the coordinator contacts the child, the family and relevant bodies after the case is referrred by court or similar body), "*Information giving*" (the professionals share information like their duties and about the matter with the family); "*Private family time* " (all the other bodies will withdraw and the families make plans and recommendation on repairing the harm). On the last stage, "*Agreeing on the plan*" the families, the coordinator and the proffessionals discuss and agree on the plan (p,85).

The process requires the presence of the offender, the victim, the families, professionals, and coordinator. It is the families who recommend and make a solution for the conflict but there is fear that the professionals might dominate the decision making and limit the involvement of the families and the victim-offender (ibid).

2.5.3 Sentencing Circles (SC)

As the family conferencing was derived from aboriginal Maori people, SC originated from Canada aboriginal people's peacemaking practice. The circle is community-based which includes the families, the community, the victims, offender, the judge, lawyer and public prosecutors as part of the meeting to discuss and recommend the type of punishment the offender receives (Liebmann, 2007). The first known cases handled by this model were in 1992 between R V Moses. The offender was a 26-year-old with 43 criminal convictions and long history of alcohol abuse. During his 43 convictions, it was suggested that he received different interventions including long term counseling and substantive abuse treatment which was not provided to him. Because of his history of conviction and failure to provide him the treatment recommended, the judge who handled his case, the probation officer and the crown counsel explored and decided to include his families, the victim and the community as part of the sentencing determination. The judge modified the court setting by creating a circle with 30 chairs in which the stakeholders; the judge, the first nation community leaders, the police, the lawyer, the probation office, the victim, and the offender were present (ibid).

The hearing was conducted in informal conversation where the parties and everyone in the circle could express their ideas and concern freely. At the end of the hearing, the community agreed to help the offender and his families; his families agreed to help him while he dealt with his substantive abuse and recovery; and the offender agreed to take a three-part treatment program (Liebmann, 2007; Van Ness and Strong, 2015; Hirsc *et al*, 2003). The Judge, Barry Stuart, discovered a lot of advantages of sentencing circle than the tradiational criminal justice system (ibid)**.**

In general SC has four processes: the application process, preparation, sentencing circles and follow up circles (Van Ness and Strong, 2015). Usually it is the judge who is part of the circle and imposes the sentence after consensus is reached in the circle. But in some communities where the model is developed, judges are not part of the decision and (sentencing). But if the circle fails to agree or reach consensus after two circles, the case will be referred to a court or a judge might impose sentence based on the circle's discussion (Liebmann, 2007). Circles are used in cases including serious crimes, petty crimes, parole hearing and also for reintegrating the offender into his/her community (ibid).

Although the purposes of the models are the same, the above three models have their own similarity and differences. The table below shows the similarity and differences of the three models.

Table 1 Characteristics of models of Restorative Justice

Characteristics and stages	Victim-offender mediation/dialogue	Family group conferencing	Sentencing Circles
Stage in criminal justice process	Diversion, pre-court, post-process adjudication, post-sentence	Diversion, pre-court, post-adjudication, post-sentence	Diversion, pre-court, post-adjudication, as sentence, post-sentence
Kinds of cases	Minor crimes; and increasingly more serious and violent crimes	child welfare and less serious crimes; and also increasingly more serious and violent crimes	minor crimes, serious and violent crimes, case needing extensive follow-up

Role of facilitator	Create safety, guide process	Create safety, guide process; writing (but not recommended in some forms of conferences)	Create safety, talking piece to guide process
Participants	Initially, one victim, one offender and mediator(s). It might also include family members and supporters.	victims, offenders, family members, supporters and some state employees	victims, offenders, family members, supporters, criminal justice system personnel, members of the local community
Preparation	In-person (is strongly recommended)	Phone contact and in-person	In-person recommended, but can also be through the use of preliminary circles.

Source (organized from) Barbara E. Raye and Ann, W. Roberts, 2007)

As the above table shows, the models have their own similarities and differences but in general it has three characteristics: RJ dialogue is inclusive, it is based on the principles and values and the program is conducted in such a way that it gives the participants freedom to express their experience, emotion and taught (Liebmann, 2007).

2.5.4 Other Models

A. Victim -Offender Panels

This model deals with victim-offender cases where both are unable or are not willing to meet face to face. This model gives the willing parties to be represented or 'surrogate encounter' (Van Ness & Strong, 2015). The panel is composed of group of victims or offenders who are linked with similar crime but both parties are not victims of each other. The purpose of this panel is to find out the crimes committed and to identify or expose the crime with a purpose of changing the behavior and attitude of the offender (ibid).

B. Citizens Panel

Citizens Panel model is mainly used in Canada and US for minor criminal cases. In the US, Citizens panel handles cases related to non-violent juvenile crimes (Hirsc, *et al*., 2003). It also takes care of cases in which the community is affected like public urination, prostitution, and neighborhood disturbance and drinking. Since there is no

individual who is directly affected in those cases (it is the community which is the victim), there are no direct victims present in the panel (ibid).

2.6 Incorporation of Restorative Justice into Criminal Justice System

Many scholars agree on using the restorative process in dealing with crimes rather than the retributive criminal justice system (Zehr, 1997). In fact, it is the dissatisfaction of the traditional justice system which is not rehabilitating victims and offenders that led to the exploration of other options like RJ (ibid). However there are two different views on achieving the Restorative Justice goals. One group sees RJ as separate from the traditional justice system having loose link with it (McCold, 2000). This group believes that the purpose of RJ is attained by diversion of cases from the criminal justice system and it states that this method is best to protect the values and principles of RJ (ibid). According to them incorporation of RJ into the legal system is unnecessary for the reason that the criminal legal system would weaken the principles of RJ by bringing judicial coercion into the process. McCold (2000) noted that there are three stages in the development of RJ. On its first stage, it operates by way of diverting cases from the justice system to programs of RJ operated by non-profits. On the second stage, the responsibility of organizing and facilitating RJ programs is transferred to the formal criminal justice system. On the third stage, RJ will be infused on the criminal system and it will change the justice system with principles of RJ. Critics of this group state that placing RJ independent of the criminal legal system limits the opportunity of reforming the legal system.

The second group put RJ with the formal criminal justice system (Walgrave, 2000). They state that the justice system should be reformed based on the values and principles of RJ and argue that RJ should be integral part of the justice system (ibid). The diversion groups who are critics of integration group argue that the values of RJ do not fit with the value of the criminal justice system. Morris (1995) noted that “trying to patch Restorative Justice onto the existing fundamentally retributive systems is a transplant the social body will reject” (p, 288).

However, the idea of both groups for development of RJ depends on the criminal justice system. Both agree that the state should arrange funding, referrals and a legal framework for the restorative programs. Furthermore, the system should provide legal safeguard and judicial oversight for the development of Restorative Justice.

2.7 Restorative Justice and the Criminal Justice System:-The Link

In order to talk about the link between the criminal justice system, which is retributive, and the Restorative Justice system, which aims to restore relationship of the offender, victim and the community, it is necessary to clarify the retributive concept and their differences. Zahr (1995) and (1997) have summarized the paradigm of both concepts.

Table 2: Comparison of Retributive and Restorative Justice

Retributive Justice	**Restorative Justice**
1. Crime defined as violation of the state.	1. Crime defined as violation of one person by another.
2. Focus on establishing blame on guilt; on past (did he/she do it?).	2. Focus on problem-solving, on liabilities and obligations, on future (what should be done?).
3. Adversarial relationships and process normative.	3. Dialogue and negotiation normative.
4. Imposition of pain to punish and deter/prevent.	4. Restitution as a means of restoring *both* parties.
5. Justice defined by intent and by process: right rules.	5. Justice defined as right relationships; Judged by the outcome.
6. Crime seen as individual vs. state.	6. Crime recognized as interpersonal conflict.
7. One social injury replaced by another.	7. Focus on repair of social injury.
8. Community on side line, represented abstractly by state.	8. Community as facilitator in restorative process.
9. Encouragement of competitive, individualistic values.	9. Encouragement of mutuality.
10. Action directed from state to offender: • Victim ignored. • Offender passive.	10. Victim's and offender's role recognized • Victim rights/needs recognized. • Offender encouraged taking responsibility.
11. Offender accountability defined as taking punishment.	11. Offender accountability defined as understanding impact of action and helping decide how to make things right.
12. Offence defined in purely legal terms, devoid of moral, social, economic, political dimensions.	12. Offence understood in whole context – moral, social, economic, political.
13. 'Debt' owed to state and society in the abstract.	13. Debt/liability to victim recognized.
14. Response focused on offender's past Behavior.	14. Response focused on harmful consequences of offender's behavior.
15. Stigma of crime irremovable.	15.Stigma of crime removable through restorative action
16. No encouragement for repentance and forgiveness.	16. Possibilities for repentance and forgiveness.
17. Dependence upon proxy professional.	17. Direct involvement by participants.

Source Zahr (1985, p 15; 1990, p, 211-14).

From the above table we can observe the differences of both systems in defining some concepts, values, and also in handling of the whole process of trialing and sentencing the criminal. Both have the aim of protecting the public peace and order and deterrence of crime but they have differences in answering the question how? In criminal justice system the state which is believed to be the victim investigates and prosecutes the criminal and puts him/her in some restriction such as prison while in Restorative Justice (RJ), justice is attained through the victim and the community healing, and offenders accountability and responsibility. Hence the link in Criminal Justice System and RJ lies on the desire of both systems to ensure and protect the peace of the society and prevent recidivism.

Chapter Three
Overview of the Ethiopian Criminal Law

3.1 Development of Ethiopian Criminal Law

An attempt by rulers to have a written criminal law goes back to the 15th century where Emperor Zar'a Ya'equob with a desire to have written law, ordered the Ethiopian Orthodox Church Scholars to prepare a written law (Jembere, 2000). The scholars compiled a written law with 62 articles then known as the *Fewuse Menfessawi* translated as the canonical Penance where most of the articles dealt with criminal matters. Failure of the *Fewuse Menfessawi* to deal with all the legal issues at the time led to the codification of the *Feteha Negest* (The law of the kings) by the same emperor. It can be said that the *Feteha Negest* was one of the first legislations that incorporated the principles of Criminal Law (ibid).

As Philip Graven, the drafter of the 1957 penal code, noted the principles of criminal law incorporated 'intention' and 'negligence', involving the proportion of sanction and fault, individualization of punishment, sharing of guilt in case of group fighting, forgiveness and redemption of offenders were included (Graven,1965). The *Feteha Negest* with its all drawbacks was incorporated in 1908 to the Ethiopia Legal System by King Menelik and was used until it was replaced by the Penal Code of 1930 (ibid).

The 1930 Penal Code was influenced by the *Feteha Negest* and some foreign laws but was not codified systematically. However; it has introduced few criminal law concepts. The crime and punishment for the exact crime was stipulated; the code protected the interest of the property, persons, the state and community; the concept of petty offence was included and the penalties were softened.

The 1957 Penal Code was the first code that followed the rules of the modern legal codification and it was one the first modern criminal codes of the time. It was drafted by Philip Graven, a Swiss who was president of the court of cassation and Dean of Faculty of Law in Geneva. The drafter used different modern and latest sources in the codification process. The main sources of the code were the Swiss Penal Code of 1937 and the pre 1957 Swiss jurisprudence. He also used the French Penal Code of 1810 (the general format); Yugoslav Penal Code of 1951 (related to military offences) and also the codes of Poland,

Norway, Spain, Portugal, Denmark, Republic of Germany, Brazil, the Netherlands, Greece, and Italy. International conventions like some provisions of the UNDHR and the Red Cross Geneva Convention were incorporated (ibid). A new concept with the aim of prevention of crimes and rehabilitation of offenders was introduced. Unlike the previous laws where the purpose of the penal code was retributive; the new code aimed (include) at the prevention of crimes and rehabilitation of criminals.

This new concept and some provisions of the code arose bitter controversy among the codification commissions composed of Ethiopians and foreigners (ibid). After long discussions, compromises were made and the draft was accepted. Graven (1965) noted that the draft code was accepted *"….because it aimed at not only satisfying the then state of affairs, but guiding society as an instrument of change. The new code was intended to affect national unity and to provide for the progressive development of Ethiopia***".**

Some of the new concepts introduced and those that were compromised were on the issues of abolition of mutilation as punishment, collective punishment and others. Probation and suspension of sentence which is discussed in detail in the subsequent section were introduced in the 1957 code. The code was in force until it was replaced in 2004 and this shows how the drafters carefully incorporate modern legal system. Using the latest sources has made the code to serve for half a century**.**

After overthrowing King Haile Selassie, the military government came to power in 1974 and brought change to the legal system. In 1974 martial law was introduced and military tribunals were created to deal with political offenses. The tribunals were given authority to impose long sentences and death penalty for crimes like corruption and maladministration. In 1976 the 1957 code was amended in order to include death penalty for anti-revolutionary activities and economic crimes. In 1981 another special penal code was introduced to elaborate economic crimes. According to this code, serious economic crimes include sabotage in agriculture products and destroying public property and vehicles. The revised Special Penal Code of 1981 also included articles dealing with offences against the head of state, armed uprising and crimes against the independence and territorial integrity of the state.

The socialist regime was overthrown by armed struggle in 1991 and a new criminal law " The Criminal Code of the Federal Democratic Republic of Ethiopia" was brought into force in

2005 by proclamation no 414/2004. The preamble of the code states reasons that necessitated revision of the 1957 code. The reasons mentioned are:

- To redefine the purpose and objective of punishment.
- To incorporate modern legal concepts and international convention that the country ratified.
- To incorporate new crimes that were not incorporated in the old penal code (crimes like money laundering, hijacking of aircraft, etc).
- To incorporate all provisions related to crime in one code. There were a lot of separate proclamations dealing with crime and the new code aimed at adopting comprehensive criminal code by putting together all the provisions.
- To increase punishment for serious crimes like rape.
- To make clear the determination of sentencing.

This criminal code has managed to incorporate all criminal provisions but there still are separate proclamations with criminal provisions such as anti-corruption proclamations, provisions that deal with tax crimes and also anti-terrorism proclamation.

3.2 Objectives and purposes of Criminal Law

A criminal Law is one of the oldest laws associated with the history of society. According to Hall (2004), a criminal law is different from civil law because its purpose is to protect the society while civil law is to protect the property and persons' interests. The purpose and objective of the Ethiopian criminal law is stipulated in the preamble and Article 1 of the code. The objective of the FDRE criminal law, according to Article 1 is "ensuring order, peace and security of the state, its peoples, and inhabitants for the public good". Since the criminal law considered crime as offence against the state, its main objective is protecting the peace of the state and public good, than individual's wellbeing.

In accordance with Article 23(1) of the Ethiopian criminal code, crime is defined as "an act which is prohibited and made punishable by law. In this code an act that consists of the commission of what is prohibited or the omission of what is prescribed by law." From this definition we can tell that the Ethiopian criminal law views crime as violation of a law in a form of commission or omission. In other words, it means that it is the state which has been violated and it is the state's responsibility to respond to the crime in order to protect the public

peace. The code on Article 1 provides three ways to achieve its objective. Paragraph 2 of Article 1 states that:

> "*the Code aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes*."

