

Sexual Violence and Justice in the Context of Legal Pluralism: Lessons from the Gamo Cultural Setting¹

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Abstract

Although the pros and cons of legal pluralism have been widely debated in academic discourses its benefits and limitations in settling sexual violence cases have not been adequately explored. Focusing on the Gamo cultural context, this study explores the implications of legal pluralism for the rights of sexually abused women. Diverse methods, including in-depth-interview and informal conversation, were employed to gather data during the ethnographic fieldwork carried out in the Gamo highlands. The findings reveal that the justice institutions functioning in the study area are informed by customary laws, state laws and the human rights norms. The plural legal settings are characterized by dynamic, competitive, and confusing scenarios in which women's quests for justice are not adequately addressed. State justice institutions and government-affiliated women's rights advocates have provided abused women with alternative avenues to customary justice institutions. However, state institutions marginalize customary institutions from addressing criminal cases (including sexual violence cases) despite the fact that they lack the capacity to adequately address similar cases. As a result, abused women hardly get justice as they continuously move between the available options and eventually trapped in a grey area left by the competing justice institutions.

Key words: *derecima*, Gamo, justice institutions, legal pluralism, sexual violence

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Introduction

It has been argued that the roots of legal pluralism are associated with legal systems in former European colonies in Africa and Asia (Woodman 1996; Hellebrunn 2000). The history of legal pluralism in Ethiopia followed a different route as compared to other African countries since the country was not under colonial rule, except a brief period of Italian occupation from 1936 to 1941. The history of legal pluralism in Ethiopia could be divided into three eras: the pre modern era (14th to early 20th centuries), the modern era (1930s to 1991), and the period of the Ethiopian People's Revolutionary Democratic Front (EPRDF) (since 1991). In the pre-modern era the state relied on translated and indigenized legal documents influenced by "biblical and Roman-Byzantine traditions" (Pankhurst and Getachew 2008: 1). The *Ser'ate-Mengist* (Law of the Monarchy) and the *Fitiha-Negest* (Justice of the Kings) were traditional texts introduced in the 14th and 15th centuries respectively. The *Kibre-Negest* (Glory of Kings) served as an important legal document until the beginning of the 20th century. Despite this, customary laws played an important role in most parts of the country during that period (Pankhurst and Getachew 2008).

The modern era was dominated by the monarchy (Emperor Haile Selassie I: 1930-1974) and the Derg regime (1974-1991). Major developments in the Emperor's period were the introduction of different laws: the 1931 Constitution, the Revised Constitution of 1955, the Criminal Code (1957), and the Civil Code (1960). The legislative process was characterized by two major features: 1) it was predominantly influenced by the Western idea of law (Kohlhagen 2008); and 2) it did not give much attention to customary laws and institutions as its major concern was fostering a unified legal system across the country (Pankhurst and Getachew 2008).

The Derg regime, like its predecessor, focused on strengthening a centralized legal system (Pankhurst and Getachew 2008). The dominant political ideology of the Derg period was socialism. As Yacob points out, customary "institutions were effectively weakened under the Derg regime because they were viewed [...] as primordial and inimical to modernity and socialism" (2006: 56). The regime weakened local institutions by

introducing new structures such as the *kebele* administration and *kebele firdshengo* (grassroots courts attached to the *kebele* administration).

The coming of the EPRDF regime has led to the revival of customary institutions and practices. The EPRDF government has established a new trajectory in the political history of the country by introducing ethnic-based federalism and encouraging cultural revitalization. The 1995 Constitution “has allowed a great space for customary and religious laws and courts” (Pankhurst and Getachew 2008: 6), especially to deal with family and personal matters. In some cases, the revival includes the reform and codification of customary laws. A good example is the revitalization of the Gurage customary law. The Sebat Bet Gurage have published the codified version of their customary law entitled “*KITCHA: The Gurage Customary Law*” in 1998. The Kitcha incorporates new legal provisions related to gender and marriage (Bahru 2006). The revitalization of customary institutions has also been observed in other societies, among others, the Kambata (Yacob 2006), the Sidama (Aadland 2006), and the Gamo highlanders (Freeman 1999; Freeman 2002). As the findings of this study reveal, customary justice institutions, which are vibrant across Gamo communities, still play a vital role in addressing disputes associated with marriage, divorce, rape and abductions.

The strengths and limitations of legal pluralism have been widely debated in academic discourses. However, its benefits and shortcomings in settling sexual violence cases have not been adequately explored in the Ethiopian setting. This study is aimed at filling this lacuna by exploring the implications of legal pluralism for the rights of sexually abused women specifically focusing on rape cases in the Gamo cultural setting.

Research Methods

This article is a part of a PhD dissertation submitted to the School of Social Work at Addis Ababa University in 2014. Hence, it relies on the data collected through a multi-round ethnographic fieldwork carried out in the Gamo highlands from November 2012 to September 2013. In addition to two rounds of preliminary fieldworks carried out to collect initial data and

select a study site, five rounds of fieldwork were conducted for the period of 5 months in the Gamo highlands, specifically in Chenchä district of the Gamo Gofa Zone. The bulk of the data were collected from Dorzedere and Chenchä town. The fieldwork was initially started in Dorze *dere* to collect data from study participants (including raped girls, elders, women and men of different statuses). In the later stage of the fieldwork, a substantial amount of data were collected from key informants working at the district court and justice department, experts of the district Women's and Children's Affairs Office (WCAO), and leaders of district women's associations.

In-depth interviews, focus group discussions (FGDs), and informal conversations were employed to collect data. *In-depth interview* was employed to collect data from key informants including 1) the *derecimata*, (elders of the land) and leaders of *kebele* women's associations in Dorzedere, and 2) gender experts of the district WCAO, judges, and leaders of district women's association at Chenchä town. *Individual case-studies* were employed to gather data on rape cases filed at the district WCAO and heard in the contexts of customary institutions and state legal institutions. Different methods were employed considering local circumstances including: rounds of short interviews with sexually abused girls who had brought rape cases to the attention of the *derecima*, the district WCAO, and the district court; informal discussions with women and men who had a detailed knowledge of the cases; and in-depth interviews with key informants in Dorze and Chenchä town. *Women's FGDs* were carried out with the assistance of a woman facilitator to collect data on women's perspectives on human rights and state legal provisions and the implications of legal pluralism for girls/women subjected to gender-based violence such as rape. Informal conversations were also exploited as means of gathering data.

