HARAMAYA LAW REVIEW, Vol. 9 (2020) ISSN: 2227-2178 (P) & 2305-3739 (E)

To cite this article: Zelalem Tesfaye Sirna and Eshetu Yadeta Temesgen, *Blood Feud in North Shäwa: Exploring the Contradiction Between the Customary and State Criminal Justice System*, HARAMAYA LAW REVIEW 9 (2020): 39-53

BLOOD FEUD IN NORTH SHÄWA: EXPLORING THE CONTRADICTION BETWEEN THE CUSTOMARY AND STATE CRIMINAL JUSTICE SYSTEM

Zelalem Tesfaye Sirna and Eshetu Yadeta Temesgen[*]

Community of victims, unable to control its destiny, tends to victimize itself viciously.

\- Frantz Fanon (1963)

Abstract

The objective of this paper is to explore the contradiction between the customary and state criminal justice systems under the rubric of the Ethiopian criminal justice system by taking the case of blood feud induced homicide cases tried at North Shäwa Zone High Court of Oromia Regional State. It examines the practice of blood feud induced homicide cases tried and adjudicated in the High Court vis-à-vis the gumaa system. To address the objective, the paper employed in-depth interviews with key informants. Review of court cases, relevant laws and literature was also made. The paper finds that revenge killing is a common phenomenon in the study areas and its mitigation requires a different approach than reliance on the formal criminal justice system alone. It also finds that the gumaa system has the capacity to discontinue the vicious cycle of blood feud induced homicide, and in areas where the gumaa system is intact, the rate of revenge killing is low. Thus, it has indicated that the councils of elders and the gumaa system play an indispensable role in restoring and sustaining social harmony and peace to the community. However, there is a lack of legal framework that integrates and/or accommodates the gumaa system into the formal justice system. As a result, the relation between the judiciary and the gumaa system in relation to blood feud induced homicide exhibits competition as well as cooperation. And yet, a legislation that recognizes customary criminal justice system alone may not fully complement the criminal justice system. Therefore, legal actors such as judges, prosecutors, legal counselors and police officers should consider the gumaa systems in their jurisdictions.

Keywords: *Blood feud, criminal justice system, gumaa, North Shäwa High Court*

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I. INTRODUCTION

An intentional killing of a human person is presumptively a murder and rigorously punishable under Ethiopian law. Broadly speaking, there are two types of homicide: the first degree (murder) and the second-degree homicide (manslaughter). Murder is an unlawful killing of a human being by another human being with malice afterthought. The killer must have reflected upon and thought about the killing in advance. On the other hand, manslaughter is an unlawful killing of human being by another human being without malice afterthought.[1] In turn, manslaughter is classified as voluntary and involuntary manslaughter.[2]

Beyond the conventional criminal law of homicide, it is appropriate to problematize whether homicide and its punishment are culturally relative. Is criminal behavior wholly idiosyncratic and personal to the offender or are there broader social determinants of the commission and meaning of crime? Quoting Pospisil, Simon notes that the Kapuaku Papuans from West New Guinea do not take harsh actions against a murderer.[3] To prevent war, the local leader rather orders the defendants' relative to pay blood money to the victim's relatives and reprimand the defendant.[4] Thus, relatives who had nothing to do with the murder would receive harsher treatment (in fine) than the murderer who may get a scolding.[5] Similar experience also exists among the Oromo people of Ethiopia.[6] Legal sociologists also argue that if we are to understand the moral and psychological dynamics of crime, we must look at things in multi-dimensional manner, say, for example, we must view the typical homicide as presumptively feeling in the mind of the killer as if it is a legitimately justified act of law enforcement.[7]

Evidences from North Shäwa Zone of Amhara Regional State indicate that a homicide by one Amhara against another was to be revenged by the victim's family, and neither the local judicial administration nor the distant central government is expected to take measures against the perpetrators.[8] The revenge killing by a male relative of the victim (the blood avenger, or *demelash*) was usually directed not against the perpetrator who had fled to the woods or

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[1] Lee Cynthia and Harris Angela, *Criminal Law Cases and Materials,* AMERICAN BOOK SERIES, Thomson/West, USA, 2005.