The first mechanism is the principle of due notice. This principle states that individuals should be given due notice about conducts that amount to crime, the penalty for the conduct and the absence of defense based on ignorance of the law (La Fave & Scott, 1972). On this aspect the above article states that it aims to prevent crime by 'giving due notice of the crimes' and also its 'penalties prescribed by law' with a view of warning individuals not to violate the criminal law. But the code does not incorporate the principle of defense based on ignorance of law in Article 1 as it does other principles. But it stipulates in Article 80 (1) that ignorance or mistake of law is no defense. The due notice is carried out by publication of the laws in the official state bulletin, *Negarit Gazzeta* and it is presumed that everyone is aware of the enacted law with no excuse of ignorance of law.

The second mechanism to achieve the purpose of the Ethiopian Criminal Law stated in Article 1 is punishment. It is stated that when the due notice became ineffective, punishment should be provided. The purpose of the punishment is *'to deter'* and *'reform'* wrong doers. Punishment is believed to deter offenders from committing other crimes and it also serve as a warning to potential criminals. With the exception of death penalty and life imprisonment for serious crimes; the main objective of punishment is to preclude offenders temporarily or permanently from committing other crimes by reforming them. Punishment for reform of criminals is also recognized.

The last mechanism to achieve the purpose of the law is "measures". Measures are used to prevent further commission of crime. These measures include home arrest, reprimand etc, In general, from the preamble and the provisions of the Ethiopian Criminal Code, one can say the objective and purpose of criminal code are the following.

a. **Protect the security and safety of the state**

In the Ethiopian Criminal Law, protection and ensuring state safety and security is the primary objective of the law. The state using the police, prosecutor and court makes sure the criminal gets punishment in order to achieve this objective.

b. Protection of public good (Protection of persons and property)

The other related objective of the law is ensuring public good. This includes protection of property, liberty and life. Safety and security guarantee peaceful order of the society and enable the people to live without fear of injury to their life and property. The code aims at protecting the property and person's safety and security by maintaining law and order.

c. Deterrence and punishment

According to the Ethiopian criminal code, the purpose of punishment is to deter criminal activities by making criminals an example and giving a warning to the potential offenders not to commit crime. The concept of deterrence also daunts the criminal from committing further crime by denying the criminals liberty or by restraining and confining them from committing another crime**.**The presumption inherent in criminal law is that if we make the punishment sufficiently harsh, persons who might commit crime are prevented from doing so because they fear punishment. If enough people fear punishment, there will be considerable reduction in criminal activity. The retributive aspect of punishment is not mentioned in Article 1 (which states the objective of the law) or in the preamble (as background of the code) of the Ethiopian Criminal Code but from the whole reading of the code; we can conclude that the code has a retributive objective**.**

d. Rehabilitation

The other purpose of the law is to reform or rehabilitate offenders. This is done by giving them different trainings and education while they are serving their sentence so that they can be law abiding and self-sustained citizens. There are various programs to educate and train criminals in legitimate occupations during the period of incarceration.

3.3 Types of Punishment

As mentioned above, there are different theories of punishment: Retribution, prevention (incapacitation), deterrence, reformation and integration. This part of the thesis will discuss the types of punishment based on the Ethiopian Criminal Code.

3.3.1 Principal

Principal punishments are those punishments primarily and independently imposed on the offender for the crime he/she has committed. Principal punishments are further classified into three categories.

a. Pecuniary Penalties (Art. 90-102):- pecuniary penalties or monetary penalties are penalties which are imposed on adults and are payable in monetary form. The penalties under this category include fine, sequestration, confiscation and other pecuniary effects. Fine is "a pecuniary criminal punishment payable to the public treasury" and is calculated based on "the degree of guilt, the financial condition, the means, the family responsibilities, the occupation and earnings there from, age and health of the offender."(Article 90/2/). The code states minimum and maximum amount of monetary punishment for both natural and juridical person. The minimum amount of fine imposed on the offender is 10 birr and goes up to 10,000 birr while the fine for juridical person goes from 100 birr to 500,000 birr. But the fine can be extended based on the motive for committing the crime, the degree of motive and other circumstances. The fine can be converted to compulsory labor when the criminal is not able to settle the fine (Article 96)

The other type of pecuniary penalty is **Sequestration**. This type of penalty is imposed for specific types of crimes as mentioned in Article 99 of the code. The type of crimes are conspiring or engaging in hostile acts against the constitutional order, or, conspiring or engaging in hostile acts against the internal and external security of the state. Sequestration is ordered when the offender is convicted in his/her absence and it might also be ordered in addition to other penalties. The law also imposes fine on young offenders (Art. 167) as well as on petty offenders (Art.752) who are able to pay the fine which is proportional to their income and gravity of the crime.

b. **Confiscation** (Article 98) is another form of punishment under this category. Confiscation is ordered by court on the property of the convicted criminal which is directly or indirectly acquired by commission of crime or on lawfully acquired property of the criminal. Other pecuniary effects include forfeiture of material benefits to the state and compensation to be paid by the criminal to the victim.

As stated above, all the monetary and property penalties are paid to the state with the exception of article 101 where the criminal is ordered to pay for the damage caused to the victim. To claim the damage the victim has to institute civil suit but the civil suit can also be joined with the criminal suit with certain exceptions.

c. **Punishments restricting or Depriving Liberty** (Art. 103-116):- A punishment under this category includes compulsory labor and imprisonment. Compulsory labor is ordered for minor crimes which are punishable with simple imprisonment not exceeding 6 months. The penalty extends from 1 day to 6 months and the court may sentence compulsory labor with deduction of wages to the benefits of the state according to Article 103 and with restriction of personal liberty according to Article 104**.** The implementation of compulsory labor is non-existence due to lack of enforcement and due to high likelihood of criminals to escape and for the enforcement agents to engage on hot pursuit (Informant 5,April 13,2016)

Imprisonments which restrict the movement and deprive the liberty of the offender are further divided into two categories

- **Simple imprisonment** is applicable to less serious crimes and the duration of the sentence ranges from 10 days to 3 years. But in exceptional circumstances it might be extended to five years (Article 106 and 107).
- **Rigorous** imprisonment is sentence for serious crimes with the intention of strict confinement of the criminal, special protection of the society and punishment and rehabilitation of the criminal. The duration of the

imprisonment extends from one year to 25 years with the exception to life imprisonment for very serious crimes. (Article 108 and 109).

d. Death Penalty (Art. 117-120). Death penalty or capital punishment is sentenced for very serious crimes such as homicide. According to the constitution and the criminal code, death penalty is executed with the confirmation of the head of state and when pardon or amnesty is denied. Furthermore, it is sentenced exceptionally on dangerous criminals who attained the age of 18 at the commission of the crime. The crime must be completed, with no extenuating circumstances and the law must expressly provide death penalty.

3.3.2 Secondary punishment

Secondary punishment is imposed in addition to the principal punishment. In other words, secondary punishment cannot be ordered before the principal punishment but in certain circumstances the secondary punishment may replace the principal punishment. Secondary punishment includes caution, reprimand, admonishment (Article 121), public apology (Article 122) and deprivation of rights (Article 123). It also includes dismissal from defense force and reduction in rank. Secondary punishment seems to have some restorative concepts since the court may "order the criminal to make a public apology to the victim.., or to the persons having rights from such injured person" and also the "court may, either during the trial or in its judgment caution, admonish or reprimand the criminal."(Article 122). But since the apology is carried out by the court, it loses the main element of Restorative Justice that is sincere regrets on the part of the offender.

3.3.3 Measures

In addition to the above punishments, the code has designed a protective measure to achieve reformative purpose and helping the person not to commit further crime. Measures aim in educating the criminal to be a good citizen and abstain from committing another crime when the criminal gets back to the community after serving sentence in prison.

Measures may be imposed on persons convicted of crime or potential criminals and also may be imposed even if it is not mentioned in the criminal code as far as the court finds it desirable. The code provides the general principle for imposition of measure as: “the general preventive or protective measures provided in this Code may be applied together with the principal penalty or after the principal penalty has been undergone when, in the opinion of the court, the circumstances of the case justify”(Article 134).

The code provides three types of measures applicable to irresponsible persons, young persons and general measures for the purpose of prevention and protection of the public from another crime. Article 130 states that if a criminal is found to be a threat to public safety or order or if s/he proves to be dangerous to the persons living with him, the court shall order her/his confinement in a suitable institution. And according to Article 131, if such a criminal is suffering from mental disease or deficiency, deaf and dumbness, epilepsy, chronic alcoholism, intoxication due to the abuse of narcotics or any other pathological deficiency and requires to be treated or placed in a hospital or asylum, the court shall order his treatment in a suitable institution or department of an institution. A measure applicable to young people includes admission to curative institutions, supervised education, home arrest and reprimand. A general measure for the purpose of preventing further crimes includes seizure of dangerous articles, suspension and withdrawal of license and closing of an undertaking (Article 324).

From the above discussion, we can argue that the type of punishments mentioned above slightly and remotely touches the concepts of Restorative Justice; and more focus is given to the principal punishment which noticeably shows that the FDRE Criminal Code emphasises on retributive and deterrence purposes of punishment.

3.4 Institutions

The Ethiopian criminal justice system involves different institutions and procedures in bringing the criminal to justice and imposing penalty. The first step is what we call setting justice in motion; opening the case to criminal investigation for the alleged crime. This is started by providing information to the police or public prosecutor in a form of accusation or complaint. (Ethiopian Criminal Procedure Code Article 11 and 13). But complaint or

accusation against young person should be made directly to the court (Article 16 and 172). Any adult person is legally responsible to report the commission of crime to the concerned body. In general, the community, the police, the court, the prison and the prosecutor are the ones who are involved or handle the process from receiving report of the commission of crime to sentencing and reforming the criminal.

3.4.1 The Police

The police start investigating the crime after receiving complaint or report from the public or the victim in order to establish whether a crime has been committed or not and whether it was committed by the suspected person. The investigation process involves interrogating the suspect, arresting and searching the suspect and her/his premises in order to find evidences linked to the alleged crime and also hearing witnesses. The suspected person is arrested if found with flagrant offence or might be summoned to the police station for interrogation and will be "asked to answer the accusation or compliant made against him\her" without, however, being intimidated or coerced" (Article 27 of Criminal Procedure Code). Furthermore, the police may "summon and examine any person likely to give information on any matter relating to the offence or the offender" (Article 30 Criminal Procedure Code). After collecting all the evidences linked with the alleged crime, the police will report the result of the investigation to the public prosecutor with view of court proceeding.

3.4.2 Public Prosecutor

The public prosecutor based on the report of the police investigation will start prosecution unless he/she declines the case. The prosecutor can decline the case if the accused has died or is infant or if the accused cannot be prosecuted due to immunity (Article 39). Also, according to Article 42, the public prosecutor may decline believing that the case lacks evidence to justify conviction and if it is not possible to find the accused and the case cannot be tried ex-parte. Lapse of the period of limitation, if the offences are subject to pardon or amnesty or if the ministry of justice ordered the prosecutor not to institute a proceeding due to public interest, can also be a reason for decline.

The public prosecutor starts the prosecution process by preparing charge and submitting it to the court to initiate the case for trial (Article 38). After receiving the charge, the court fixes the date of the trial and summons the accused and the prosecutor to appear before court**.** If the accused is in custody, the summon will be sent to prison administration and both parties are expected to appear on the appointed date. The accused is expected to appear personally on the date of trial and in certain circumstances will be guarded or chained if it is believed she/he is dangerous or may become violent or may try to escape (Article 127 and 261).

On the trial date, the court reads the charge to the accused and asks whether s/he pleads guilty or not guilty (Art. 133). If the accused pleaded not guilty, the court will ask the prosecutor to present her/his evidences, but if the accused pleaded guilty the court may convict her/him immediately or may demand the prosecutor to corroborate the plea evidence if it is not satisfied with the plea of guilty. The prosecutor presents her/his evidences and call witness to prove the case. Usually the witnesses are those who were present at the time of the incident or the victim himself/herself**.** The court might acquit the accused if it is found that there is no evidence to convict the accused based on the prosecutor's evidence. If the court believes otherwise, the accused will be called to enter upon her/his defense by presenting evidences including calling witness. In both cases, the witnesses pass through all examination stages. The accused is required to demolish the facts and evidences presented by the prosecutor and create a doubt over the proof of the prosecution. Finally, the court will render the verdict based on the evidences presented and according to the law.

3.4.3 The Court

The court involves in the criminal proceeding from investigation (in young offenders case) up to sentencing and post-sentencing. Investigation against young person is not done by public prosecutor or the police but by court. The court may give instruction to the police on how the case should be investigated, or may instruct the prosecutor to directly frame the charge and institute the proceeding without the need of the police to investigate the accused in serious crimes punishable with rigorous imprisonment exceeding ten years or death (Article 172).

The court receives the charges, fixes a date for trial, asks the accused what to plead, asks the witness when necessary, gives orders, and has the authority and controls the proceeding according to the laws (Ethiopian Criminal Procedure Law, Article 134).

During the trial the court hears all evidences and witnesses; evaluate the evidences of the prosecutor and the accused and rules whether the accused is guilty or not guilty. If the court believes the prosecutor has failed to prove the case beyond reasonable doubt or if it believes the accused has created reasonable doubt by disproving the evidences of the prosecutor, the court will acquit the accused. But if the court believes the prosecutor has proved the case beyond reasonable doubt, the accused will be guilty of the crime and the court will ask the prosecutor and the accused for their sentence options by way of mitigation or aggravation. After taking their opinions, the court will impose punishment or sentence on the offender stating under which article of the law he/she is punished. The court also orders the appropriate body to execute the judgment. Any of the parties can lodge appeal if they do not agree with the verdict.

Unlike the restorative justice mechanism; the Ethiopian criminal justice system has no mechanism for the victim or the accused to express their feelings. It is the state who controls all the process of the proceeding and the victim has no role in the process or in sentencing of the offender except in a case where he/she is a witness (even in this case, the victim's role is limited on explaining the crime) (FDRE Criminal Code Article 82, Criminal Procedure Article 149)

3.4.4 Prison

A prison is a place where the accused will be kept during the trial, and if convicted where the criminal will be kept until she/he finishes her/his sentence. Prisons have the aim of putting the offender in highly secured compound with the aim of depriving him/her liberty because of the damage he/she has caused. It reforms and also keeps him/her safe from the potential revenge of the victim or his/her relatives. After the sentence, the convicted criminal will be sent to prison and will be administered by the rule and procedures of the prison administration. Prisons have different programs with the aim of reforming and training the prisoners so that they

become good citizens and serve their community and the state which they caused harm. Moreover, prison directors follow up the conduct of every prisoner and recommend for earliest release if they fulfill certain conditions, good conduct would be one of it.

3.4.5 The Community

As mentioned above, community involvement in the Ethiopian Criminal Justice System is limited to reporting the crime and also in being a witness at court. Even if it is a member of the community who is damaged by the crime or it is their values that were infringed by the offender, the criminal system has less interest in listening to the community about the matter. It is the state which handles the case from investigation to sentencing and post-sentencing. The system does not provide a mechanism of reintegrating prisoners to their community after they serve their sentence. This can cause marginalization, discrimination, self-hate and the ex-prisoner might develop the tendency to committee another crime.