The Study Area and People

The Gamo Area⁴

The Gamo area provides the wider geographical and cultural context for this study. The Gamo area refers to the Gamo highlands and the adjacent lowlands which are predominantly inhabited by the Gamo people. It is located in southwestern Ethiopia bordering Wolaita and Dawro in the north), Gofa in the west), South Omo and Derashe in the south, and the two Rift Valley lakes: Abaya and Chamo, in the east.

According to the 2007 census report, the Gamo population was more than 1.1 million (CSA 2007b). An overwhelming majority of the people speak the Gamo language belonging to the Omotic language family (Freeman 1999). The Gamo are closely related to other Omotic speaking peoples: Gofa, Dawro and Wolaita. These ethnic groups share cultural traits including cultivating *enset* as a staple food and using similar titles such as *ka'o* (also spelt as *kawo*) for their politico-ritual leaders. *Gome*, a complex taboo system, is also central in the culture of these groups though the Dawro and Wolaita use a slightly different term, i.e., *gomia* (Haileyesus 1996; Data 2007).

Anthropological accounts reveal that the Gamo highlands were inhabited by many communities organized into tiny states (locally called *dere*⁵). There were more than 40 Gamo *dereta* until the highlands were incorporated into the Ethiopian state in 1898 (Olmsead 1974; Olmsead 1997). Though the *dereta* do not exist as autonomous political entities, they still maintain their identity, institutions and indigenous structures. Dorze *dere*, the study area, was one of those autonomous political units. Based on the current administrative structure, Dorze is located in Chenchä *woreda*, one of the 11 *woredas* in the Gamo Gofa Zone, Southern Nations, Nationalities and Peoples Regional State (SNNPRS).

The term 'Dorze' embraces two meanings: the Dorze people as well as

⁴ The Gamo area refers to the Gamo highlands and the surrounding lowlands predominantly inhabited by the Gamo people.

⁵ *Dere* (singular), *dereta* (plural); similarly, *dubusha* (sing.), *dubushata* (plu.); *cima* (sing.), *cimata* (plu.)

the geographical area (*Dorzedere*) inhabited by the people. Currently, Dorzedere is divided into 11 *kebeles* and an administration of a small town called Dorze Bodo. Dorze also retains elements of the indigenous administrative structure which has 3 levels: *Dorzedere* itself, 15 small *dereta* which are further divided into several neighborhoods (*guta*). Distributed across the three levels of the structure, Dorze customary justice institutions are widely involved in conflict resolution activities.

Gamo Customary Justice sSstem

The main components of the customary justice system in Dorze and other Gamo communities are the *dere woga* (customary laws), *dubusha* (customary court/public assembly), and *derecima* (council of elders). The *dere woga* is a body of norms and a set of moral values that provide a wider framework for social interactions and human conduct across Gamo communities. It embraces cultural norms and procedures that govern diverse issues, among others, inheritance and property ownership; marriage and divorce; conflict management and resolution; gender-based division of labor, and funeral and mourning ceremonies. It also provides a list of sanctions (including ostracism) and fines to punish individuals and groups committing wrong deeds, *inter alia*, rape, homicide, adultery, and theft.

Dubusha can be defined as a ‘customary court’ where conflicts are resolved and as a community assembly where communal and topical issues are discussed and settled. The term *dubusha* literally refers to two things: 1) the site where people’s assemblies are held; and 2) the assemblies. The major roles of *dubusha* assemblies include making and reforming laws, and hearing disputes and resolving them based on customary norms and procedures. Despite their hierarchical structure, *dubushata* have some common elements. *Dubusha* places have a wide open space permanently reserved for public assemblies. In most cases, *dubusha* sites own and are associated with a big tree (locally called *kasha*). As *dubusha* trees are considered as sacred, cutting them (including their branches) is strongly prohibited. Using fallen leaves and branches of *dubusha* trees as fuel is deemed transgression of taboo.

Analogous to state court structure which has three hierarchies: first

instant courts, high courts, and supreme courts, there are three hierarchies of *dubusha* assemblies. However, it is important to note that the three levels of state courts are structured at the federal and regional state levels. Dorze *dere*, a tiny local community as compared to the federal and regional states, has also three tiers of customary courts (*dubusha* assemblies), which include, from the bottom up, *guta* or neighborhood⁶*dubusha*, *dere**dubusha*, and Dorze *dubusha*. *Guta dubusha* hears minor cases that involve people in the same neighborhood and refers cases to the *dere dubusha* when it fails to resolve them. Dorze *dubusha* occupies the highest position in the hierarchy of *dubushata*. It makes and revises customary laws, resolves outstanding matters (including cases referred to it from lower-level *dubushata*), and discusses topical issues that could affect the entire Dorze *dere*.

It is essential to carry out a careful inventory in order to know the exact number of *dubushata* in Gamo *dereta*. I have estimated the number of *dubushata* in Dorze *dere* based on the data gathered from 4 small *dereta*, namely, Laka, Haizo, Amara, and Bodo. Laka has 14 neighborhood *dubushata*. Haizo has 6 whereas Amara and Bodo have 3 each. This indicates the existence of 26 neighborhood *dubushata* in the four *dereta*. Taking 7 as an average number of neighborhood *dubushata* in each of the 15 *dereta*, the total number of neighborhood *dubushata* in Dorze *dere* is estimated to be over 105 (See Figure 1).