[2] Voluntary manslaughter is murder reduced to manslaughter through the application of partial defense. In contrast, involuntary manslaughter is an unintentional killing resulting either from criminal negligence or commission of a low-level criminal act such as a misdemeanor. Involuntary manslaughter is distinguished from other forms of homicide because it does not require deliberation, premeditation or intent. Because neither of these mental states is required, involuntary manslaughter is the lowest level category of homicide. See: https://www.justia.com/criminal/offenses/homicide/involuntary-manslaughter/ (Accessed in May, 2020).

[3] Kapauku is a name applied to the coastal people of south-western Netherlands New Guinea to a tribe of about 60,000 mountain Papuans. Pospisil Leopold, the Kapauku Papuans and their Kinship System, 30 OCEANIA 188-205 (1963).

[4] THOMAS W. SIMON, LAW AND PHILOSOPHY AN INTRODUCTION WITH READINGS, 450 (The McGraw-Hill Companies Inc, 2001). See also Dinnen, *Sentencing: Custom and the Rule of Law in Papau New Guinea* 27 JOURNAL OF LEGAL PLURALISM51, 1988.

[5] *Id.*, THOMAS W. SIMON, at 451.

[6] Aberra Degefa, Justice that Heals and Restores: The Potential of Embracing Borana Oromo Indigenous Justice System Alongside the Ethiopian Formal Criminal Justice System (Unpublished, Dissertation, Addis Ababa University, 2015).

[7] Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 1997.

[8] Dolores A. Donovan, and Getachew Assefa, *Homicide in Ethiopia: Human Rights, Federalism, and Legal Pluralism, 51(3)* THE AMERICAN JOURNAL OF COMPARATIVE LAW505–552, 2003.

mountains, but against a member of the perpetrator's family who had nothing to do with the killing.[9] This problem is not limited to Amhara Regional State. Although it may not be of the same gravity, blood feud also exists in North Shäwa Zone of Oromia Regional State, particularly in the areas bordering the Amhara Regional State.[10] Unlike ordinary revenge killings, blood feud forces a male relative of a victim to avenge that victim's death by killing the slayer himself or his close relatives, and a blood feud may last many years. The man who avenged his family was seen as fulfilling a moral and social obligation and was honored by his family and by his society.[11] As Franz Fanon rightly observed, "a community of victims, […] unable to control its destiny, tends to victimize itself viciously".[12] However, in North Shäwa Zone of Oromia Regional State, the only exit from this vicious cycle is through truth and conciliation procedures known as the *gumaa* – the system of ending blood-letting and restoration of peace to the community. The *gumaa* system is a *de facto* justice system where local elders often dwell on to resolve crimes such as blood feud induced murder cases.

For this study, three *woredas* namely; Dara, Kuyyu and Dagam *woredas,* of North Shäwa Zone were selected. Although there are varied degrees of the practice of blood feud in all areas of the zone, the woredas were targeted for certain reasons. First, Dara *woreda* was selected for the case of blood feud induced murder is acute in the woreda. Second, Kuyu *woreda* was targeted because there exist ample experience of the *gumaa* system coordinated through the council of elders working consistently towards reconciling the family of avengers and family of victims. Thirdly, Dagam *woreda* was targeted for its proximity to Salale University and the availability of knowledgeable local elders known as *jaarsa igguu* (revered elders).

Methodologically, the paper utilizes qualitative research approach which is concerned with the "interpretative"[13] understanding of the people under study by closely listening and treating them as human beings with nugget of knowledge and experiences.[14] As a socio-legal research, the paper straddles between the criminal law regulating murder cases and its practical application. The primary data were collected through fieldworks conducted in targeted *woredas* from 5th April to 30th May, 2019. During the field works, in-depth interviews were employed to understand the relevance, the nature and relation of the *gumaa* system with the conventional

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[9] *Id.*

[10] The name "North Shäwa" is used both in Amhara Regional State and Oromia Regional State. This study is concerned with the North Shäwa of Oromia Regional State. North Shäwa is bordered on the south by Oromia Special Zone Surrounding Addis Ababa, on the southwest by West Shäwa, on the north by the Amhara Region, and on the southeast by East Shäwa. North Shäwa zone has 13 woredas. According to the 2007 Central Statistical Agency, this Zone has more than 1.4 million total population.