3.5 Restorative Justice and the Ethiopian Criminal Justice System: - The Link

The Ethiopian Criminal Justice System considers the state as a victim and is primarily focused on punishing the offender. The accused is brought for trial in chain or guarded (if considered violent) and kept in isolated place in the court room or at the compound of the court.(Art.127 of the criminal code). This shows that the system is more concerned in putting away the criminal or the suspect rather than reforming him. It does not give adequate opportunity for the offender to remorse or compensate for the wrong he/she has done. Moreover, the victim has no role in the criminal proceeding besides reporting the crime and being a witness at the court. Even in some circumstance, the prosecutor might not call the victim as a witness believing other witness can testify more accurately than the victim. The victims have no say or cannot address the court on how the crime has impacted their life (except the opportunity s/he might have if s/he is called as witness) or on the sentencing process. In the same way, the offender is passive in the process and is not part of the sentencing except mentioning mitigating circumstance or giving opinion on the sentence mostly through the defense lawyer. The community is not also part of the proceeding or on the sentencing process. The community's role is limited in giving information to the police or the court. Hence, we can say that there is almost no inclusion of the concept of Restorative Justice in the criminal

justice system except some of the concepts which are discussed below and which some scholars argued for their link with Restorative Justice Concepts.

3.5.1 Restitution

As discussed above, the criminal properties might be forfeited and the criminal might be ordered to pay certain amount of money for the crime committed or in addition to the principal sentence. But the monetary penalty or the property forfeited goes to the state treasury and the victim cannot claim damage except instituting separate civil action. Nevertheless, there is an option to claim damage as part of the criminal proceeding. In this case, the prosecutor joins both charges - the criminal case and the damage claim at the criminal court. The Ethiopian criminal law states that:

> *Where a crime has caused considerable damage to the injured person or to those having rights from him/her, the injured person or the persons having rights from him/her shall be entitled to claim that the criminal be ordered to make good the damage or to make restitution or to pay damages by way of compensation. To this end they may join their civil claim with the criminal suit" (Article 101)*

The process for the civil claim to be joined with the criminal case should by applied by the victim or her/his representative at the opening of the hearing of the court trying the criminal case. The power to decide about the application lies in the hand of the court. The court may accept the application or deny if it believes that the determination of the compensation requires hearing additional witness than the one called by the prosecutor or the accused; or if the court believes the hearing of the civil claim will complicate or delay the hearing of the criminal case. Even if the court refuses the application based on the above reasons, the victim still has the right to institute a separate civil case (Article 154 and 155 of Criminal Procedure).

If the court accepts the application, the claim will be joined with the criminal case and both parties have the right to present evidences to support or refute the claim. Both parties also have the opportunity to address the court, explain the damage and after hearing all the evidences the court will decide on the amount of the compensation and other related fees (Article 159). If the victim is not able to pay the damage the court may order the compensation to be paid from other sources. The criminal code states that:

> *Where it appears that compensation will not be paid by the criminal or those liable on his/her behalf on account of the circumstances of the case or their situation, the court may order that the proceeds or parts of the proceeds of the sale of the articles [be] distrained, or the sum guaranteed as surety, or part of the fine or of the yield of the conversion into work, or confiscated property be paid to the injured party*."(Article 102/1/)

This joining of the civil and criminal case and the right to ask for compensation by the victim and the liability of offender and offenders' relative for payment of compensation is being extended as links of Restorative Justice with the criminal justice systems. It is believed that this gives opportunity for both parties to be part of their case and also to the families or parties who are liable on behalf of the offender. However, unlike the Restorative Justice both parties have no say on the amount of compensation and it is the court that decides even about the participation of other parties in the proceeding and also on joining the civil and criminal case. The hand of the state is clearly visible through the judiciary to determine the denial and permission on the involvement of the parties. But in Restorative Justice, the victim's right for compensation is the first and most important part of the process. There is no other party who grants permission or restriction on the request or claim of compensation

3.5.2 Conduct Private Prosecution

One of the interesting provisions of the Ethiopian Criminal Procedure Code is Article 44 which allows the victim or his/her representatives to conduct private prosecution. This article gives right to the victim to conduct private prosecution when the public prosecutor refuses to institute charge on the reason of insufficient evidence to justify criminal conviction for crimes which are punishable upon complaint. The law under Article 41 specifies the people who have the right to institute the investigation or conduct private prosecution.

On the appointed hearing date, the court tries to reconcile the parties and advise them to settle the case peacefully. The court gives priority to reconcile the parties as the crime is punishable upon complaint and is considered as private matter rather than public matter (Art. 151). If parties reconcile their dispute, the court will record the matter to have the effect of judgment. If the parties refuse to reconcile, the court will read the charge and ask the accused to plead guilty or not guilty and the

ordinary prosecution procedure stated from Articles 123-149 will be followed. Some connect the right for private prosecution with the concept of Restorative Justice since the victim is the one who handles or presents the case. However, still it is the court that gives judgment on the case and the role of both parties is limited only to giving opinions on the judgment to the court. Thus the existence of the concept of Restorative Justice becomes imperceptible.

3.5.3 Suspension of Enforcement and Sentencing

One of the purposes of the criminal law, as mentioned above, is to reform and rehabilitate the criminal and this is sometimes achieved by giving another chance to the offenders especially young and first-time offenders. Suspension of penalty or sentence gives the offender the opportunity to change his/her criminal behavior and to easily reintegrate with the community. The criminal code provides two types of suspension: suspension of pronouncement of penalty (Article 191) and suspension of enforcement of penalty (Article 192).

In suspension of pronouncement of penalty, according to Article 191, the court suspends the sentence and places the offender on probation after conviction. In other words, the court finds the accused guilty but will withhold the pronouncement of the sentence that should be imposed on him/her. His/her conviction is not also registered in the court record. The same article gives conditions for suspension of pronouncement of penalty: the criminal must be a first-time offender and should not appear to be with dangerous character. As well as the crime, the accused convicted should be punishable only with fine and compulsory labor or with simple imprisonment of less than three years (Articles 90, 103 104 and 106).

According to Article 192, in suspension of penalty, the court convicts the criminal, passes a sentence and records such conviction but the court suspends the enforcement of the sentence or penalty for specific period of time. Both the suspension of enforcement of the sentence and pronouncement of the sentence gives opportunity for the offender to make good for the damage he/she caused, reform and reintegrate to the community.

Seeing suspension in light of Restorative Justice again is debatable. It is the court that determines the eligibility of the offender for suspension. The victim and the community are not parties to the process. It is the court as a state agent that determines, not the ones who suffered due to the harm. Thinking the possibility of the offender to integrate into the society will be unpractical without addressing the individual victim and community. Even it sometimes seems disrespectful to the victim and community.

3.5.4 Probation

Probation is a release of a convicted offender under the supervision of a probation officer subject to revocation upon default of the conditions attached to his/her release (Ayele, 2006). Article 190 of the criminal code states that the court has discretionary power to order probation, "having regard to all the circumstances of the case and if it believes that it will promote the reform and reinstatement of the criminal." With this, the court may place the convicted criminal on probation if he/she fulfills certain conditions which are:

- When the crime is punishable with fine, compulsory labor or simple imprisonment for not more than three years.
- When the criminal has not been convicted previously.
- When the court believes that the criminal does not appear dangerous to the society.

In addition, the offender is required to do the following in order to be placed under probation:

- To enter into an undertaking to be of a good conduct.
- To meet the conditions of conduct attached to the probation.
- To repair the damage caused by the crime or
- To pay compensation to the injured person (Article 197 and 198).

If the offender fulfills the above conditions, the court will grant him/her probation and place the offender under the supervision of a protector or probation officer who shall keep in touch with the probationer and report his/her situation (Article 199). Nevertheless, the court has full power to revoke the probation if one of the rules attached to the probations is infringed by the probationer or if he/she commits new

crime during the period of probation (Article 200). According to Article 204, the period of probation may be a minimum of two years and may extend up to a maximum of five years, subject to any provisions to the contrary.

Like in other cases, if probation is granted by the court, the focus is still on the offender. The idea of making good or compensating the injured is similar to that of restitution. To look for link with Restorative Justice again remains with the compensation for the damage. Who will determine the probation? It is the court? Does the victim have a say including on the amount? No. Thus there is no difference any sort from that of restitution except in relation to having a probation officer and other procedures.

3.5.5. Parole

The Black's Law Dictionary defines parole as "the conditional release of a prisoner from imprisonment before the full sentence has been served" and the reason for granting parole according to the dictionary is "…for good behavior on the condition that the parolee regularly reports to a supervising officer for a specified period." Hence, parole is provided towards the end of the enforcement of the sentence or penalty with the aim of reforming and reinstating the offender to the community. The criminal code outlines conditions for granting parole in Article 202. The article states that the court may grant for the conditional release of the prisoner based on the recommendation of the prison administration and when the following conditions are fulfilled:

- When the prisoner shows tangible proof of change in conduct and work,
- When repaired the damage caused or agreed with the victim,
- When it is believed that offender will be of good conduct when released from prison and joins community,
- When the prisoner serves two-thirds of a sentence of imprisonment or twenty years in case of life imprisonment,
- When the prisoner or the management of the institution submits a petition and recommendation respectively.

The application of parole has its own procedures and gives opportunity for the criminals to be released earlier and it encourages them to change their behavior in

order to be granted early release. The convict will be informed about the possibility of release on parole on conditions that he/she shows good behavior and fulfills certain conditions (Article 203). After serving a certain period of the sentence, the prisoner shall make application to the prison administration to recommend the case to the court for conditional release and the administration refers the application to the court with report. The prisoner who fulfills the above conditions will be granted parole but the non-compliance of those conditions may lead to the revocation of the parole in which case the prisoner would be sent back to the prison to serve the remaining sentence (Article 206).

To sum up, the above exceptional laws give the victim of the crime to be compensated, reconcile, to actively participate in the process of the criminal justice system by conducting private prosecution and give a chance for the offender to make good for the damage he/she caused, to remorse, to apologize, and improve his/her behavior. However, those exceptional circumstances cannot be taken as concept or elements of Restorative Justice since their very existence is not for this. Restorative Justice goes beyond those exceptional circumstances stated in the Ethiopian Criminal Law and has the aim of healing the victim through the offender's voluntary action to take responsibility (not to avoid imprisonment) 'restoring the parties to their earlier position before the crime was committed, and the community's active involvement. Due to these, the researcher argues that Restorative Justice is barely visible in the Ethiopian Criminal Law. However, the above exceptional circumstance should not be disregard though Restorative Justice elements are not fully embodied in them. They can be used as a starting point to take the necessary reform measures in order to implement the concept of Restorative Justice in the Criminal Justice System.

CHAPTER FOUR

GUMAA AS TRADATIONAL CONFLICT RESOLUTION MECHANISM

4.1. The Oromo People

The Oromo are one of the largest ethnic groups in Ethiopia. Different scholars argued on the origin of this great people. The *Oromia* region is also one of the widest and richest regions of the Federal State. The population size is estimated to be around 40 million and believed to constitute about 40% of the Ethiopian population (Hussen, 2006). The *Oromia* region is bordered by *Amhara, Afar, Benshangul-Gumuz, Southern Peoples, Nations and Nationalities*, and Somali regions of Ethiopia, and Kenya and Southern Sudan.

The Oromo people are also rich in different cultures, traditions and beliefs. These values of the people are reflected, persistently revealed and practiced in the day to day life of the people. They have communal home-grown systems of resolving political, economic, social and political conflicts. They have been using these systems for peaceful co-existence among themselves and with other tribal and ethnic groups. They also negotiate, settle or redefine their relationships. As a communal society, the Oromo people are concerned with secured and peaceful existence of the community. This does not, however, mean that in the Oromo cultural traditions, individuals have no place; it only means that the right, value and attribute of an individual is driven from and shaped within the larger community or society (ibid)

4.2 The Gada System

The Oromo had an egalitarian social system known as *Gada.* This system governs the political, social, economic, spiritual and traditional lifestyle of the Oromo people. The *Gada* System is where the male Oromos are organized according to age and generation set for both social and political activities. It is a system of an age-grade classes of *Luba* that succeed each other every eight years in assuming military, economy, political and ritual responsibilities (Legesse, 1973). Each *Gada* class remains in power during a specific term of *Gada* which begins and ends with a formal power transfer ceremony (ibid). Some scholars claim that about three principles are embodied in the system which assure the check and balance that help to prevent abuse of power. These principles are the eight-year term, the balance position within the group and power sharing between the upper and lower levels (Hora, 2015).

The system divides every male Oromo into five grades of eight years in each where he performs different responsibilities and duties prior to moving to the next stage. According to Edossa, *et al.* (2005) these grades start from 0-8 years old (*Dabballee),* 9-16 years old (*Foollee),* 17-24 years old *(Qondaala),* 25-32 years old (*Kussaa*), 33-40 years old *(Raabaa),* 41-48 years old *(Luba)* (Edossa, *et al.,* 2005). When Oromo males get to the different grades, they assume different responsibilities. For instance, those in the age range of 9-16 years are responsible to look after livestock, and serve as messengers. Those in the last stage *(*40-48 years old*), luba,* are responsible for Leadership, arbitration or serving as elders. The name for each grade varies from place to place. Unlike Edossa, *et al.* (2005), Zertman puts those in grades 8-16 as *Itimako,* 16-24 as *Dabballee*, 24-32 as *Follee,* 32-40 as *Qondalla,* and 40-48 as *Luba* (Zartman, 2000).

Another important feature of the *Gada* system is grouping or organizing every Oromo in "*gossa*". Sometimes this grouping is explained as "class" or "party" (ibid). In different parts of Oromia, these *gossas* are known with different names. In the area where this research was done, the five *gossase* are *Birmaji, Horata, Michille, Duuloo,* and *Roobalee* (Edossa, *et al.,* 2005). Every five years, elders of each of these *gossas* will gather under a tree and issue the rules, regulations and procedures in governing different aspects of the Oromo people. **(**Informant 3 and 10, Sebeta Town, March 13, 2016**)**

The *Gada* system encompasses, leads and directs the socio-political, religious and all other aspects of the Oromo people. It has political, economic legal, and social facets. Actually the term *Gada* is used to refer to different interrelated meanings. Legese explains *Gada* as a system "where a class of people assumes political leadership" or that refers to eight years period where elected officials seize power. I can also mean the overall political economic, social, legal and religious institutions of the Oromo people (Legesse, 1973).The Oromo *Gada* system is the most sophisticated socio-cultural organization ever known in traditional Africa (ibid). Legesse (1973) further states that:

> "… *the Gada-based Oromo democracy 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''.(p. 195)*

The Oromo people had been using and are still using several different locally developed approaches to settle both internal and external conflicts. In the *Gada* system, the class that

assumes the current leadership position should regulate the law that a given *Gada* should manage and administer. However, some scholars claim that this system has gone under different challenges and changes due to internal and external dynamics (Keneni, 2013). In this process some indigenous or traditional practices have been left out and some persist and continue to be effective. *Gumaa* is one of the indigenous, traditional conflict resolution mechanisms within the *Gada* system which governs the social, economic and political institution.