This structure of the *dubusha*, serving the Dorze community extending from the apex down to the neighborhood level, suggests that the *dubusha* system is by far more accessible to the members of the community as compared to the structure of state courts. For instance, the population of the 4 *dereta* (Haizo, Laka, Amara, and Bodo) was 3305 in 2013. As mentioned above, the total number of neighborhood *dubushata* in the 4 *dereta* is 26. When we add the 4 intermediate *dubushata*, the number increases to 30. These figures indicate that, on average, a neighborhood *dubusha* serves about 127 people (minors included) whereas a *dubusha* at the intermediate level serves around 826 people. In general, as illustrated in Figure 1, there are approximately 121 *dubushata* (Dorze *dubusha* (1), *dere dubushata* (15),

⁶Like the term neighborhood, the word *guta* refers to people who live near each other in a specific geographical location. I use the two terms interchangeably throughout this article.

and *guta dubushata* (105) distributed at the three levels for the entire population of Dorzedere estimated at 21000 people.⁷

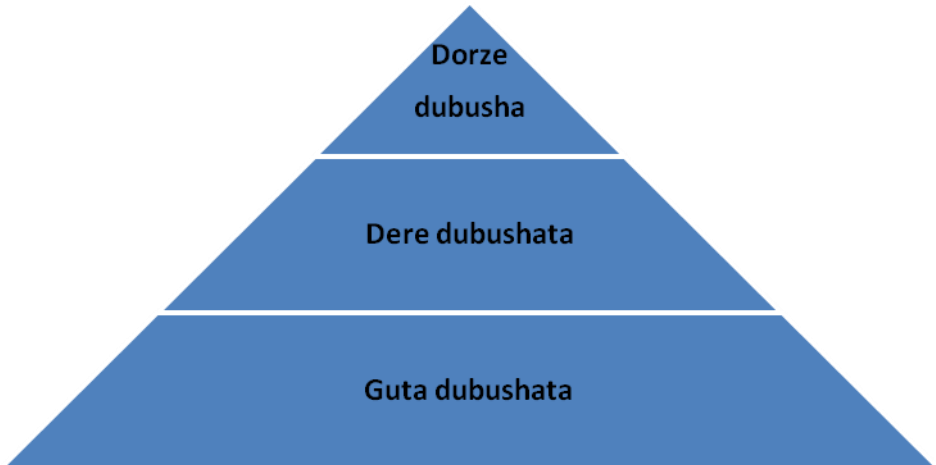


Figure 1: The three hierarchies of the *dubusha* structure in Dorzedere

The distribution of state justice institutions is quite different. In stark contrast to the *dubusha* structure, the state judiciary system does not have fine-grained sub-branches down to the local level. For example, there is only one court (located at Chenchata town) for the entire Chenchata district population estimated to be 111, 686 (CSA 2007b). Contrary to this, one can find hundreds of *dubushata* across rural villages in the same district. State justice institutions at the district level also have very limited human resource. Based on the data gathered in June 2013, Chenchata district court and the office of justice administration had four judges (all men), three judicial officers (all women), six detective police (five men and one woman), and five prosecutors (three men and two women) responsible for handling all judicial cases in the district whereas the district police office had 46 (43 male and 3 female) staff.

The customary justice system is not limited to the *dubusha* institution.

⁷Chenchata district Women's and Children's Affairs Office, Chenchata town, is the source of the population number.

The *derecima* institution is also functioning across the three levels of the *dere* structure. *Derecima* refers to a council of elders that plays an important role in settling different types of conflicts. It seems similar to the *jaarsaa biyyaa* of the Oromo (Mamo 2006; Abera and Berhanu 2008) and the *cimuma* of the Burji (Girma and Fekade 20012). The number of men involved in the *derecima* varies based on the case. The nature of the case also has implications for the status and number of men to be selected as members of the *derecima*.

The *derecima* is different from *dubusha* assemblies for some reasons. The *derecima* can be summoned easily as it does not require mobilizing a large number of people. *Dubusha* assemblies and the *derecima* are involved in hearing cases of sexual transgression. However, *dubusha* assemblies tend to give much attention to sexual transgressions that involve married people while the *derecima* hears sexual offenses targeting unmarried girls (e.g., rape and abduction). As a result, the analysis of this paper mainly focuses on the role of the *derecima* in settling rape cases in the context of legal pluralism.

Complexities of Legal Pluralism

Several studies portray the co-existence of state and customary justice systems in different societies of Ethiopia (e.g., Bahru 2006; Yacob 2006; Getachew and Shimelis 2008; Assefa, Gebre et al. 2011). Most of the studies mainly explore issues such as the interaction between the two justice systems, and their strengths and weaknesses in resolving conflicts. The findings of this study demonstrate the existence of a more complex scenario as other elements, the human rights norms, have become parts of the existing plural setting. The multiple legal setting gets more complex as actors and institutions informed by the human rights discourses are also involved in the process of addressing cases that involve gender violence.

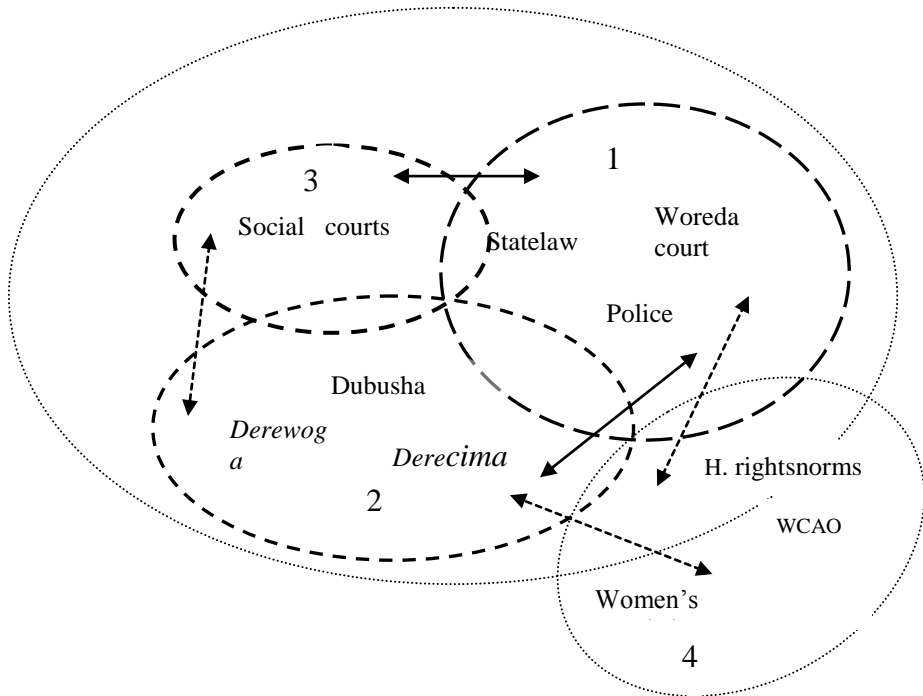


Figure 2: Interlocking and plural legal systems in Chencha district and Dorze dere

Figure 2 illustrates the plurality of the justice system observed in the study area. The major institutions mapped out in the study include three components: 1) the state institutions including the state law, the district court, and the police; 2) customary institutions (*derewoga*, *dubusha*, and *derecima*); and 3) Social Courts which are hybrid institutions established by the government at the grassroots level. There are other institutions and associations which are not components of the justice systems but have strong working relationships with customary and state justice institutions. They are the district Women's and Children's Affairs Office (WCAO) and women's associations, which are represented by number 4 in the Figure. Broken lines are used to sketch the Figure in order to show the porous nature of the boundaries between the justice systems and institutions as well as their overlapping relations.