[11] In this paper, North Shäwa Zone refers to the North Shawa Zone of Oromia Regional State unless indicated otherwise. In North Shäwa Zone where the practice of the *gumaa* system is intact, the prevalence of revenge killing is very low. As a result, the prevalence of the blood feud among the Oromo in the study area is considerably less than among the Amharas who inhabit in the same area. However, because of cultural diffusion the case of blood feuds among the Oromo is not totally absent.

[12] FRANTZ FANON, WRETCHED OF THE EARTH (1963).

[13] SILVERMAN, D., INTERPRETING QUALITATIVE DATA: METHODS FOR ANALYZING, TALK, TEXT AND INTERACTION (3rd ed.), (2006).

[14] World Views, Paradigms and the Practice of Social Science Research, P. 10, *available at*: http://www.sagepub.com/upmdata/13885_Chapter1.pdf, (Accessed in May, 2019).

criminal justice system. In all the targeted *woredas*, interviews were conducted with knowledgeable local elders, and legal professionals such as public prosecutors, criminal investigators and judges. The total numbers of interviewees were fifteen: *seven* interviewees from Kuyu, *six* interviewees from Dara, and *two* interviewees from Dagam. The selection of the customary dispute resolution leaders (the councilors) was conducted based on the snowball sampling. That is, the researchers approached the presidents of the *woreda* courts, and through them we could find reliable and knowledgeable informants. Data gathered through interviews were selectively transcribed and analyzed for the purpose of this article. Furthermore, from 2013 to 2019 more than eighty blood feud induced murder cases tried in North Shawa Zone High Court were reviewed. However, for the purposes of this paper, only three cases are meticulously analyzed.[15]

The rest of the paper is organized under three sections. Section II discusses the contradiction between the formal and customary criminal justice system in Ethiopia. Under this section, the *gumaa* system and its significance in breaking the cycle of blood feud induced homicide is discussed. Section III analyzes the causes of murder in the study area in general, and blood feud induced homicide cases tried at the North Shäwa High Court in particular. Section IV provides concluding remarks.

II. THE CONTRADICTION BETWEEN THE FORMAL AND CUSTOMARY JUSTICE SYSTEM IN ETHIOPIA

Unlike the idealistic nature of state laws, the Ethiopian customary law systems are practice oriented. As a result, its influence over the behavior of the rural community in Ethiopia is a matter of fact.[16] For instance, the customary norms of familial reconciliation and compensation are deeply entrenched in the hearts and souls of a large percentage of the people of Ethiopia. The FDRE Constitution also does not preclude the adjudication of civil matters under customary and religious courts.[17] However, ambiguities persist when it comes to the relevance of customary criminal justice system. Although customary courts continue to deal with criminal matters under the *gumaa* system, except in matters that are up-on-complaint cases, criminal matter is the monopoly of the state. Obviously, customary criminal courts have no legal recognition to try criminal matters such as homicide. In practice, however, customary courts deal with criminal matters and award blood-money as a compensation based on customary rules; and not only the offender but also his relatives should pay compensation to the victim's family. In case the offender evades, social ostracism and banishment from the community may be taken as a remedy.

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[15] In fact, in the process of collecting relevant court cases, we have had a challenge of knowing whether the murder cases are blood feud induced or not. This gap is mainly because the criminal charges often do not state specifically the historical causes of the murder. Besides, the blood feud cases are treated analogously to any murder cases.

[16] See Donovan and Getachew, *supra note* 8, at 542.

[17] CONSTITUTION, Proclamation No 1/1995, FED NEGARIT GAZETA, 1st Year No 1, 1995 (here after FDRE CONSTITUTION), Art 34(5) and Art 78(5).