4.3. *Gumaa*

4.3.1 Definition

As *Gada* is used to explain the eight-year system in which classes of people assume power or the political, economic and social institutions, the *Gumaa* also has its meanings. *Gumaa,* according to Huntingford (1955), is "killing for revenge'' (p. 63). The term has also a different meaning in different parts of Oromia. For instance, "*gumaa-baasuu*" means killing for revenge, and "*gumaa-nyaachuu*" means receiving blood price (Informants 1, 2 and 3, Sebeta, March13, 2016). This shows the fact of not having different meanings for *gumaa* but also misunderstanding of the meaning has been seen in some circumstances. Keneni has commented and tried to explain that the misunderstanding of the meaning is reflected due to the language barrier on those not well versed with *Afan Oromo*. He also mentioned how this misunderstanding leads some scholars to say killing for revenge is the cultural value of the *Oromo* (ibid).

Though proofing either way is not the objective of this research, the researcher does not buy the claim that killing for revenge is an *Oromo* cultural value. Rather the researcher strongly believes that the *Oromo* people have high regard and value for peace than for revenge. This simply can be observed by looking at the *Gada* system and *gumaa* as traditional conflict resolution mechanism (TCRM), the latter being the main point of discussion of this paper.

In any manner, for the purpose of this paper, *gumaa* is taken as payment of compensation for damage incurred and the process observed to bring reconciliation, forgiveness and peace where conflict arises (Chala, 2002). *Gumaa* is usually exercised for damages done to human life and body. Though it is not a usual occurrence, it can be done for the death of animals too (ibid). The amount of compensation varies according to the extent, type and

the way the damage happens (intentional or negligence). The amount is determined and fixed by the elders of each g*ossa* at the time of making the *seera*. (Informant 1 and 2 Awash Balloo, March 20, 2016)

4.3.2 Principles and Values of *Gumaa*

Even though we do not find written, prescribed and structured principles and values of *gumaa*, one can derive them from the very outset of the idea and the proceedings involved in executing it. This researcher has tried to categorize the scattered and unstructured leading principles and values embodied in *gumaa*.

A. Principles

1. Recognizing the damage caused to victims - In *gumaa* the damage sustained by the victim or his/her family or clan is given due consideration. The damage will not be disregarded or taken as something related to breaking a given set of standards. It recognizes the emotional, physical and psychological trauma and resorts to addressing them (ibid). This principle is clearly manifested on the first step of the *gumaa* procession.
2. Responsibility of offender - Contrary to the recognition of damage and injure, the offender, whether intentional or accidental, inflicts a damage he/she will take responsibility for. In most cases, the offender himself/herself will be the one to inform about the incident (Chala, 2002). In others, after the incident occurred, s/he will give proper handling of the body if the victim died or inform others to help if it is bodily injury only (Informant 3, Awash Balloo, March 20, 2016). This responsibility includes raising money for *gumaa* payment and publicly confessing the crime. This reflects how the offender accepts responsibility (Negewo, 2010).
3. Stakeholders' involvement - If a conflict happens and damage occurs, it is assumed that the damage is not only upon the particular victim but also against the family, the clan or the community (Regassa, Genemo, and Yigezu, 2008). In the same manner, the offence is also considered to be done not only by the offender but also by his/her family or clan. In the *gumaa* or reconciliation process, it is not the victim or offender alone but the whole community is involved (Negewo, 2010). The involvement resumes from mobilization to de-escalate the conflict to procession of *egeziota* (pleading or begging) of the victim's family or clan to the payment of *gumaa* (ibdi).

B. Values

1. Honesty - In *gumaa* the offender will confess his/her crime willingly and voluntarily. Telling the truth is the primary step of taking responsibility. Since the offender is engaged voluntarily and knows the awaiting measure, it is unlikely of him/her to tell lies (Chala, 2002). On the other hand, if s/he tells lies s/he knows what would happen to her/him, their family or even to their 6th or 7th descendants (Informants 1 and 2, Sebeta town, March,13, 2016). No one will dare to tell lies specially if they brought the *kallacha* in the *gumaa* or during the reconciliation. *Kallacha* is a traditional secured spiritual staff. Whenever the process of *gumaa* is conducted, *kallacha* together with *sekelle* is held by elderly men and women (Negewo, 2010). As an instance, during an interview with some informants, the researcher happened to find out the powerful effect of *Kallacha*. An individual rented a plot of land from a widow and used to farm on it. As time goes the gentleman decided to take the farmland and refused to pay the rent claiming the land belonged to him. The widow took the case to the different levels of the courts but in vain. As a last resort, the widow went to the *Abba Gada* and presented her case there .The gentleman was summoned and asked by the *Abba Gada* to swear in front of the *kallacha* but he could not and would not dare to do it. He further admitted his denial about the ownership right of the land and returned it to the rightful owner, the widow. (Informant 4, Sebeta town, April 21, 2016)
2. Transparency - Another value of *gumaa* is its transparency. The process of *gumaa,* how the investigation is made to identify the offender, the reconciliation process, the payment on *gumaa* is open and visible to any member of the community (Regassa, Genemo and Yigezu, 2008). The reconciliation or the process of *gumaa* is done under a specific tree where anyone who is interested to attend can do so (Informants 1, 2 and 3, Awash Belloo, March 20, 2016)**.** The applicable *seera* is clear and easy to understand.

3. Accessibility - Where conflict arises, the offender or his/her family will seek refuge in the house of the elders or might go far away. The offender's family immediately resumes the pleading by explaining the situation to the elders who are responsible to handle the *gumaa* (Negassa, 2005). These elders live among the society and are accessible to anyone. The accessibility is also in terms of location and relation. Disputants should not walk far to report the incident, the elders live in their vicinity and are accessible at any time (Regassa, Genemo and Yigezu, 2008). The other fact in terms of accessibility is the language used to handle the conflict. Though nowadays

language is not a problem the fact the process conducted in the language and cultural setting of the parties involved feels comforted (ibid).

4. Participatory - This value has the same meaning as that of the principle indicated in 4.3.2. (a) (3) above. The victim, his/her family, the offender, his/ser family and the community all participate in the process. There is no feeling of one being an accuser and the other an accused. If conflict arises and someone died, the issue shall become every body's concern (Informants 1, 2and 3, Sebeta, March 13, 2016)**.** Furthermore, the situation forces the offender to willingly accept whatever penalty is imposed on him/her since the approach clearly shows him/her the extent of damage or grievance he/she inflicted on the society in general. Here the offender will return or amend the damage he/she inflicted on the victim. Paying monetary compensation for the damage and lost property and apology are some of the ways in which the offender participates. (ibid)

5. Effective and efficient - "Justice delayed is justice denied" is not seen in *gumaa* procession; rather the investigation, the reconciliation and the *gumaa* take place on time and effectively (Regassa, Genemo and Yigezu, 2008). The time for the reconciliation and *gumaa* payment can be made in one day or the maximum may take about a week depending on the level or degree of damage (bodily injury and death). (Informants 1 and 2, Sebeta town, March 13, 2016).
6. Integration - After the *gumaa* is paid and the process is completed, the reconciliation and reintegration of the offender is immediate. They start it by eating in one plate, feeding each other. This may go to the extent of inter marriage so as to solidify the relationship (ibid).

4.3.3 Institutions

During the *gumaa* procession, different institutions are actively involved. These institutions are uniquely placed to assist in the conflict resolution, reconciliation and in bringing lasting peace. These institutions include:

*a. Seera (*law) - Every *Gada* provides detailed rules and regulations to be observed by the community. This *seera* is not a written law but narrated by the *caffeetatichaa* and will pass to the elders and the community. The *seera* contains the prohibition, sanction and amount of compensation for every bodily harm including damage caused to animals. (ibid)

b. *Kallacha* – This is a ritual material or object used during conflict resolution, adoption and cursing. Its power and reverence is much higher than the modern lie detector used by the formal legal system to try to find the truth. It is a conical iron tube knitted together with dry sinew (Negewo, 2010).

c. *Caaccuu* - It is another ritual object worn by women. This is the point where women will have part in the community affair. The *kallacha* does not go out alone without *caaccuu* (Negassa, 2005) and wherever the *kallacha* goes, the *Caacuu* goes too. (ibid).

d. *Caffeetaichaa* - The term is derived from the term *caffee* meaning parliament where the law is promulgated. *Caffeetaichaa* means judges who interpret and apply the *Seera.* There are about six permanent members of *Caffeetaichaa* in *Tullema Oromo.* These judges who handle conflicts also lead the *gumaa* process *(*ibid*)*

e. *Arrara* – This means reconciliation. It is a process of conflict management involving individual clans within and outside the community. It is handled by community elders and associated with *Gada* (Edossa, *et al.*, 2007).

f. *Jaarsummaa* - It means the process of conflict resolution with the help of group of *Jaarsaa* (elders). It is an establishment that deals with all kinds of disputes ranging from simple quarrels to the most serious criminal cases, even homicide (Negewo, 2010).

g. *Luba* – This refers to people who have entered the *Luba* grade (age 40-48) and are considered as elders to settle disputes among groups and individuals and apply the laws *(seera)* to deal with particular conflicts (Legesse, 1973).

h. *Waltaji* - It has two meanings, one is elders that go back and forth during *gumaa* procession and the other is a place where conflict proceedings take place (Negewo, 2010).

4.3.4 Shortcomings

1. Like any system or practice, *gumaa* is not a fault-free or perfect process. The political economic, social and cultural system which governs the day to day activity of the Oromo people and the umbrella of *gumaa*, the *Gada* system itself, doesn't give enough recognition for women. Legesse shows this in the following statement.

   "Men are in control of military and political activities. Only men can engage in warfare. Only men take part in the elections of leaders of camps or of age-sets and gadaa classes. Men lead and participate in ritual activities whereas women are restricted to domestic work'' (Legesse, 1973 p.179).

He indicates that the age-set and generation-set do not recognize women. On the other perspective, he tried to show the important role of women. This concept is also further supported byMegersa reflecting the crucial place of women in the system by referring to *siiqqee* (Megerssa, 1993). It is a stick given to a bride at her wedding day that serves as a weapon to fight for her right (Chala, 2002).

2. When we come to the process of *gumaa*, since the main system *Gada* does not give room for women, the role of women is very minimal. One of the possibilities for women participation is that women during the reconciliation process might participate as a member of the conflicting parties to be reconciled with the offender (Informants 1, 2and 3, Sebeta, March 20, 2016). Another circumstance in which women are involved is holding the *caaccuu* when *kallacha* is brought out for procession. The third condition in which women are involved is preparing and serving the food and drink for the celebration after the *gumaa* is conducted. Thus the passive recognition of women in *gumaa* is mentioned as one of its weaknesses. transcribe

3. Lack of transcription – *Gumaa*'s historical bases, objectives, principles, values and procedures are not written. They exist with the society in the form of oral narration and in the mind of the wise elders or the *Gada* leaders for many centuries (ibid). This trend will lead to the dilution and distortion of the system. Apart from losing its originality, if not kept properly recorded, it will be forgotten by the coming generation with the influence of today's less communal life style.

4.4 *Gumaa* and the Ethiopian Criminal Law: The Link

In the preceding part of the paper, we have discussed the Ethiopian Criminal Law and *gumaa*. In this section we will try to compare the two in light of the different yardsticks set.

4.4.1 Comparison of Objectives, Principles and Values

Table: 3 Comparison of *Gumaa* and the Ethiopian Criminal Law

No	Measurement	*Gumaa*	ECL
1	Objectives	1. Reconciliation - The main purpose of carrying out *gumaa* is to reconcile the two parties. If crime is committed among the Oromo people it is believed that the social value and harmony is also affected (Zartman, 2000). Reconciliation ensures the peaceful relation of the creator, the creature and the surrounding world. The reconciliation shall de-escalate the possibility of continuous killing or revenge. G*umaa* is a kind of blood price *(Yedem madrekya)* paid to stop further killing. Since the reconciliation is done among the main stakeholders, it is very effective in terms of guarantying lasting peace. 2. Integration of the offender to the society - When a crime is committed the offender becomes fugitive and runs from his home and family. Not only the offender but his/her family and clan will also leave their home and village (Informants 1, 2, and 3). It creates disruption in the society, it makes children, and women suffer if the offender is the breadwinner of the	1. Deterrence has two objectives, one, it is targeted towards a particular offender to impose penalty to discourage him from criminal act. 2. It is to send a message for other prospective criminals to refrain from any criminal act. It is to discourage potential offenders (Ethiopian Criminal Law Art. 1) . 2. Retributive - It is to take action against or penalizing the offender for the crime he/she committed. The victims or his/her families want to see the offender paid for the wrong he/she committed. It is a typical expression of criminal law. People who committed crime should be penalized. 3. Incapacitating - This action is taken against the offender to deny her/him the chance to harm or to keep the offender away from the society. The typical example of lifelong incapacitating is death sentence or life imprisonment without parole. There is also time frame used as incapacitating mechanisms, these are sentence for 3 years, five years, etc (ibid). 4. Rehabilitation - This is turning or transforming of the offender to be the valuable member of the society. It is

		house. Unless *gumaa* is paid, though the offender is apprehended and penalized for the wrong he/she did, they will not integrate with the society. But once *gumaa* is paid, the offender and his /her family integrate with the society and leave peacefully. 3. Restoration of lasting peace - After *gumaa* is paid and reconciliation is done, the peace and harmony of the people will be secured. The offender and his /her family are restored to continue their normal life (Informants 1, 2, and 3) The victim or and the family are fully satisfied with payment of *gumaa*, reconciliation and restored to their normal life. It is not something superficial happening for the sake of process, it is real restoration of broken relations.	influencing the offender in a positive manner so that he/she can be useful to the society. Eg. Training the offenders in different skills and knowledge. It is mainly focused on the offender without involving the victim or community who are affected by the crime. 5.Restoration - This objective is applicable with the other four objectives. It is to repair any damage incurred by the offender on the victim, to return the property or material taken by the offender. Usually in the criminal law context, it deals with material aspect rather than the relational aspect (ibid).
2.	Principles	1. Addressing the victim is the main principle of *gumaa*. Unlike the formal criminal law which deals with the violation of a set law or rules, it recognizes the damage of the victim. It is very much close to the heart of the victim. Its main focus is to involve and make the victim the center of the issue. (Informants 1 and 2, Awash Balloo, March 20, 2016)	1. In criminal law, the crime committed is considered to have been perpetrated against the state. The place of the victim is minimal, almost forgotten. In the process the victim may be needed for evidence collection or to be witness. The victim has no say on the issues. It is the prosecutor and sometimes the police who determine whether the victim's involvement is important or not. 2. The offender is also categorized and labeled in such a way that s/he has no possibility of involving in the process. The offender is marginalized and stigmatized. It is assumed