The three sets of interlocking components of the multiple justice setting (state institutions, customary institutions, and Social Courts) are enclosed together in the bigger circle because they are directly involved in settling disputes. The district WCAO and women's associations are situated in a circle which is partly outside the big circle because they are components of neither customary nor state justice systems. Despite this, they are engaged in the process of addressing cases such as rape, specifically acting as advocates of women's legal and human rights. As an advocate of women's rights, WCAO is constantly engaged with the state court, the police, and the *derecima* to facilitate legal processes addressing gender-based violence cases. It also settles marriage conflicts through mediation, sometimes working in collaboration with the *derecima*.

Interview data and the analysis of rape cases reveal that the sets of institutions illustrated in Figure 1 do not stand and operate in isolation. Rather, they engage with each other in many ways, among others, in the process of filing, referring, and resolving sexual violence against women. The district court, the WCAO, and the *derecima* have close, dynamic, and complex relationships which involve collaboration, competition, and conflict. The cooperative relationship is reflected in many ways. For example, the *derecima* may hear rape cases and refer them to the district court or the WCAO when it fails to resolve them, whereas the court and the WCAO may invite the *derecima* to settle some cases related to marriage

and the family.

The relationship between customary and state institutions also involves competition and conflict. Although the state legal institutions claim the prerogative of hearing rape and abduction cases, the *derecima* is still engaged in hearing similar cases, sometimes with the consent of the court or that of the WCAO and other times by persuading the two parties (rapist and the raped) and their relatives. As a result of these competing relationships, one blames the other based on its own perspective. The *derecima* blames the state court for lack of concern for cultural issues, reconciliation and compensations. People working in the court and the WCAO blame the *derecima* for addressing all cases through reconciliation, for protecting men from legal sanctions, and for exposing women to further violations.

Do Women Benefit from Legal Pluralism?

‘The state law has no benefit to the raped girl.’

‘The *derecima* is getting bad and corrupt.’

The above short statements are quoted from two female study participants. Though the statements do not represent the views of study participants, they highlight the limitations of the state legal and customary justice institutions in addressing cases reported by abused women. As noted earlier, the components of the multiple legal setting in the study area are not limited to state and customary institutions as it also incorporates the human rights norms. Hence, multiple institutions and actors informed by diverse sources of norms are engaged in different ways in the process of defining, hearing and resolving cases of sexual violence. State justice institutions are predominantly informed by legal codes (e.g., the Criminal Code) whereas customary justice institutions are guided by the *derewoga*. Informed by the human rights norms, advocates of women’s rights (e.g., WCAOs) have brought the human rights element into the existing multiple legal setting.

The field data disclosed that institutions and actors guided by diverse perspectives and sets of laws are engaged in legal discourses and practices that involve filing, hearing, settling, and referring sexual violence cases. Rape cases, for example, could be settled by the *derecima* or by the district

court alone. Otherwise, they could move between the state and customary justice institutions until they were settled or left unresolved. Discourses and practices observed in the study area demonstrated that the plurality of legal and normative orders leads to a confusing legal setting, competing meanings of sexual violence cases, and diverse views about the 'just' way of resolving them. As the analysis of rape cases illustrates, this precarious situation leads to unintended consequences including a dramatic case mobility, duplication of legal processes, case floating, and double jeopardy.

Case Mobility

Most of the rape cases analyzed in this study had passed through a long and dynamic process of mobility between customary and state justice institutions before they got settled or left unresolved. Different circumstances could lead to mobility of cases mainly between the district court, the *derecima*, and the district WCAO. The patterns of case mobility are illustrated by some of the rape cases collected for this study. The following example (Case 1) shows how the same case moved between state and customary institutions at various levels of the legal process. Asne⁸, whose lived experience is presented below, was about 20 years old when she narrated her story.

Case 1

Asne's Triple Tragedy: Rape, short-lived Marital Life, and Divorce

Zene, the man who raped Asne, was a civil servant. Asne knew Zene very well and she wished to live with him in marriage. Zene raped her and refused to marry her. She took the case to the women's affairs office two months after the event. Though Zene denied raping her first; he later admitted committing the crime. When he was asked whether he would marry her, Zene agreed to do so and promised to get the problem settled with the help of the *derecima*. Asne dropped the case. Zene and Asne signed a marriage agreement with the help of the *derecima*. The man agreed

⁸ Names used in this paper are pseudonyms.

to take her home after a month but did not keep his promise. Asne took the case back to the women's affairs office. Zene was detained by the police and stayed in police custody for several days. The *derecima* once again interfered to settle the problem. Asne narrated what happened at the police station and the district court in this way:

“Zene admitted that he had raped me when the policeman asked him. The policeman said, ‘What is better? You will be imprisoned up to 16 years unless you two agree to reconcile.’ ...Then...some two elders [derecima] came and asked both of us...They asked me what I would prefer and I said that I would live with him in peace, we would live together, and that this would be better than his imprisonment for 16 years. Zene agreed and we signed the ‘semaniya’ [an official marriage agreement] in the office of justice and security. We got married in Sene [June] and he took me to his house...We lived together until Tir [January]. I moved out after living with him for seven months”.

Why did you move out?

“He beats me! He harassed me saying that he married me because he was accused of rape, not because he loved me. He and his relatives mistreated me day in and day out...he beats me!”