While the customary criminal justice system is *restorative and communal-reparative system,* the state criminal justice system is *individual-retributive system.* Thus, the customary criminal justice system and the state criminal justice system have contradictory relations.[18] In the former, the family and relatives of the offender as well as of the victim are required to be part of the reconciliation process *s*ince cases are seen from the collective interest. It often considers that the responsibility for the harm rests not with the individual that caused the harm, but with the broader social grouping, often the family or clan. The kin are involved in ensuring that the offender among their midst complies with the verdict and where compensation is required; they are expected to contribute.

In dealing with the judicial pluralities in general and customary courts in particular, governments may opt for one of the following strategies: elimination, neutrality, integration, and accommodation.[19] For instance, the FDRE Constitution stipulates that "the House of Peoples' Representatives and State Councils can give official recognition to customary courts".[20] So far, however, except the case of Oromia Regional State, no customary courts are officially recognized in Ethiopia. This is not because there are no customary courts efficiently resolving civil as well as criminal cases. Rather, it seems to have to do with the Ethiopia's policy of "neutrality". The neutral strategy explicates that customary courts are constitutionally guaranteed to dispose personal and property matters based on the consent of the parties, but the government is not committed to institutionalize them.[21]

The practice in North Shäwa Zone is different from the above general underpinnings. The zonal High Court proceedings focus on individual culpability and responsibility parallel to customary law proceedings that focus on reconciliation and collective responsibility. That is while the state criminal justice system deals with individual responsibility, the customary justice system deals with familial and communal responsibility.[22] Nevertheless, the payment of *gumaa*

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[18] P. Alula & A. Getachew, *Grass-Roots Justice In Ethiopia: The Contribution of Dispute Resolution Mechanism* 2008; Zelalem T.Sirna and Moti Mosissa, *Legal Pluralism and Its implication on Human Rights in Ethiopia*: *A Look for Policy Framework*, 7 ETHIOPIAN HUMAN RIGHTS LAW SERIES, 71-104(2017); Meron Zeleke *Ye Shakoch Chilot (the court of the sheikhs): A traditional institution of conflict resolution in Oromiya zone of Amhara regional State, Ethiopia*, AFRICAN JOURNAL ON CONFLICT RESOLUTION 63- 84 (2014); Mohammed Abdo, *Legal Pluralism, Sharia Courts, And Constitutional Issues In Ethiopia*, (Paper presented at the Seminar, The Contribution of Non-Western Law to the Development of International Human Rights Law, held on 13-14 September 2010, Brussels, Belgium); Aberra Degefa, *Justice that Heals and Restores: The Potential of Embracing Borana Oromo Indigenous Justice System alongside the Ethiopian Formal Criminal Justice System*, (PhD Dissertation, Addis Ababa University, 2015).

[19] Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 SYDNEY LAW REVIEW, 375 (2007). Conceding to the Tamanaha's views, the elimination strategy refers to the state political and legal system that aggressively suppresses competing informal institutions- working towards its elimination. Whereas the integration strategy absorbs the competing system as a way to control or neutralize or influence its activities by paying the participants, providing them incentives to conform, or by situating the absorbed institution in a hierarchy that accords the official legal system final say.

[20]See FDRE CONSTITUTION, Art. 78(5). Pursuant to Art 34(5), the Council of Peoples' Representatives and State Councils can establish or give official recognition to religious and cultural courts. Religious and customary courts that had government recognition and functioned prior to the ratification of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.

[21]See P. Alula & A. Getachew, *supra note* 18, at 375.

[22] See Donovan and Getachew, s*upra note* 8, at 544. See also Clairmont, *Alternative Justice Issues for Aboriginal Justice*, 36 JOURNAL OF LEGAL PLURALISM, 125-157 (1996).

would never relieve an offender from criminal responsibility.[23] Rather, it is practiced to heal the wounds, to normalize the disrupted relationship, and to erase the spirit of vengeance between the family of the slayer and the victim's family. However, this fact is not stipulated in the law. As a result, neither the federal nor the regional state warrants this practice.