		2. The offender is equally ready to take responsibility and make good the damage incurred. He/she is not a bystander waiting for others to determine his/her guilt. He/she out rightly, (most of the time with no force from the victim) tells what happened and gives her/himself to the elders for any kind of measure. 3. The crime committed affects everyone including all habitats. In Oromia, a crime committed is taken as one committed against the Creator. In the reconciliation, payment of *gumaa* and restoration of the broken relation, all affected parties are involved. The involvement of the stakeholders like the victim, his/her family, clan, neighbors, and the community make the outcome effective and satisfactory.	that s/he committed crime against the state. This attitude creates animosity and makes the process difficult and time taking. As the law expects proof beyond reasonable doubt, the resource, energy, time and money spent is huge. Usually offenders deny that they committed the offence. It is the prosecutor's responsibility to prove it. Unlike the *gumaa* reconciliation, the offender shall not cooperate to reach fair justice. 3. The parties involved in the prosecution are the state and the offender. The victim and the community which are directly affected are not active participants. This has its shortcoming with regard to reaching satisfactory outcome. Most of the time, victims are not happy about the penalty imposed on the offenders. But if they were part of the process of reaching such decisions, they might go to the extent of forgiving the offender. The exclusion of the victims and community in the ECL has its negative effect.
3.	Values	1. Telling the truth or accountability - The offender after committing an offense will go and explain the deed to the elders. This fact reduces the hassle and unnecessary delay in the proceeding. Admitting guilt gives comfort to the victim. In the case where the offender is not known or not willing to confess, the mechanism to	1. Proof beyond reasonable doubt - It is the burden of the public prosecutor to proof the crime of the offender beyond reasonable doubt. Unlike *gumaa*, in criminal law the suspect builds doubt on the occurrence of the offence. Denial is the usual episode used by suspects. 2. Fine as one form of penalty is imposed by

		find out the guilty is much simpler than in the ECL. The *Kallacha* will be brought or the suspect will be summoned and asked to speak under oath. 2. Compensation - In *gumaa*, compensation is paid to the victim. The amount is decided through negotiation and taking in to account the objective situation. If there is famine, drought and high inflation, the compensation considers all these factors. 3. Participation - One of the unique features of *gumaa* is its inclusion of all stakeholders. The victim, offender and the community are actively involved and take the lead in the process. This satisfies all parties and makes the outcome successful. 4. Reintegration- The main outcome of *gumaa* is integrating the offender, his/her family, clan to that of the victim, his/her family and clan. True and genuine integration is expressed through inter-marriage, being God mother or God father for the other party, etc, (Informants 1 and 2 Sebeta, March 20 2016)	the court against the offender. The fine is not paid to the victim but to the state treasury. The amount is not subject for negotiation or consideration of objective situation. It is already prescribed by the law. 3. Exclusion and isolation - The main stakeholders are excluded and isolated. This is done in two ways: one, exclusion of the victim and community to partake in the legal proceeding which makes them passive onlookers; and two, isolating and excluding the offender by chaining, incarcerating and labeling him/her as dangerous. 4. Rehabilitation - This is mainly focused only on the offender. It is directed towards rehabilitating the offender by training, counseling and incapacitating. There is no any connection with the victim and community.

CHAPTER FIVE
DELIBERATION ON *GUMAA*

5.1 Process and Proceeding of *Gumaa*

Conflict is an inevitable phenomenon in human life. Conflict can be understood as a fight or possible confrontation between two or more parties aspiring something. It usually occurs as a result of clash of interest between the parties involved in some form of relationship.

In any given society, whenever a conflict arises and someone dies with intentional or negligent act, the peace and security of that particular family or clan is disrupted. Likewise, the Oromo people are disturbed if death or grave body injury occurs among members of the community. In this situation, the community takes different measures to de-escalate the problem and resolves the conflict through the *gadaa* system of conflict resolution. It involves different steps and is finally settled by holding *gumaa*. The steps have been narrated to this researcher by elders (by key informants and *caffeetatichaa* at Sebeta town, Awash Belloo, and Bouratou on March, 13 and 20, 2016 and on April 21, 23 and May 30, 2016). The steps include:

1. The individual who inflicted bodily injury or killed someone runs and hides himself/herself or leaves his/her home or runs to the elders in the community and confesses what had happened. The *caffeetatichaa* advises the offender to leave his/her home and go to exile to a distant place to avoid revenge from the victim's family or clan.

2. As soon as the killing (intentionally or by negligence) becomes known, close relatives of the offender approach the elders for immediate intervention. Elders choose to communicate with each side (*waltajii)* (Negewo, 2010) or with two people from each clan (offender's and victim's side) who can serve as go-betweens for the finding, negotiation and procedures of the reconciliation and carrying out of *gumaa*. The *caffeetatichaa,* judges who represent the current *gadda,* are the ones who preside over the case.

3. The *caffeetatichaa* judges, in the consultation with close relatives of the offender, discuss the issue and resume the *gumaa* process by conducting a ritual of pleading (*Egziota* or pleading for mercy). The *egziota* proceeds as soon as the funeral of the deceased has taken place and the families of the victim return home. The *egziota* has its own procession; the offenders' family put a yolk on their neck, harness horse, hold mud in their hands and shout *egzio, egzio, egzio*. This is done as a preliminary step and a pleading to beg the victim's family not to take any revenge and inform the victim's family that the offender and his/her family including the clan have regret in what had happened and want to enter into *gumaa*.

   The offender's family and clan do not come close but stand away at about 500mt and repeat the same for about three or four days. The *caffeetatichaa* judges approach the victim's family and clan through the correspondence (*waltajii*) and ask the cost they incur for the funeral and any cost related to the death of the victim. The family or clan of both parties are advised by the *caffeetatichaa* judges about the *seera* and the procedure of *gumaa*. After a few days, the victim's family show readiness to resolve the conflict and the *caffeetatichaa,* judges, with elders from the offender's side, approach the victim's side and start discussing the case at hand.

   To open and carry on the discussion, the elders on the offender's side and the *caffeetatichaa* judges ask the expense incurred by the victim's side *(kisara).* The *caffeetatichaa* judges advise the victim's family not to ask for more money than they spent and take advantage of their diseased relative. Then the money is paid and that paves the way for the beginning of the *gumaa* processes. Once the money is paid, the offender in exile comes back home.If the offender is apprehended and is in prison, s/he will be released under his/her secret arrangement (Negewo, 2010). The case, after this, is out of the hands of the police and the court (ibid).

4. After the victim's family completed their mourning time, elders from both sides and the *caffeetatichaa* judges resume the*gumaa* process by investigating the case. During the investigation, they try to understand the cause for the conflict, how it started, how the victim has been killed and what the offender did. If there is denial of fact, the offender is asked to take oath. The *kallacha* is brought if there is a need to find out the truth. They further discus the applicable law (*seera*) and the custom or tradition that has been

violated (Zartman, 2000). They call the offender and hear the facts from him as well as from witnesses. After all these, the *caffeetatichaa* judges reach a verdict and announce it to the parties and to the public and impose penalty according to the *seera*. Usually the penalty is payment of cattle or money. Then since the offender's family or clan has already requested for *gumaa* ,the *gumaa* process is arranged.

5. The *gumaa* is full of rituals and it is the first time the offender and the victim or his/her family meet face to face. The offender is dressed in old and worn-out clothes and unshaved and this implies his/her sorrow and sadness. The parties meet before sunrise and wash their hands with the blood of a sheep, and put the hands of the offender and those of the victim's close relatives together inside the stomach of the sheep. Then depending on the economic capacity of the offender, food and drinks are served and they sit together, eat and also feed each other.

6. The *caffeetatichaa* judges and elders in the presence of the offender, the victim's family and the whole community, bless the disputant parties, the farm, rivers, and fruits of the land and make the parties promise not to look for one another for revenge and especially for the victims not to take the case to court and testify against the offender.

5.1.1 The Victim

Different writers define a victim as:

> *Someone whose personal rights have been violated by criminal act, a person whose family and close friends have been injured or killed as a result of a crime or serious accident. It is someone who has been affected by hurtful incident or who has been injured or killed as a result of catastrophe* (Perth, 2016)

For the purpose of this paper a victim includes the person who was killed or sustained body injury, his/her immediate family, his/her clan, and in some specific cases, the whole community.

Among the Oromo people, whenever someone is killed or hurt, the damage is not only attributed to that particular person or family. It extends to the clan and community. Due to this, all appropriate measures are taken to manage the conflict so that harmonious relationship is recreated and restored. In this process the victim and victim's family and the community become the main concern for the offender. This is due to, one, the

injuries sustained by the victim or the family hurt everyone in the community as part of the society, and two, there could be a possibility of retaliation or revenge against the offender and the family of the offender. That is why the family, the clan of the offender or the community initiate the reconciliation process and *gumaa* payment.

In reconciliation and *gumaa* payment process, a very significant place is given to the victim or the victim's family. This starts from the very beginning of the process with *Egziota*. The approach towards the victim is delicate and step by step. Unlike the formal criminal law, the crime committed is believed to be not only against the victim but is also considered as the disruption of social harmony. In the formal legal system, crime is taken as an omission or commission of an act against the state. It is the state, rather than the victim, that becomes the main stakeholder in the formal legal system. In carrying out *gumaa*, the victim and his/her family are involved directly or through the representatives from the clan or close family.

The victim, if survived, presents his/her case to the *caffeetatichaa* judges. If the victim has died his close family presents the case and is actively engaged in the process. The *caffeetatichaa* judges, after investigating and hearing the witnesses, pass their verdict. In all these process, the victim is heard and asked for his opinion. Even during the declaration of the penalty, the victim is consulted though there is already set penalties for each crime committed (Informants 1 and 2, Sebeta town, March 13, 2016).

If there is payment of money as penalty, it is paid to the victim, not to the state unlike the formal system. Apart from the money compensation, the main satisfaction for the victim is to grant forgiveness to the offender, his/her family and the clan as a response for the plea. The acknowledgements of the fault and damage and the regret they show directly to the victim satisfy the victim. This helps for the victim to play a central role in peace making process **(**Negewo, 2010)**.**

The other uniqueness of the victim's involvement is that once reconciliation has taken place and *gumaa* has been paid, the victim and his/her families on one side and the offender and his/her families on the other take an oath not to handover the offender to the formal legal system. They further go to the extent of changing their testimony they had given at the police station when they are summoned to the court. They refute about

the killing or the incident that constitutes the crime. Witnesses on the victim's side prefer to go to jail for false (changing of testimony) testimony rather than testifying against the offender after *gumaa* has been concluded. The offender will escape incarceration if he/she is not apprehended. Even if he/she is apprehended, he/she will be realized due to lack of evidence since the victim or his/her family are willingly and voluntarily to drop the case and actively engaged in the *gumaa* informal legal system.

5.1.2. The offender

The exceptional and distinctive character of the *gumaa* is the engagement of the offender in the provision and service of justice. An offender who committed an offence takes the initiative to report the incident to his/her family or to the elders in the community. He/she takes responsibility willingly and without any coercion, and then settlement process resumes immediately. Unlike the FLS where the offender escapes or denies the commission of the crime, the *gumaa* (ILS) imposes social obligation on the offender to confess his/her crime. Actually, there is a strong belief that if killing remains hidden, it results in supernatural punishment that seriously affects the killer and his/her family (Chala, 2002)**.** Furthermore it's believed that the killer (impure) keeps on committing similar crimes or suffers a similar death (ibid). This social belief and sanction forces the offender to confess his/her crime. During the investigation or verifying of the case, if there seems to exist denial or the evidence on the other party seems weak, the accused will be asked to take oath to prove his/her innocence. If he/she refuses, it is a *prima facie* evidence of his/her guilt. The elders or the *caffeetatichaa* judges order the offender to leave his/her premises and hide until the victim or his /her family promise not to avenge, and the *gumaa* procession starts so as to avoid escalation of the conflict.

In any offence or crime, the kins and lineage of the offender take collective responsibility. Thus initiation for reconciliation and *gumaa* is done by the offender's family or clan and the cultural and spiritual stuff like *kallacha* and *caaccuu* are taken out together. They plead mercy with the yoked man and cattle, harnessed horses and cows. Repeated prayer, supplication and good wish statements are repeatedly narrated. The way they are dressed for *egziota* and the distance they keep from the victim's premises evident fear, respect and regrets of the offender. The distance also symbolizes the psychological distance between the victim and offender (Chala, 2002). The parties for

egziota include the elders, a young girl and a boy (symbolizing love and innocence), *Abba gadaa* and *Abbaa seera*. All the participants stand in order and with the leadership of *Abba gadaa* and *Abba Seera*, they start the plea saying:

Egzio! Egzio! Egzio	*እግዚኦ! እግዚኦ! እግዚኦ!*
Our fellow relatives, give us reconciliation	*ወገኖቹ እርቅ አውርዱልኝ*
Create a solution	*መላ ፍጠሩልኝ*
The *cholee* (the horse) is harnessed	*ጮሌው ተለጉሟል*
Kallacha and *Caaccuu* is here	*ከለቾና ጫጩ ወጥተዋል*
Elderly men and women are standing	*አዛውንትና አሮጊት ቆመዋል*
Abbaa Gadaa and *Abbaa Serra* are here	*አባገዳና አባሜራ ወጥተዋል*
A virgin girl and boy are here	*ድንግል ልጃገረድና ወንድ ልጅ ወጥተዋል*
In search of peace, we lay down the spear	*ሠላም ፍለጋ ጦር አስቀምጠናል*
Egzio! Egzio! Egzio	*እግዚኦ!እግዚኦ!እግዚኦ!*(Negassa, 2005)

This kind of begging for mercy is repeated for several times. After some time, close relatives from the victim's side appear and ask the group to whom they are presenting *egizota* (pleading). The group then replies it is there to ask for their mercy since one of the group's weak and foolish son killed their loved, innocent and positive thinking boy. The victim's family then asks, "Who is the offender? Who killed our good boy? Who is our boy?" Then the group tells the truth - the name of the offender as well as the victim (ibid).

Once the reconciliation and *gumaa* payment is decided, the offender is chained in handcuff and walks in a middle of the market and public places of that particular town begging for money to pay *gumaa*. He/she openly declares his/her guilt in public places and takes the responsibility. Raising *gumaa* payment is the sheer responsibility of the family or lineage of the offender; however, the offender takes the primary responsibility and demonstrates his/her liability for the crime.

As a final stage, the victim's family and the offender shake hands in the stomach of a sheep slaughtered for the occasion, wash their hands in the blood as a symbol of cleansing. At this point, the offender is uncovered of the veil, shaves and throws away his/her rugged cloth. Then the offender and the victim or his/her close relatives (if the

victim died) shake hands and *caffeetatichaa* judges make them, especially the victim's family, promise, swear and repeat curses upon themselves if they go against the vow.

5.1.3 Caffeetaichaa (*Caffeetich* Judge)

The terms used to refer to judges who prereside over the reconciliation and *gumaa* vary from place to place. They are called *Abba gadaa, traditional judges, caffeetatichaa judges, or Jurrsuma (*Edossa, *et al.,* 2005).