Why did his relatives mistreat you?

“They said that I should go away, that I was not his wife, and that he had brought me here without loving me...” Besides, he battered me repeatedly. I moved out and went to my father's house because they battered me.”

After exhausting the possibility of staying in marriage with the man, Asne took the case back to the court requesting for a legal divorce. She had expected that the court would let her get compensation or property share when it approved the divorce. However, the court said nothing about compensation and property share, as Asne reported.

This case shows that Asne did not consistently stick to the state institutions or customary institutions until the case was finally resolved by the district court. She had continuous interactions with different actors including women's rights advocates of the district WCAO, judges, police men, and Dorze elders. Figure 3 shows how Asne's case moved between state and customary institutions until it was concluded with divorce.

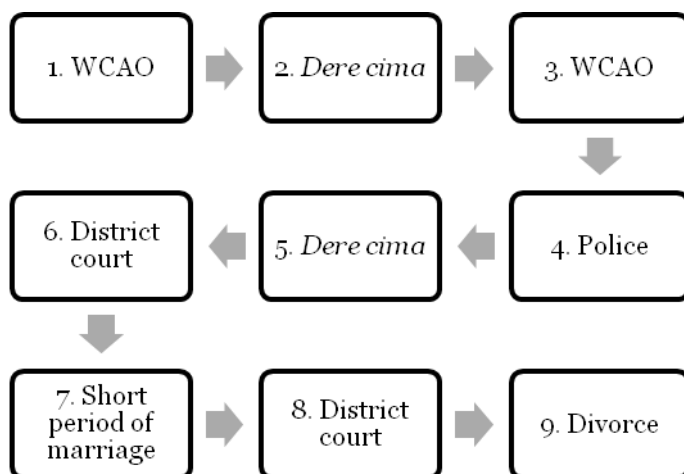


Figure 3: A rape case: Moving between customary and state institutions

As Figure 3 illustrates, Asne dropped the case reported to the district WCAO when the man promised to marry her through the *derecima* arrangements. This is a widely observed situation in the study area. Most of the girls interviewed for this study dropped rape cases filed in the WCAO and the district court to achieve their aspiration to live in marriage and restore their dignity. Girls also drop cases influenced by the *derecima*, relatives of the rapist and sometimes by their own parents and relatives.

The other factor that intensifies the mobility of cases is the way men manipulate the existing legal setting that embraces different institutions. Data gathered from different sources show that the existence of multiple justice institutions gives a room for men to evade legal sanction of the state court. Men's major tactic is getting cases transferred from state justice institution to the *derecima*. Once rape cases are removed from the context of state legal system, perpetrators of rape would use different tactics to evade the decisions of the *derecima*.

Some study participants argued that the *derecima* assists rapists to

evade prison sentence. A young woman participant argued that it is the state law that resolves rape cases properly and that protects the rights of women. However, the *derecima* interrupts the legal process, takes away rape cases from the court, and resolves them by fixing fines and persuading the girl and the man who raped her to live together in marriage. According to the young woman, this does not help the girl because:

the man [the rapist] would marry the girl in order to escape prison sentence. He would create problems to the woman afterwards. He would abuse her. He would treat her badly so that she runs away getting tired of the situation. So, the state law is better because the man would be sent to prison and get released after receiving a lesson about the downside of committing rape.

The other reason that leads to mobility of rape cases is divergence of perspectives held by legal experts, women's rights advocates, elders (*derecima*), and disputants. These actors uphold diverse perspectives related to women's rights, sexual violence cases, and the fair way of resolving them. WCAO experts define rape as the violation of women's rights that should be resolved based on the state law. They discourage women from taking rape and abduction cases to customary justice institutions which, according to them, would lead to further violation of girls'/women's rights. They advise and assist raped girls to file their cases in the district court so that the transgressor could be punished based on the state law. According to them, this is the right way of protecting women from sexual violence.

Judges and other legal experts working in the district court share some of these views. They argue that, like any other criminal, a rapist should be punished based on the Criminal Code. This is important, in their view, because court verdicts, mostly prison sentences, could serve as a deterrent for potential offenders. WCAO experts share this view. The main difference between the views of WCAO's experts and judges working in the state court is that the former define rape as violation of human rights (using the human rights' language) while the latter view rape as a crime (using the terms of the Criminal Code).

Abused girls viewed rape in a different way. For them, rape is a grave transgression that alters their lives drastically. When girls talk about rape, they do not talk about all types of coercive sex. They rather emphasize

forced sex against a virgin girl. For raped girls, the implications of rape include severe physical pain, changing status from a *gelao*/girl to a *sayo*/divorcee, losing one's dignity, diminishing future life opportunities (such as a good marriage), and multifaceted psychological traumas. The following quotation is extracted from one of the stories narrated by raped girls. It discloses the meaning of rape from the raped girls' point of view. When she was asked to explain the implications of rape for her future life, the girl replied as follows:

If a girl is raped, men in our country will not consider her as a girl. They would say 'she is a sayo' [a divorcee]. Finally, a raped girl would be forced to marry a man as old as her father. It makes me worry when I am left alone [without getting married] during the age of bearing children. In our country, when rape occurs the only option for the raped girl is living with the man who has raped her. Otherwise, it is bad to live being isolated in the house. So, if the man [the rapist] admits what he did, it is better for the girl to live with him in marriage. Staying home without getting married makes me worry because it will take time away from my reproductive age.

Raped girls' view of justice is also quite different from that of women's rights advocates and legal experts. According to raped girls interviewed for this study, court verdicts (mostly prison sentences) hardly help them because state courts exclusively focus on punishing rapists. Asne, the participant quoted above, argued that the court does not take into account the worries of raped girls and their future lives, their marriage opportunity, and their lost dignity. Referring to her case, she complained: "The court did not consider the labor I spent in his house for six months and the blood I lost when he raped me." In her view, the *derecima*, as compared to the court, is better in this regard because:

The derecima speaks genuinely after hearing my voice...The court dismissed my case without getting me paid any compensation for the misery I suffered, for the injustice inflicted upon me, and for what I labored in his house. The

derecima, however, would give judgment after questioning the man saying: 'Why did you mistreat her like this? Why did you let her suffer? If you do not want to marry her, let her go! Tell her that you will not take her as a wife instead of letting her suffer....' The court knows nothing! A paper is submitted to the court; after the paper is submitted, things are done through corruption. Many female participants, including those who narrated their lived experiences related to rape, shared Asne's idea that state courts are exposed to corruption. They claimed that corruption is one of the factors that forces abused women to drop court cases, and discourages them to rely on state justice institutions. Men accused of committing rape may use their money, their social network, or the economic and political power of their relatives or friends to suspend or abort court cases.

Some of the data collected through individual interviews and FGDs also support Asne's view that the *derecima* is better than the state court. A young woman participating in a focus group discussion questioned the benefits of jailing the rapist to the raped girl. In her view:

*The state law has no benefit to the raped girl. What is the benefit for the girl when the boy [the rapist] is jailed? The girl is already spoiled [because of losing her virginity]. She cannot live in marriage with the boy if he is jailed either. This does not benefit the girl. It is the *derecima* that helps her to get married.*

The above quotations show that rape is viewed as an offence that drastically alters the social status of the girl and diminishes her marriage opportunities. The status of the raped girl could be restored through marriage, which could be facilitated by the *derecima*. This does not mean that all women share this view. Some of the raped girls reflected their dissatisfaction with the way the *derecima* resolves rape cases and enforces its decisions. Some of the study participants complained that the *derecima* is also getting corrupt from time to time. A middle-aged woman who participated in a focus group discussion reported:

*The *derecima* is getting bad and corrupt. The *derecima* was genuine in the past. The leader of the *dubusha* used to be honest. These days, however, there are elders who discuss cases in drinking houses and make decisions without examining them thoroughly.*

Despite these accusations, the way the *derecima* defines and addresses rape cases has resonance with the aspirations of raped girls. Describing rape as a transgression that severely affects the lives of girls, the *derecima* shares some of the concerns of raped girls. The *derecima* defines rape as a breach of cultural norms, an act of spoiling the status of the raped girl, and a practice that symbolizes the beginning of marriage.

Most of the study participants, particularly those from middle- and old-age categories, see rape as an act that marks the beginning of marriage. This is because, according to the culture being studied, young people should start practicing sex after getting married and sex should be exercised within the marriage context. The rape cases disclosed that raped girls also hold this meaning of rape. When rape occurs, the raped girl moves to the house of the parents of the rapist, discloses the case, and demands the rapist to take her as a wife. When such a case is referred to the *derecima*, the elders persuade the two parties to resolve the conflict through marriage because of this deep-rooted cultural meaning of rape. The words of an old woman illustrate the cultural meaning of rape. As the woman explained, when a girl is raped, the parents of the rapist will shout out in this way:

'Dere!Dere! Dere! ... My son has done wrong! I promise to abide by the decision of the people.' Then, the boy's father would send the *derecima* to the parents of the girl. The *derecima* would restore the pride of the girl and that of the son as well. The *derecima* would reprimand the parents of the girl saying: *'Won't you stop the conflict? The problem has already happened. The two [the boy and girl] have already entered into marriage.'* (Author's emphasis)

Although the quotation reveals what was done when the study participant was a young woman, many people, including raped girls, still uphold this meaning of rape. The *derecima* prescribes marriage between the raped and the rapist based on this cultural meaning. Some women, including raped girls, show preference to the *derecima*'s position informed by this meaning of rape.

As discussed above, the diversity of perspectives intensifies the mobility of cases within the context of multiple legal orders. The findings

also disclose that the changing decisions of litigants (raped girls and rapists), the failure of the court and the *derecima* to resolve rape cases to the satisfaction of a raped girl, and the conflicting relationships between state and customary justice institutions are among the reasons that lead to dramatic mobility of cases. Mobility of cases has different implications, including duplication of legal processes and sanctions.

Duplication of Legal Processes and Sanctions

Mobility of cases is one of the main features of the dynamic and complex process of addressing rape cases. Duplication of legal processes in which the same case is heard in different justice institutions at different stages of the conflict is another implication of the multiple legal setting. For example, Asne's case (Case 1) was reported twice to the WCAO, reviewed twice by the district court, and heard twice by the *derecima*. In addition to the duplication of legal processes, the competitive interaction between state and customary justice institutions exposes rapists for double jeopardy, as the following case demonstrates.

Case 2

Dinqo: Raped by two Men

The event occurred about 10 years before the fieldwork. Dinqo was raped by two boys while she was looking after her parents' farm located far away from villages. She disclosed the offense to her parents who reported the case to the *kebele* where the rapists lived. The rapists admitted what they had done. The parents of the girl reported the case to the police, which referred the case to the district court. At this stage, the parents of one of the rapists [named Sularo] sent the *derecima* [elders] to Dinqo's parents. Both parties entered into negotiations through the *derecima*. In the process of settling the case, the *derecima* advised Sularo to marry Dinqo. He refused to do so because the other boy [named Sege] involved in the rape was an *ayle* [a social group regarded as slave]. Sularo rejected the marriage proposal noting that getting into such a marriage is a taboo⁹. As a result, the *derecima*

⁹ The Gamo culture embraces a complex taboo institution known as *gome* that

settled the conflict by fixing fines and compensation to be paid to Dinqo.

The problem was that the charge of rape [which had been filed in the district court] was not dropped when the *derecima* settled the case. The court case was initiated by a female district prosecutor who obtained information as to how the *derecima* resolved the case. Dinqo, the accused boys, and the *derecima* appeared before the district court. The two parties [Dinqo and the rapists] were requested to explain their positions. They reported that the *derecima* had resolved the conflict based on their consent. The *derecima* attested that it had settled the case based on the consent of the two parties. However, the prosecutor requested the court to nullify the *derecima's* decision and handle the case based on the Criminal Code. The court accepted the request and passed a prison sentence on the rapists who were jailed for four and half years. Dinqo could not get married for years. Finally, a weaver who lives in a distant town and who was much older than her has married Dinqo as a second wife.