Caffeetatichaa emanates from the position the judges hold in the *gadaa* system. The *gadaa* system has its own mechanism of conflict resolution and administration of justice. In some parts of Oromia, judges who handle the day to day conflict resolution are assigned permanently. Three *gulus* are permanently appointed judges to deal with the day to day conflict (Chala, 2002). In addition to the permanent judges, assistants are appointed on case by case basis. Unlike the formal legal system (FLS) where judges are appointed by the state, in the informal legal system (ILS) the disputants have to give their consent on the selection of the judges. If one of the parties has reservation on the fairness of the presiding judges, s/he can object with enough evidence (Muchie & Bayeh, 2015). Adjudication is held on an open field under a tree where every male of the community can attend, but in the FLS, though most of the time court rooms are open for any observer, in some cases there is a possibility where only the offender and the prosecutor attend the court proceeding.

The *caffeetatichaa* judges are selected on the merit of their knowledge about the rules and regulations of the system and their wisdom. Traditional judges sit according to their seniority of age and knowledge of customary laws of Oromo people because there is a belief in the Oromo traditional society that senior persons have more knowledge accumulated over time than juniors. It is not only the knowledge of the rules and regulations that is considered but also their ability to analyses issues in light of *seera*, their integrity and leadership ability are also taken as part of the criteria. Moreover, their commitment to the Oromo ideological value, truth, justice, punishment and reconciliation are taken as the basic reason for selection (Zartman, 2000).

Unlike in the FLS, the process of elders' selection is initiated by the offender's family or clan. In *gumaa* (ILS) two elders from each side are selected and two judges of the

Abbaa Gadaa preside over the case. In the FLS, the judges are appointed by the state; leave alone the offender, the victim has no say on the selection of the judges. In the FLS, no selection of judges is possible but the offender could request for a change of venue provided the judge has a relation with the victim. When investigation is completed, the prosecutor prepares a charge and presents the case to the appropriate court. Then, the accused is summoned to the court. If investigation is not completed, the police will take the suspect to court with the appropriate jurisdiction and ask for additional investigation time.

In *the* ILS, the elders investigate the case and when they get clear on the issue, they send a message to the victim's family that the offender and the family are required for settlement of the case. They summon both groups and listen to the story from each side and testimony of the witnesses and finally pass a verdict according to the *seera*. If the offender has an objection on the decision, he/she can appeal to other clan judges (Chala, 2002)**.** If the offender is not willing to accept the decision, a social sanction is imposed. This imposition includes cursing, not eating or drinking together with her/him, and other social alienations. In the FLS the offender has no option to decline accepting the verdict except appealing

The ultimate goal for the judges in the *gumaa* (ILS) is to address the need of the victim, to reconcile the disputants, to reintegrate the offender to the society by taking responsibility, and to build peace and security of the community whereas the ultimate goal of the (court) judges in the FLS is to implement the law, to punish the offender to give a lesson for potential offenders only. In the *gadda* system, the process starts from the time the incident has been reported either to the judges directly or through other means. Observing the values and norms of the society paves the way for effective and legitimate reconciliation among members of the community.

Though election of ILS judges is based on their social value, knowledge and fairness, women have no place. The *gadaa* system does not give room for women. However, some scholars such as Chala (2002) argue that though the *gadaa* system seemingly excludes women, there is the *siiqqee* system which entitles women to some authority and fight for their right when there is a need. Furthermore, he argues that women of *siiqqee* have roles to play in the ritual practices embedded in the system, so women are

not excluded from the *gadaa* system but from the age grade (Chala, 2002). However, in the FLS, women have equal opportunity in terms of involving in the legal system as prosecutors or judges.

5.1.4 The Community

Whenever there is an unpleasant incident among the Oromo and a conflict is likely to escalate and revenge to take place, the community members take a swift action. They mobilize the community leaders to intervene in the matter, make aware the offender's family and kins, and do everything to avoid more bloodshed. Involvement by community members has two sides. One, they organize the pleading process of *egizota* to ask for mercy by bringing out all the ritual stuff, elders, a young girl and a boy, a harnessed horse, and yoked oxen. Two, they comfort the victim's family by attending the funeral, staying with them and consoling them in their sorrow.

5.2 Restorative Justice and *Gumaa*: A Nexus

The goals of Restorative Justice are to restore the losses suffered by victims of crime; repair the relationship between the victims and the offenders; and reintegrate the wrongdoers into the community. Likewise, the goals of *gumaa* as reconciliation mechanism are to address the need of the victim, to reconcile the disputants, to reintegrate the offender to the society by taking responsibility and to build peace and security of the community. In order to look at the compatibility and nexus of the two concepts, it would be practical to examine them in light of their objectives, principles and values.

With this intention, the researcher discusses some of the principles and values of RJ and *gumaa,* and glosses over them briefly since they have been dealt with in the preceding chapters. Meanwhile, the objectives of these two systems have not been adequately discussed in the foregoing chapters, so a more detailed discussion will be made here.

5.2.1. Objectives

The objectives of RJ are to attain the victim's various needs such as emotional, material, financial, etc. It gives an opportunity to the victim to meet the wrongdoer and find out the reason for the harm (Hirsch, *et. al*., 2003). It recognizes the victim's sufferings and considers her/him and the community as the primary victim of the offender's act. The victims and the community play a key role in the justice process. The support provided

by community members, their family and friends comforts and strengthens the victim and the victim's attachment with the community gets stronger (Zehr and Mika, 1997). Families of victims benefit by knowing why their family members were victimized, and knowing that wrongdoers have taken responsibility, including steps to repairing the harm which they have been caused.

It has the objective of providing the offender an opportunity to repair the damage caused to the victims and to the communities. By doing so, it ensures stability between the victim, the offender and the whole community (ibid). This helps not only to ensure stability but also restore the broken relationship, prevent further harm and reintegrate the offender into the society and help him/her and the family to live peaceful life.

Gumaa, as a main road to reconciliation, has the objective of addressing the victim's harm by approaching the victim with fear, respect, and by asking for mercy (Negassa, 2005). The fear and respect express how much the offender and the whole community felt about the harm. This gives the victim and his/her family comfort and strengthens their relationship with the community. It also clearly shows how the offender regrets and takes full responsibility for his/her wrongdoing (ibid). During the case hearing or at the time of the *gumaa* process, the offender gets the chance to explain how the incident happened. Here the offender does not talk to justify his/her deed or to defend himself/herself as in the FLS but to ask for mercy with humble and low spirit. Even the cloth s/he wears and the unshaved face show the offender's deep regret (Negewo, 2010).

The community's active involvement from the first day of *Egizota* to the final *gumaa* and reconciliation ceremony shows that the harm and offence is not only to the victim. Furthermore, the Oromo people believe that if reconciliation is made, harmonious relation is restored not only among the conflicting parties but also in the community, between God the creator and the surrounding world (Zartman, 2000).

With the payment of *gumaa*, the victim gets satisfaction by involving in the whole process of the justice system. The direct payment of compensation, though does not equate with the life of the deceased, the way the offender takes responsibility and the active engagement of the community ensures the restoration and creation of lasting peace in the society. In some cases, there were instances where the conflicting parties

end up in having inter-marital relationship or becoming a God father/God mother to babies born to the families (Informant 5, Burayou, April 23, 2016)

Here we can clearly infer that the objectives of RJ which are recognizing the victim's needs and harm, the offender's responsibility, and the community's active role are similar to those of the *gumaa*. The latter also acknowledges the damage and hurt inflicted on the victim, the liability or accountability of the offender and the commitment and dedication of the community. Thus the objectives of both RJ and *gumaa* are recognizing the harm against the victim and the community, being aware of the needs of the victim and addressing them, providing opportunity for the offender to take responsibility, involving the community actively, focusing on restoring relationship and building lasting peace and security.

5.2.2 Principles

The first principle of RJ is recognizing crime as a violation of people's and human relation which harms the victim and the community and as result needs restoration (Zehr and Mika, 1997). Those affected by this violation should be addressed. Restoration is a continuum of responses to the range of needs and harms experienced by the victims, offenders and the community (ibid). Likewise, in *gumaa* a crime committed is believed to be against the victim, the community and nature too (Zartman, 2000). The offender and his/her family are also affected by such an act since they fear revenge from the side of the victim. Thus addressing the issue immediately and specifically is important in the *Oromo* people's reconciliation practice.

The offender's voluntary acknowledgement of responsibility without coercion is the other principle which links the two systems. The community, together with the victim and offender, also take the responsibility in supporting the victim and assisting the offender to recognize the responsibility and to make right (Van Ness and Strong, 1997). In *gumaa* also, the offender is expected to take full responsibility for the wrong he/she committed. The community puts pressure and social sanction if the suspected offender denies (Informants 3, Sebeta, March 20, 2016 and Informants 10, 11, 17, Sebeta, April 21, 2016).

The third connecting principle of RJ and *gumaa* is the involvement of stakeholders. One of the unique features of RJ is the participation of the stakeholders in the justice process. In *gumaa* the involvement of the stakeholders is not limited to the victim, offender and community; it goes to the extent of involving the spiritual and ritual stuff.

The fourth and fifth principles are more or less summarized as restoration of the broken relation and reintegration of the offender into the society. In RJ and the *gumaa* process, active involvement of the stakeholders helps the way forward and outcome of the process. It is not something that is imposed by an outsider. Whatever measure or steps to be taken are done in consultation with and consensus of the parties. This especially helps to reintegrate the offender and restore the relationship between the victim, the offender and the community. The ultimate outcome of both systems, especially that of *gumaa,* is to reintegrate the offender back into his premise, family and clan. It is to restore the broken relationship of the victim and the offender to the extent of eating and drinking together and blessing each other and making a vow not to hurt each other and their descendants to come.

5.2.3 Value

For RJ to be successful and for victim, offender and community restoration to be practical, certain values need to be applied. Value shows the standard of the process and the all-inclusive nature of RJ. Although there are a number of values discussed by different scholars, in this research we will attempt to raise a few of them and examine their similarity with *gumaa.*

During the RJ process, conflicting parties present the facts from their point of view. In this encounter, since the stakeholders meet on their free will and voluntarily, they all tell the truth. This helps the parties to understand each other's points and helps them to reach a kind of consensus on what has to be done about the damage inflicted on the victim and on the community. In *gumaa* also honesty and telling the truth have a big place as is the same in the culture of the Oromo. The offender, without any pressure, tells what had happened and how the incident had occured (Regassa, Genemo, & Yigezu, 2008).

Participation of stakeholders is the other feature of RJ and this is also true with *gumaa*. This has a message of inclusion rather than exclusion. The offender does not feel excluded and condemned. The victim also gets the chance to have a say in the process and the penalty imposed. The same is true in the case of *gumaa*. All the stakeholders participate actively and with genuine dedication.

5.2.4 Stakeholders

The three primary stakeholders in RJ are victims, offenders and their communities, whose needs respectively are getting reparation, taking responsibility and achieving reconciliation (Zehr and Mika,1997). It underlines the involvement of all the three stakeholders in repairing the harm caused by crime. In *gumaa* also, these three parties are the stakeholders. Though each party has a distinct role, the aggregate result is to bring restoration of the broken relationship and the reintegration of the offender into the society. It is also the satisfaction of the victim and the community through active involvement in the process.

5.2.5 Outcome

Since the objectives, principles, values and stakeholders of RJ and *gumaa* are more or less similar the inevitable outcome becomes the same. Thus the outcome of RJ and *gumaa* includes the following:

- Meeting the financial, material and emotional needs of the victim.
- Enabling the victims to heal by knowing the truth and getting the desired community support.
- Facilitating situations for the offender to take responsibility for his/her actions.
- Preventing recidivism by integrating the offenders into the community.
- Creating an effective community that supports the rehabilitation of the offenders and the victims and also works to prevent crime.

5.3 Implications of Formal and/or Informal Justice Systems

Two different forms of administration of justice are in use among the Oromo people, the formal justice system and the informal justice system (Informant 4, Sebeta town, April 21, 2016 and Informant 5, Burayou town, April 23, 2016). The latter system is sometimes referred to as traditional indigenous mechanism. The existence of these two systems together is found to influence one another. The implementation of one is impacting the other

(Macfarlane, 2007). Sometimes there are instances where they even seem to compete with each other (Nagawo, 2013).

5.3.1 The Formal Justice System

The formal justice system is equipped with its implementing agents like the police, the prosecutor and the court especially in criminal cases. Due to government structure, we have legal pluralism in the formal legal system, that is, the federal and the state (regional). So we have the federal court, the federal prosecutor, and the federal police and prison administration and at the same time state (regional) court, the prosecutor's office, the police and prison administration. In Oromia Regional Government, we find the Oromia state courts from *woreda* to the cassation court. The federal cassation court has appeal jurisdiction over cases referred from Oromia cassation court. All these different levels of courts have their own jurisdictions based on the nature of dispute and the material jurisdiction it involves both in criminal and civil cases.

There is the Oromia Prosecutor's Office which is another legal institution that deals with criminal cases reported to it by the state (regional) police. The state prosecutor also handles cases of federal nature through delegation from the Federal Prosecutor's Office..

The Oromia Police Commission has also been organized for law enforcement in the Oromia Regional State. In relation to criminal cases, the state police investigate the case and report to the prosecutor's office. Due to the nature of the work, there is some controversy and overlap between the federal and state police. The other legal institutions in relation to criminal cases are the federal and state prisons. Both correctional institutions handle prisoners sent to them from the federal and state criminal courts.

In the formal legal system, the police, the prosecutor and the courts, at any level, focus on getting hold of the offender, investigating, prosecuting in the court of law and passing a sentence of penalty and sending offenders to prison. By upholding the dictum of crime being a violation against the state, the purpose and objective of the FLS are, most of the time, punishing the wrongdoer. The rules and regulations to measure the extent of harm and to impose equivalent penalty have already been set or codified. Unlike the informal legal system, the procedures are fixed; the parties involved are defined (state and offender), and the outcome is almost predicted. In comparison to the

informal legal system, the time it takes is long, the satisfaction of the victims is not certain and the participation of the community is totally unrecognized.

5.3.2 The Informal Justice System

When we come to the informal, traditional or indigenous justice system, we find it all over Ethiopia and it is used widely throughout the country. Each ethnic group has its own informal legal systems. In Amhara, Afar, Benshangul-Gumoz, Gurage, etc (Yntiso,Azeze and Assefa, 2011), we predominantly see the practice of the informal legal system. These mechanisms have evolved through time and have been established on the cultural, traditional and spiritual bases of their particular community. Unlike the formal legal system, they are not derived from a set of rules designed by the legislator. They originated from repeated practices of what people do instead of what people should or should not do (ibid). There is no written or codified set of rules and procedures. They are rather narrated and passed from generation to generation verbally and in actual performance of the deed. The extent of their acceptance and enforceability is profound and failure to abide entails a social sanction to the extent of punishment.

In contrast to that of the formal legal system, the ultimate goal of the informal legal system is to bring peace, reconciliation and restoration. It is also not to resolve the conflict at hand and to penalize the offender, but to address the root cause of the conflict and bring lasting peace in the community. It is not to create a mentality of animosity between conflicting parties, to make one party a winner and the other a loser.

In the formal legal system, the disputants do not usually stop until they exhaust the entire appeal ladder. As a consequence, they are drained physically, mentally and financially. With all this sacrifice, there is no guarantee for them to get what they think is justice. On the other hand, the informal legal system does not consider any violation or conflict as an act against a particular individual, but against the community at large. This makes the informal legal systems like *gumaa* more community-based and geared towards restoration of broken relation and reintegration of offenders.