In addition to duplication of legal processes and sanctions, this case reveals the power struggle between the *derecima* and the state court. The *derecima* had resolved the case putting aside the notion that hearing rape cases is the prerogative of the state court. The court reviewed the same case, nullified the verdict of the *derecima* and sent the rapists to jail. The prison sentence passed by the court practically undermined the position of the *derecima* to address rape cases. It also let the rapists punished twice: first by the *derecima* and then by the state court. The duplication of the legal process also shows the vulnerability of customary justice institutions. As one of the members of the *derecima* that resolved the same case disclosed, the court's decision had triggered a conflict among the elders themselves and between the elders and the parents of Dinqo.

embraces several taboos that regulate human conduct including sexual behavior. Gamo communities are divided into caste-like hierarchies that include from the top to the bottom: 1) the *mala* (respected members), 2) *ayle* (descendants of slaves), and 3) artisans (potters and tanners). *Gome* restricts social interactions among these social groups. For example, marriage and sexual intercourse between members of the *mala* and the *ayle* is considered as a transgression of social norms which, according to local belief, would pollute the former.

‘Floating Cases’

An explicit confrontation between the *derecima* and the state court discussed above is not a widely observed phenomenon. The state court fails to give final verdicts for most of the rape cases partly because of an implicit struggle between state justice institutions and customary justice institutions. For instance, five out of the seven rape cases collected for this inquiry¹⁰ were reported to the district court; however, they were either dropped or suspended for years or left unsettled. This is because the cases have been moving between the state court and the *derecima* without being resolved. This problem could be associated with the limitations of the *derecima* to settle rape cases and enforce their decisions (as the state law has weakened *derecima*'s customary authority); the implicit struggle between customary and state justice institutions; and the sluggish justice system of the country.

The legal process the rape cases passed through reveal that mobility of cases tends to lead to case-floating. I use the phrase ‘floating cases’ to refer to cases left unresolved after continuously moving between state and customary justice institutions. One of the rape cases collected for this study provides an ideal example of floating cases because it was left unsettled after being reported to the WCAO, filed in the district court, heard by the *derecima*, and reported to the *kebele* administration. The man who raped the girl (Danse) signed a marriage agreement and took her as a wife after the case moved from WCAO to the *woreda* court and then to the *derecima*. However, Danse could not stay in her marital home longer. Rather she moved away from her husband as he mistreated and neglected her intentionally. When I interviewed her in the last stage of my fieldwork, Danse was seeking the support of the *kebele* administration and the *derecima* in her effort to get justice. At that time, she was nurturing a one year-old baby girl born, according to her claim, to the man who raped her, married her and then chased her away. Danse also disclosed her intention to take the case back to the court. However, she did not do this for various reasons including 1) the absence of relatives who could support her effort, 2) lack of money to pursue the legal process, and 3) her responsibility to nurture her baby girl.

¹⁰Two cases (out of the seven) involved two men who raped the same woman/girl. In both cases, the men were punished with prison sentences. The remaining five cases, however, were dropped from the district court and were finally left unsettled.

Case mobility and case floating are closely associated with complex relationships between raped girls and the justice institutions available to them. The relationship is tense and contentious. Raped girls enter into conflict with the *derecima* when they report cases to the WCAO or to the state court as the *derecima* considers such actions as neglecting their traditional power and exposing internal issues to ‘outsiders’. The abused girls enter into another conflict with state institutions when they drop cases filed in the WCAO and the state court. The act of dropping cases annoys experts of WCAO who advocate for women’s rights and support raped girls to get justice through the state law. It also upset legal experts handling rape cases.

Discussion

The findings of the study emerge as consistent with other studies (e.g., Mamo 2006; Pankhurst and Getachew 2008; Assefa, Gebre et al. 2011), and reveal the absence of a single source of legal norms exclusively applicable in the study area. Rather, multiple, competing, and overlapping legal orders and justice institutions operate together in the same socio-cultural setting. The interaction between state and customary justice institutions involves conflict and strain primarily because, as noted also by other scholars, questions of jurisdiction between these institutions are not clearly elucidated (Assefa, Gebre et al. 2011). Theoretically, criminal cases such as rape and abduction are the prerogatives of the state law. In practice, however, both customary and state justice institutions are involved in addressing these cases.

The injection of the human rights perspective into the local context intensifies the complexity of the multiple legal setting. As a result, state justice institutions, the WCAO (informed by the human rights perspective), and customary justice institutions (especially the *derecima*) interact in diverse ways in the process of defining and settling cases of sexual violence. The WCAO encourages abused women to see rape as a violation of human rights, bring rape cases to the state court, and stick to the legal process until the rapist gets punished. The *derecima* struggles to stop the

flow of cases to the state court; to take over cases filed in the state court and resolve them based on customary laws and procedures. The state court strives to maintain its prerogative to hear rape cases. In some circumstances, it outlaws the decision of the *derecima* and reviews rape cases settled through customary procedures. This situation deepens the competition for jurisdiction between state and customary institutions.

The dynamic and competing interaction in the context of legal plurality has diverse implications. One of the consequences is ‘forum shopping’, a situation in which disputants choose a legal institution among available options to advance their interest (Benda-Beckmann 1981, Harper 2011). As the field observation disclosed, forum shopping is not limited to bringing a particular case to either of the justice institutions. Rather, it involves successive decision making processes which would lead to changing position of disputants (including abused women) and continuous mobility of cases between customary and state justice institutions. The problem is aggravated not merely because of forum shopping, however. It also results from ‘shopping forums’ (Benda-Beckmann 1981) in which justice institutions and individuals working in the institutions treat disputants in different ways to gain advantages or to get rid of cases that threaten their interests. As a result, rape cases are filed, transferred, dropped, suspended, and, in many cases, left aside without getting resolved at all.

The precarious situation produced by the plural legal setting also has other unintended consequences, including the duplication of legal processes and outcomes. It exposes disputants to different justice systems informed by different philosophies, sets of laws and procedures. This situation, as observed in other societies (e.g., Birhan 2011; Mulugeta 2011), sometimes leads to double jeopardy. It also creates ambiguous situations in which neither state institutions nor customary justice institutions take the entire responsibility of addressing cases of sexual violence.