The investigation mechanism and search for the truth is directly related with values, beliefs, norms and traditions. This minimizes the possibility of denial and forces offenders to come forward and tell the truth about their actions. The curse and blessings,

and the oath they take holding stuff like the *kallacha* of the Oromo are strong and uncontested lie detecting mechanisms.

The flexibility of the procedures and the selection of the elders of *caffeetatichaa* judges or *Jaarsummaa* are transparent and that gives confidence to the parties in dispute to trust and accept the decision. The procedure takes place in accessible public place; it is more or less cost and corruption free; it is exercised by trusted people in the language everybody speaks; and decisions are taken according to rules known to all community members. The burden of the *caffeetatichaa* judges or the elders is immense. The merit for their selection is their ability to understand facts and interpret according to the norms and customs of the society. They have to do their best to investigate and reach fair, all-rounded and appropriate decision. They also aim at restoring peace rather than imposing or enforcing an abstract law. Other important differences are that the formal legal system is time taking, costly and less accessible, especially to the rural population, while the informal legal system is not.

However one cannot deny the shortcomings of the informal legal system. It has its own defects in terms of exclusion of women - it is men-dominated. In the Oromo *Gada* system, women are not recognized in the age-set and generation set system. They are also excluded from the conflict resolution mechanism. In *gumaa* also women are called to take part as members of the family of the victim for reconciliation. Apart from this, they do not have a place as judges or elders. Lack of being up-to-date is also another shortcoming. They function on rules that are century-old. This might be a challenge to the system, since the urbanized population and the new generation will be hesitant to embrace them.

During conducting this research, the fact I learned from the *caffeetatichaa* judges, prosecutors, *woreda* level Judges and the police is that the informal legal system is more dominant than the formal legal system. A number of criminal cases are handled by *gumaa* and parties are reconciled and integrated into the society through the system. There were even incidents where the police and prosecutors were forced to close cases because of lack of evidence. Sometimes, the witnesses change their testimony when they appear in court and bluntly deny the incident due to the oath they make and fear of curses. On the other hand, the formal legal helplessly waits and proceeds with cases left

over from the informal legal system. The two systems never worked as complementary; they were rather contenders. They become effective on the choice of the community and other stakeholders.

A personal experience of this researcher encountered about seven years ago would be a good example for the prevalence of *gumaa*. A young girl was killed in a car accident. The offender was imprisoned and meanwhile elders were sent to the victim's parents and family for the procession of *gumaa*. The *gumaa* was not carried out immediately but money was given to the victim's family for funeral and other expenses. Elders were then elected from the two sides and they started the reconciliation process. Since it was a car accident and the offender was already apprehended, there was no need for other kind of negotiation. The negotiation was finalized shortly and an appointment was arranged for the *gumaa* process. The process was held around 4:00 a.m. in the morning before dawn and was done in the same manner as desribed in this chapter. The parties' approach, the killing of the sheep, and the washing of the hands in the blood were all carried out.

The most surprising and amazing experience was the meeting of the family of the victim and that of the offender on the feast prepared by the victim's family. I got the opportunity to attend the feast and observed how genuinely the victim's family forgives the offender and shows this by hugging and kissing the offender. The parents of the deceased, brothers, uncles and aunts came out in turn to the room where I was sitting with the offender and embraced him.

The highlight of the event is that we were all called to a separate room and all attending elders came together and started blessing the offender saying, may God protect you from this kind of accident, may God keep you and your family safe and bless your health and your business. They also blessed the other attendants like me and the crop, the chattels and the farm.

The remorse and sorrow I saw on the offender was different. The offender was ashamed and mortified. It was his families that were comforting him. After witnessing the *gumaa* settlement, the court finally dropped the case.

Due to the nature of my work, I was also following another case of car accident where the victim survived with some leg fracture. To finalize this case, the offender was traveling back and forth from Addis Ababa to a palce that is about 350 kilometer away for over 6 years to follow up the court case and to take the victim to a hospital. The demands and the claims on the part of the victim and the bitterness, anger and resentment on the part of the offender were easy to imagine.

Actually, the experience motivated and inspired this researcher to conduct a study on the topic when opportunity came her way.

CHAPTER SIX
DISCUSSIONS AND ANALYSIS

In this chapter we will try to briefly look back at the facts, the findings, the laws and the different analyses stated in the preceding chapters. Some discussions and analyses have already been made in each chapter, but again to make a comparative analysis and present discussions on the three systems, we will be forced to mention some of the points again.

In the preceding five chapters we tried to see the theoretical and practical applications and relevancies of Restorative Justice, Ethiopian Criminal Law, and *Gumaa*. In this chapter we will discuss the extent to which RJ is recognized and implemented in the Ethiopian Criminal law, the elements/principles of RJ reflected in *gumaa*, and how we can extend these principles and values to the Ethiopian Criminal Justice System.

Thus the nexus, differences and contrast of the three systems, i.e., *Gumaa*, Restorative Justice and Ethiopian Criminal Law will be discussed as follows.

6.1 The Ethiopian Criminal Law Versus Restorative Justice

As we discussed in chapter three of this paper, the main objective of the Ethiopian Criminal Law is to ensure peace and security of the state, its people and inhabitants by punishing criminals in order to deter them and to give a lesson for others (Criminal Code, Article 414). This clearly shows that the central theme of the Criminal Law is punishing wrongdoers who violate the prescribed law or regulation.

In the Ethiopian Criminal Law, the crime committed is considered as it is committed against the state. Thus the state is the chief performer and owner of the whole process. Unlike RJ, the place of the victim is minimal and almost forgotten. In the process, the victim may be needed for evidence collection or to be a witness. The prosecutor can decide the relevance or importance of the victim. Sometimes s/he is even discouraged from attending the criminal proceedings. Victims have no say on the issues and could not express the harm and damage they suffered. There is no possibility for them to converse with the offender to find out why the event happened. And there is no room for reconciliation and restoration of the relationship. It is the judge, the prosecutor and sometimes the police who determine the

proceeding and finally convict the offender. The court, before passing the sentence, allows the prosecutor and the defense lawyer to give their opinion. Usually the prosecutor forwards aggravating statements while the defense lawyer advances mitigating opinions, but the victim has no any part. The victim has no role in the determination of the punishment imposed on the offender. In the ECL, since the proceeds from pecuniary penalty go to the state, the possibility of compensating the victim is extended to other civil proceedings.

On the other hand the offender is categorized, labeled and marginalized in such a way that s/he would have no chance of involving in the process and influencing the verdict. S/he is pushed to the corner of being dangerous, aggressive and outcast. This in turn creates a hostile behavior on the part of the offender. These practices may also increase the likelihood of subsequent objectionable behavior by the offender, as he may feel hated and cast out by the community (Enyew, 2013). The offender, instead of regretting and making an effort to take responsibility and acknowledge the wrong, denies and contests the wrong. This attitude creates animosity and makes the process difficult and time-taking. Absence of acknowledgement and cooperation on the part of the offender and the responsibility of the prosecutor to prove beyond reasonable doubt make the process time, money and energy consuming. When we see the court proceedings, the offender is seated passively in a designated seat, chained and represented by the defense lawyer being disconnected from the society. The likelihood of reconciliation and reintegration of the offender into the society is shattered.

Comparing the place victims have in the Ethiopian Criminal Law to that in RJ, it is observed that the victim plays a key role in the investigation, proceeding and judgment in the latter and this is one indication of the absence of RJ in the ECL. Furthermore, the objective of the Criminal Law focuses on the punishment of offenders whereas RJ is interested in addressing, amending and compensating the victim. The outcome of the Criminal Law is incarcerating and isolating the offender but that of the RJ is reconciling the victim, the community and the offender. In RJ, the offender voluntarily and willingly accepts responsibility whereas in ECL there is no admission of offence and damage. Besides, ECL develops hostility and resentment towards the victim and the community at large. The community which acts as pleader, reconciler, victim and judge in RJ is completely ignored and disregarded in the ECL. Though the community members and volunteers are very essential in responding to and reducing crime, the Ethiopian Criminal Law does not give due consideration to them. The role of the

community is almost non-existent in the criminal proceeding except by way of providing information or acting as witness to the crime.

Although some scholars argue that no adequate space is given to RJ in the ECL, the concepts of amnesty, pardon and parole in the latter indicate existence of some elements of RJ. But this researcher argues that in order to have RJ elements in any concept or practice, the three inseparable, essential and indispensable stakeholders should exist. When we see pardon in Article 229, a sentence can be remitted in whole or in part for grave or minor penalty, but the crime remains in the records. One who grants pardon is the state, not the victim or the community. The opinion of the victim and/or community is not asked for or is taken into account. In the case of Amnesty, Article 230 provides the provision of amnesty for certain crime or certain group of criminals and in contrast to pardon criminal records are entirely deleted. Here again, in actual fact the harm on the victim and/or the community is still in their heart, mind and they might even prepare for revenge. The stakeholders are the state and the offender and the victim and the community are disregarded.

Following Article 190ff, parole may be granted if the offender is found to have improved behaviorally and if a recommendation for the same is secured from the prison administration. This shortens the stay of the offender in prison and gives him/her a good opportunity to go back and reintegrate into the society. Again, seen in light of RJ, there is no other obligation on the offender except the expectation to change while in prison and prepare to shoulder responsibility. Of course, Article 202(1) (b) puts a condition for parole that the offender should repair the damage incurred or make an agreement with the aggrieved party. The offender's readiness to amend or fix the damage or convening with the victim to resolve the conflict will determine the grant of parole. The behavioral change and specially the agreement with the victim show reconciliation, restoration, and offender-victim connection. Compared with pardon, amnesty parole has a closer relation with Restorative Justice since out of the three stakeholders, two are recognized.

Despite existence of a slight element of RJ in this concept, the implementation became impossible due to lack of appropriate institutions. As remarkably indicated by Enyew (2013), "the criminal law provisions on probation and parole are meaningless and remain paper values in the absence of organs to supervise parolees and probationers and to report to the court as to the status of the offender" (p. 238).

Another point mentioned by scholars as indication of existence of RJ in the ECL is the concept of private prosecution right of victims. This idea is stated in Article 44 of the Criminal Procedure Code. This scenario exists in offenses based on private complaint and if the prosecutor is reluctant to handle the case believing there is no case and attests to that in writing, the victim or his/her legal representative can handle the case.

Some scholars argue that concepts like private prosecution, parole and compensation create a link between ECL and Restorative Justice. However, as we discussed thoroughly in Chapter Three of this paper, these concepts mostly revolve around the state and the offender. It is the state via the court that grants parole and suspension of sentence, decides on the amount of compensation, and hears and decides on cases handled in private prosecution whereas the victim and the community are kept silent and passive observers during the proceeding in the court of law. Even the offender's participation does not seem to be based on genuine regrets, it is rather to get a chance to be out of the prison.

The concept of caution, reprimand, admonishment and apology in Article 122 is referred to or taken as containing the concept of Restorative Justice. In this article, it is stipulated that the court may order the offender to make public apology to the victim or to those who secured the right from the injured person. Here the apology is not something that is made out of sincerity and based on voluntarily action, but done by the imposition of the court. We do not see the voluntary genuine regret of the offender but rather a 'sanction' by the court. However, Restorative Justice is based on free will and real apology on the part of the offender and satisfaction of the victim and the community.

Article 151 of the Criminal Procedure states that where the court summons the offender on criminal case based on private complaint and requests the offender and the victim to reconcile, and if they reconcile it is considered as judgment. The court encourages the disputants to settle their matter with reconciliation. Unlike the other exceptional concepts of the Criminal Law such as restitution, pardon etc., here the court acts as a facilitator, not an imposer. The court cannot force the offender and the victim to reconcile. More than any article in the substantive Criminal Law, the Criminal Procedure Law has elements of Restorative Justice. Even if the third stakeholder is not in the picture, the law incorporates the reconciliation concepts.

In 2011 the government issued a criminal justice policy with the objectives of protecting and ensuring peaceful existence of the public, the state and individuals. The policy designed a strategy that prevents and fights crimes targeted against the constitution, ensures the continuity the development goal through democracy and good governance and establishes criminal justice system which respects the right and freedom of individuals (Ethiopian Justice Policy, 2011). The policy states the usefulness of "alternative solution" in terms of saving time and resource; expediting the justice system; protecting unnecessary psychological trauma of the offender, the victim and the witness by proceeding in the court of law; and allowing the offender to take responsibility on his/her free will. The policy incorporates different concepts and ideas which are new to the criminal justice system and those stated in different legal documents. (ibid)

One of the new concepts is the introduction of settling criminal cases out of court by taking steps on "alternative solution". In Article 4.6.2, the principles of "alternative solution" are listed out and envisage the promulgation or amendment of relevant laws. The two basic principles are:

- Instead of taking offenders to court of law, it is better to encourage them to take responsibility voluntarily. This will lead to the reconciliation of the offender and the victim or to payment of compensation.
- "Alternative solution" shall be applicable depending on the type of crime, the behavior of the criminal, the overall situation of the case and it is believed that the alternative solution is more beneficial to the general public instead of taking the case to court of law. It is applicable on young offenders, on those who are not recidivist and to crimes punishable with simple imprisonment (ibid).

The following requirements are stated to be fulfilled to apply "alternative solution"

1. Where there is enough evidence to convict the suspect.
2. When handling the case through alternative solution is beneficial to the public and protects the right of the victim.
3. Where the suspect or defendant fully acknowledges the crime, takes responsibility and expresses his/her regrets.
4. Where the suspect or defendant before taking responsibility gets legal counselor’s advice.
5. The suspect or defendant should be informed the right to decline for alternative solution option.

The principles and requirements are almost the same as those of Restorative Justice. Apart from the Criminal Procedure Code Article 151 and the concept of parole, it is this policy that significantly contains the concepts of Restorative Justice. However, the policy is still a though ratified by the Council of Ministers it is not yet implemented. Thus concerned bodies in the criminal justice system should take action for its promulgation and implementation.

Of course, the challenge in relation to the policy is that it cannot continue as a policy. A formal promulgation as proclamation or as an amendment of the criminal law or a separate new law is necessary. Introducing a new concept in the criminal justice system entails amendment of the criminal law. As the hierarchy of the law requires, the criminal law cannot be amended by a policy.

6.2 The Ethiopian Criminal Law versus *Gumaa*

Crime is a violation or infringement of people's relationships and a destruction or disruption of the peace of the individual and community. It is not simply an offence against the state. The approach of the Ethiopian Criminal Law to repairing this harm is by penalizing the offender without due consideration and inclusion of the victim, the offender and the community. It is a focus on punishing law breaking rather than attending to the harm experienced by crime victims.

On the other hand, Restorative Justice is an inclusive act that involves the participation of the victims, the offenders and the community affected by the crime in finding solutions that repair the harm and promote reconciliation and restoration. In light of this, one can say that the Ethiopian Criminal Law is unreceptive in terms of including the principles and values of Restorative Justice. Not only the principles and values of Restorative Justice but the elements of RJ in their entirety have no room and effect. Apart from that, in the current practice, the ECL is not primarily or for the most part focused on the reconciliation, restitution, reintegration and restoration of the victim, the offender and the community. This consequently breeds high rate of recidivism rather than improvement; separation and alienation rather than restitution and reintegration of offenders.

Law should be a product and outcome of a given social interaction, culture, tradition and values of a given society. It is difficult and challenging to introduce or hold a legal system

which does not take into account and give due consideration to the value and tradition of the society. The criminal justice system should not be different from this. Traditional conflict resolution mechanisms are highly loaded with cultural and spiritual life and value of the society. This is the main reason why traditional conflict mechanisms are practiced for the most part and widely used across the nation.

On the other hand, traditional conflict resolution mechanisms are part of communal system which play an important part in the reconciliation, preservation and enhancement of social relationships. They are deeply rooted in the customs and traditions of the society. Every group of the society has its own traditional way of conflict resolution besides the legal settlement of conflict through courts. Likewise, most of the time, the Oromo people encourage disputants to resolve their conflicts through indigenous means of conflict resolution. (Chala, 2002)

Gumaa, one of the traditional conflict resolution mechanisms, as briefly discussed in Chapter Four of this paper, is used and practiced in almost every part of Oromia with some difference in terms of ceremony. When we see it in relation to the Ethiopian Criminal Legal System, its recognition and space is more or less the same as that of Restorative Justice. No acknowledgement is made in any part of the FLS of the traditional conflict resolution mechanisms including *gumaa* and no acknowledgement of the ILS is made by the formal legal system. As clearly stated by Nagawo, the relationship between the two systems has been uneasy and competitive and the two justice systems equally claim the loyalty of the people and try to assert their authorities over the people. (Nagawo, 2013)

Even though the Ethiopian Criminal Law encompasses dynamic and vibrant concepts from the time of its first issuance in 1930, traditional conflict resolution mechanisms have not been given the proper place. The 1930 and 1957 criminal codes are mostly dominated by concepts from France, Switzerland, and other European countries (Graven, 1965). On continuum, the current criminal laws by endorsing most of the concepts in the former laws (with some exceptions which are repelled) still decline to recognize the TCRM except in the case of private or family affairs. Ethiopia, as a nation with diverse ethnicity, culture and belief, should give due consideration to the traditional and cultural conflict resolution mechanisms like *gumaa* and others.

However, when we come to the practicality of TCRM, their recognition and implementation among the people is totally different from that of the law. Most of the time, criminal cases get solution without being referred to the FLS. Sometimes, although they are referred to the FLS, they are either discontinued or withdrawn from the court or witnesses disappear (Informant 6, Addis Ababa, April 18, 2016 and Informant 9, Burayou town, May 30, 2016). This makes the FLS ineffectual and unpractical. Even after the offender served the sentence, going through the traditional conflict resolution mechanism or *gumaa* is mandatory for the offender to reconcile with the victim, reintegrate into the society, and restore the broken relationship. Furthermore, it is very crucial for the offender to lead a peaceful and harmonious life and give security for the offender since there is no fear for revenge after *gumaa*.

The preference of the ILS, particularly the *gumaa*, over FLS is due to several reasons. To mention some:

- The ILS (gumaa) is deeply rooted with the value, culture, tradition and belief of the society. But the FLS seems alien to the majority of rural population of Ethiopia.
- The participation of all stakeholders gives satisfaction to everybody. The victim gets satisfied, the offender takes responsibility and gets opportunity to apologize and the community involvement brings genuine reconciliation and integration.
- ILS (*gumaa*) is more accessible to the community especially in the remote parts of the country. The procedure and language used are very familiar to the parties.
- Flexibility of the ILS is another point of preference over the FLS. The effectiveness of the outcome and the guarantee of its implementation can also be mentioned.

These and other reasons make people to choose ILS over the FLS. Lack of platform for the recognition of the ILS by the FLS creates rivalry and competition between the two. Had the law and policy makers given due attention to ILS and looked for ways to accommodate it, the criminal justice system would have been effective and peace would prevail.

Another surprising and contradicting fact is the use of *gumaa* by courts as mitigating point during sentencing. The FLS, without recognizing *gumaa* or traditional conflict resolution mechanisms in the substantive and the procedural law, uses it practically. If an offender is apprehended and appears before court while the family is in the reconciliation process and completion of the *gumaa* requirements is underway, and if the family of the offender submits

the agreement to the court, it can be used for mitigation. So the paradox of the FLS in denying and accepting *gumaa* or ILS or traditional conflict resolution mechanism is clearly seen.

6.3 Gumaa versus Restorative Justice

The main objective of *gumaa* is reconciling the victim, the offender and the community. It is also the integration of the offender and restoration of the broken relation. Ultimately this leads to peaceful existence and harmony in the community. Likewise, the objective of Restorative Justice is reconciliation of the three stakeholders, by addressing harm of the victim and community and offender's responsibility. Eventually, this will lead to reconciliation, reintegration and restoration of the offender.

When we come to the principles of *gumaa* and Restorative Justice again, they both focus on the relationship between the victims of the crime, the wrongdoers, and the community. In both cases, the principles are more or less the same. In addressing the harm, the healing of the victim is primarily reflected. The principle of acknowledgement of responsibility by the offender is also seen in both cases. *Gumaa* and Restorative Justice focus on the involvement of all three stakeholders in repairing the harm caused by the crime. Though the role, degree of responsibility and extent of damage vary, the stakeholders' active involvement smoothens and expedites the reconciliation process and brings a lasting solution. This leads to the other principle of *gumaa* and Restorative Justice, i. e., the restoration and reintegration of the offender into the society which is done without any imposition and remorse. The offender feels accepted and enjoys the reintegration; the victim is comforted by forgiving the offender and the community benefits from the peace and harmony.

When we see the values of *gumaa* and Restorative Justice, they are more or less the same as that of principles indicated above. Accountability of the offender is clearly manifested in both cases. Compensation is the other value seen in systems' scenarios. Of course, in the Ethiopian Criminal Law, the victim's right to request for compensation is stated. But the way the compensation is set is not like that of *gumaa* and Restorative Justice. In the latter, compensation is determined through open discussion, negotiation and participation of the victim, the offender and the community. But in the Criminal justice system, it is determined by the court. Participation of different stakeholders is regarded as another important value of *gumaa* and Restorative Justice.

Although many of the values, principles, processes and outcomes of gumaa are not written and well structured as in the case of Restorative Justice, they are the same as in the latter. There is an immense overlap between the two systems. Yet it does not mean that they do not have their own uniqueness. The difference is that Restorative Justice System is more advanced and highly developed and modern. The process and *modus operandi* are clearly defined and steps are consistently followed. Above all, the objectives, principles, values, and procedures are prescribed unlike in *gumaa* which completely relies on narration and oral tradition.

The other difference between *gumaa* and Restorative Justice is that the former is highly attached with rituals and spiritual practices whereas the latter is not. The inclusion of new ideas and concepts to strength the system and to cope with the development of technology and influence of globalization exists in Restorative Justice. But *gumaa* is deeply rooted and attached with past and age old concepts and no attention has been given to accommodate the upcoming new philosophies and new concepts.

The other major difference between the two is that *gumaa* does not give enough room or space to women. Women in gumaa do not play any role except in accompanying the *kallacha* spiritual stuff by holding *caaccuu* or *siiqqee*. The two spiritual stuff used by women are taken out not only during conflict resolution but also in times of adoption and other traditional activities. During the *gumaa* process, women do not participate as judges or members of the elders. They prepare and serve food and drink. Lack of recognition of women goes deeper in the whole *Gada* system where women are not eligible for any political, social and economic authority. Dejene, cited in Chala (2002), refutes the idea of excluding women by indicating the *siiqqee* spiritual institution which excludes men. He further argues saying that *siiqqee is an* institution which functions hand in hand with the *Gada* system as one of its built-in mechanisms of checks and balances (Chala, 2002).

CHAPTER SEVEN
CONCLUSION AND RECOMMENDATIONS

7.1 Conclusion

Restorative Justice as a recently developed and effective justice system is getting wider acceptance in many countries. It is a mutual and peacemaking approach to conflict resolution, and can be used in different settings such as school and home business. The nature of Restorative Justice makes it appealing, effective and practical in conflict resolution. The involvement of different stakeholders especially the victim, the offender and the community gives it unique feature.

The criminal law, on the other hand, focusing mostly on punishing the offenders is not a preferable means of justice system. Specifically, the Ethiopian Criminal Law punishes the offender considering that crime is committed against the state. The scenario will be the victim as a passive actor, the offender as an outcast and marginalized individual and the community as an outsider and inactive observer. The state, as a key player, punishes offenders to make sure that they are deterred from further crime or potential offenders learn what will happen if found committing crime.

The traditional conflict resolution system of *gumaa* is predominantly used by the Oromo people in resolving conflicts and avoiding animosity. The reason for its effectiveness and consistent use is the simplicity, accessibility and effectiveness of the process. It is also due to its positioning both parties in win-win situation than in win-lose. Its emphasis is on the future relation of the offender, the victim and the community. Its catching features are reintegration of the offender and restoration of the broken relationship. The satisfaction it brings to the stakeholders and the enforcement of the decision is also the other reason for its preference over the Criminal Law.

However, the non-inclusion and recognition of Restorative Justice System, on the one hand, and the non-development of the traditional conflict resolution mechanisms like *gumaa,* along with the wide acceptance it enjoys in the society, on the other hand, are obvious shortcomings. The forced implementation of the remote, state centered and punitive Criminal Law has also created confusion and mystification among the society. The community at large

has seen *gumaa* as fair, transparent, effective and all inclusive justice system. It serves the purpose of keeping the community's peace, harmony and social integrity.

7.2 Recommendations

Having examined existing situations discussed in this paper, it would be compelling to think of a different approach that links and connects these justice systems for the building of lasting peace and harmony, prevention of recidivism, and reintegration and restoration of offenders. It is thus high time the researcher suggested the following.

1. There is a need for the development of a kind of hybrid justice system which mixes both the formal criminal law and the informal legal system, or traditional conflict resolution mechanisms such as *gumaa* instead of the current practice that excludes all ohers. It is, therefore, timely to implement a uniquely combined justice system which considers the cultural, traditional and long established value systems of the diverse population of Ethiopia.

2. Furthermore, ways should be sought for the inclusion of Restorative Justice principles, values and concepts in the Criminal Legal System of Ethiopia.

3. Possible efforts should be made by the concerned stakeholders to update and incorporate new social dynamics into *gumaa* and other traditional conflict resolution mechanisms which are predominantly exercised by the population.

4. Last but not least, this paper is only a provocative and stimulating piece of work. Thus, further study should be carried out so as to give us further enlightenment in the area.

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Annex I Persons Interviewed

1. Ato Teresa Sori Elder (*Chffeetatichaa) Awass Bello Sebeta Town.*

2. Ato Ketema Waqejera Elder (*Chffeetatichaa) Awass Bello Sebeta Town.*

3. Ato Bekele Bedada Resedent and local person of Sebeta Town.

4. Ato Grima Abebe Oromia Regional State Sebeta zone Court President.

5. Ato Baysa Sorsi Oromia Regional State Burayou zone Court President.

6.Ato Habtamu Ayana Oromia Regional State justice bureau prosecutor

7.Ato Eshetu Oromia Regional State Burayou Zone Prosecutor.

8.Ato Abel Birbisa Lawyer in Oromia and Federal Courts.

9. Inspector Chemdesa Bodena Oromia Regional State Burayou town Community Police Division Head

10. Ato Gossa Bedada Sebeta Town resident.

11. Ato Hirpa Waktole Sebeta Town resident.

12. Ato Megersa Tola Burayou Town resident

13.Ato Fekadu Gemeda Burayou Town resident.

14.W/o Demi Aduga Sebeta Town resident.

15. W/o Desta Feyerra Sebeta Town resident.

16.Ato Mohammed Oromia Regional State Sebeta Town Head of Prosecutor office.

17. Ato Kebede Daka Bourayou Town resident.

18. Ato Dereje Tesfay Sebeta Town resident.

19. Ato Tufa Tolosa Sebeta Town resident.

20. Ato Matthews Gichile Addis Ababa resident

Annex II Interview Questions

I. Question for / Elders or *Cheffeetich* Judges

1. As elders or *Caffeetich* judges how are cases presented to you?
2. Who communicates or ask you to be judges or elders to a given crime?
3. What do you advise offenders? What to do?
4. What kinds of cases or conflicts come to you?
5. What are the procedures to be followed? What are the responsibility of victims, offenders and community?
6. How do you decided or determine guilt? Do offenders confess themselves? What rules do you follow? How do you decide on compensation?
7. Do victims or offenders or community involve in the decision making?
8. Do you encounter situations where parties in a conflict disagree with you decision? Are victims satisfied with your decision?
9. Do you encounter cases presented to court after reconciliation made and *gumma* is paid?
10. Do you handle conflicts which are already in the court? Have you ever ask court to drop the charge because *gumma* is already paid?

II. Question for Court Judges

1. What kinds of cases are frequently seen in your bench?
2. How do you decide and reach in to conclusion of on suspect guilt?
3. Do victims and community participate in the proceeding? Or decisions making?
4. Are victims satisfied with the decisions? What about the community?
5. Is a suspect gets the opportunity to explain the reason of the conflict? Do offenders out rightly admit their guilt? Do you allow for the victim and offender to convene?
6. Have you ever encourage victim and offenders to settle their case through the informal process?
7. Do you encounter situations where victim and witnesses refuse to testify against the offender? If yes what do you think is the reason? What measure do you take?
8. Have you ever approached by victim or community to close cases which are handled by the formal court due to the payment of *gumma*?
9. Do you use reconciliation through *gumma* as mitigation point in sentencing?
10. What is your opinion on the effectiveness of *gumma*?
11. What do you see as a short coming in the formal legal system?
12. What is your understanding of the people in terms of using the ILS like *gumma*? Are people comfortable with the formal legal system? Or with the informal legal system like *gumma*?

III. Question for public prosecutors

1. What kind of cases do you prosecute mostly?
2. Are you satisfied on how the investigation is done? Do you involve the victim or community in chagrining the offender?
3. What are the role of victim and community in the investigation of the case?
4. Do victim and community satisfied on your framing of the case and how you handle it?
5. Do you advice or the victim and offender to finish their case by reconciliation or *gumma*? Do you arrange forum for the offender and victim to meet?
6. Do you encounter situation where the victim after settling the conflict through *gumma* asked you to drop the charge?
7. Do you close case because of wittiness refusal or change of testimony? What do you do if wittiness refuses to testify due to reconciliation or payment of gumma?
8. What is your reaction if parties to a conflict conform?

IV. Question for police officers

1. Who inform you about occurrence of a crime?
2. What is role of victims and Community in the investigation process?
3. Do you try to the victim and offenders to meet together and resolve their dispute? What about the Community?
4. Do you consult the victim in your investigation? Do you consider any concern the victims have?
5. To what extent elders or *Caffeetich* judges involve in the investigation?
6. Do you drop investigations if victim and offender reconcile?
7. Are victims more satisfied in the traditional conflict or the court ruling?
8. Do wittiness's change their testimony when they appear in court after reconciliation?
9. Do offenders acknowledge their responsibility during investigation?