Above all, as observed by other scholars, the study findings show that state justice institutions fail to respond to the needs and social concerns of disputants (Assefa, Gebre et al. 2011; Harper 2011) in general and to those of women in particular. Seeking justice relying on the human rights perspective and the state law has, as Thomas observed, contradictory and complex consequences for women. Outcomes of state courts are not realistic and rewarding for women because they fail to consider women’s

immediate socio-economic needs (Thomas 2007) as well as their psychological and cultural trauma (Assefa, Gebre et al. 2011). These statements are consistent with the findings of this study generated from the analysis of rape cases. For example, unlike the views of legal experts and women's rights advocates, punishing rapists with prison sentences does not adequately respond to the needs and aspirations of women. Abused girls tend to prefer the customary way of resolving rape cases because it resonates with their socio-cultural perspective and their aspirations for marriage, compensation, social status, and community recognition as opposed to state justice that exclusively aims at punishing the rapist.

Conclusion and Remarks

Legal pluralism is evident in the study area where different legal norms and justice institutions operate in the same setting in a complex and dynamic way. However, women do not adequately benefit from the availability of multiple options as different actors define sexual violence (e.g., rape) and justice related to it in diverse and competing ways. Legal experts and women's rights activists define rape as a 'crime' and a 'violation of women's rights', respectively. In their eyes, punishing rapists based on the Criminal Code is an appropriate way of deterring similar crimes and protecting women's rights. They hardly take into account the imperatives of addressing the social and cultural strain from which abused women suffer.

The *derecima* and other strong proponents of customary justice define the same behavior differently. For them, 'rape' (specifically raping a girl) constitutes: 1) an act of spoiling the status and future life of the girl as sexual transgressions are associated with the notion of pollution, and 2) a practice that marks the commencement of marriage between the rapist and the raped. Accordingly, 'the just' way of resolving a rape case is persuading the rapist to take the raped girl as a wife. Marriage is regarded as a means of restoring the pride of the girl and 'punishing' the rapist. In the past, the rapist who refused to marry the girl would have faced exclusion from the community. Currently, the community is not strong enough to punish transgressors because of cultural change in general and specifically, as a

result of the state law that bans customary institutions from settling rape and other criminal cases.

Women do not exclusively rely on any single meaning of rape. Analysis of rape cases reveals that abused girls pragmatically appropriate the human rights and legal meanings of rape and take their cases to the WCAO and/or the district court. However, most of them do not consider the verdict of the state court, mostly years of prison sentence, as an appropriate way of healing their pains, as well as the social and cultural trauma they encounter. State courts' hearings also involve a prolonged legal process which requires a lot of resources in terms of time and money. In most cases, abused girls mostly take rape cases to the state court in order to put pressure on the rapist to seek the intervention of the *derecima*. Raped girls pursue this line since the customary meanings of rape and justice resonates with their aspirations for compensation, marriage, and restoration of a dignified status. However, they hardly achieve these aspirations through customary justice institutions too because of the weaknesses of the *derecima*, which is blamed for corruption, favoritism and poorly enforcing decisions.

Perpetrators of rape, on the other hand, benefit out of this situation, which allows them to evade sanctions of both the state court and customary justice institution. They escape the verdict of the state court by shifting the case to the *derecima*. Once the case is withdrawn from the court, they also evade the decisions of the *derecima* by showing partial or situational compliance to the verdicts and by influencing the members of the *derecima* using local networks and the power of money. Moreover, men forced to take the raped girl as a 'wife' by the decision of the *derecima* could chase her away by exercising more abuses.

Legal pluralism provides women with competing avenues to different justice institutions. It also raises women's awareness of human rights, and allows abused women to take pragmatic decisions to benefit from the available options. However, neither of the options adequately addresses cases of sexual violence and protects women's legal and human rights. Rather, the availability of the human rights and state-legal approaches together with the customary ones has created an elusive scenario that jeopardizes women's rights and wellbeing. In this regard, legal pluralism entails more constraints than benefits for protecting women from sexual violence. The presence of state justice institutions and advocates of

women's rights has relatively weakened the power of customary justice institutions; yet the former have failed to serve as effective alternatives for delivering justice and protecting women's rights to be free from sexual violence.

Based on this conclusion, it is imperative to highlight some important points to deal with the problems on the ground. The state justice system is not the only way to protect women's rights to be free from sexual violence such as rape; it is rather one of the important options. Hence, strengthening the effectiveness of both customary and state justice systems is essential to provide abused women with justice. This could be done by enhancing collaboration between the two justice systems through a dialogical process which creates a climate of mutual learning (Nimmagadda and Martell 2008; Ife 2010). As opposed to the top-down approach that encompasses unequal power relations, the dialogue should be an ongoing and interactive process of exchanging knowledge that builds understanding, respect and trust between the parties involved in the process (Nimmagadda and Martell 2008). The dialogical approach could be employed to enhance a collaborative relationship between local communities and customary institutions on the one hand, and state actors and institutions on the other.

This could be enhanced, for example, by empowering both parties through training on legal and human rights ideas; providing trainings to state justice actors and human rights activists about the pros and cons of local cultures (e.g., cultural values, taboos, and customary justice institutions) for women's rights; advocating for new legal provisions that clearly portray the boundaries between customary and state justice institutions; encouraging legal reforms in order to put in place procedures of transferring cases and exchanging evidence between customary and state justice institutions.

The human rights' approach has been considered as an alternative avenue to protect the rights of women at the grass-roots level. However, different questions have been posed related to the human rights approach: Do people across cultures agree on the meaning of the human rights norms? Do the human rights norms have similar implications across cultures? Are women supposed to be entitled to specific rights? How do women and men at the grass-roots level appropriate, define, indigenize, and make use of the

human rights norms in different cultural contexts and local circumstances?

Acknowledging the complexity of the problem, Jim Ife (2010) has pointed out the importance of promoting the culture of human rights and responsibilities at the grassroots level, which requires the implementation of a bottom-up and participatory approach. The human rights work promoted by WCAOs is dominated by a top-down approach. As a result, it does not adequately empower women to appropriate and define human rights ideas in their context and make use of them to protect their rights. The WCAOs should adopt, to borrow Jim Ife's terms, the 'human rights from below' approach which resonates with the community development principles, among others, a bottom-up approach, a wider participation, and appreciation of wisdom and skills of community members.

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