A. The Gumaa System

The *gumaa* system is a prevalent customary justice system across the whole Oromia Regional State. The Tulama people (Salale area) have also maintained this indigenous conflict resolution mechanism. Although the process of truth and reconciliation takes place at several places across North Shäwa Zone, a plain field and covered with prairie, around large trees and adjacent to rivers are preferred places. Once a slayer kills a person, the traditional mechanism through which elders intervene and stop taking revenge is known as *ezgotaa*. In *ezgotaa*, the elders beg the family of the victim not to take any revenge against the family of the slayer. Until the *gumaa* is paid to the family of the victim, the elders give a direction to both families not to share the same public spaces such as markets or not to meet in person. Until the rite of *hark-bafanna* (hand shaking) takes place, the elders rebuke both the victim's family and the offender's families. In particular, the family of the victim will be to kneel down on one leg and step on land with another leg. He will then be given a spear at hand and two representatives (*lukoo*) will make him rehash the following statements:

Yoon haloo bahe, kanan dhalche naaf hinguddatin. Kan faccafadhe naaf hin margin.
Yoo ani hamaa irratti yaade waraanni koo dhalladuu du'aa haa ta'u.
Yoo sun immoo dide ta'e, waraanni koo qara haa ta'u.
Kana hin darbu – yoon kana darbe warraanni na hin dhabin.
Ija hamaadhaan hin laalu – hamaa irratti hin malu.
Yoon hamaa irratti male, waraanni kun natti haa garagalu.
Dhalchu naa hin guddatin, guddatu jilba hin darbin.
Facaafadhu quunnaa sadii hin darbin.
Saanyin kiyya zarii takka hin darbin.[24]

Roughly translated;

If I take revenge, may my children not grow.
What I sow/plant may not germinate/grow.
If I thought to take revenge, may my spear be the cause of my death.
If the other refuses, may my spear be sharpen.
I will not take revenge, if I do so, may this spear not miss me.
I will not think of wickedness; I will not do any wrong.
If I wrong him, may this spear turn against me.
If I got a child, it may not grow.

[23]Interview with the Presidents of Kuyu, Dara and Dagam woreda courts, in April, 2019.

[24]Interview with Mr. Girma Seifu, local elder, in April, 2019 at Kuyu town. Mr. Girma Seifu is a member of the council of elders in Kuyu. The council has office in the justice office in Kuyu and Mr. Girma was serving as its secretary. Before taking an oath, traditional tools such as *eeboo* (spear), *alanegee roobii (*a whip made up of hippopotamus leather), *ejersa* (olive), leaf of a weed known as *qomogno,* leaf of endemic tree known as *waatoo,* and *ulee horooroo* (a straight stick)will be brought to the procession and they will be laid down on the ground.

If it grows, it may not pass a knee.
If I sow seeds, it may not surpass thirty Kilos.
My cow may not give birth to more than one calf.

Nevertheless, it has to be clear that not every person respects the order of the elders as there are occasions where the family of the victim(s) disregards the *ezgotaa* and attempts to take revenge against the slayer's family.[25]

As already said above, the term '*harka-bafannaa'*[26] would literally mean "hand shaking." However, it is a symbolic performance which represents the reconciliation process between the family of the victim and the offender.[27] This process is also called *gumaa nyachisuu* (it is the derivative of feeding a piece of raw meat called *gumaa).* However, it also refers to the payment of the blood money. The *harka-baafannaa* process often takes place on Monday. Nevertheless, our key informants reiterated that reconciliation will not be initiated until the criminal becomes under the custody of the police.[28] Moreover, crimes such as abduction and arson are beyond the jurisdiction of the *jaarsummaa* (customary reconciliation system).[29]

It is interesting to note that there is well established and experienced council of elders in Kuyu town. According to our informants, the council was established 15 years ago, and it is serving the local community in reconciling the family of the victim and the family of the offender through the *gumaa* system.[30] There is also a spirit of cooperation between the courts, the justice bureau and the council of elders. The council of elders gathers once every month, specifically on the 29th day of every month, traditionally known as date of *balazgeri.*[31] On this date, representatives from the judiciary, the justice office, the police and other officials of the

[25] Interview with Mr. Shewalul Segni, local elder, in April, 2019 at Kuyu Town. The informant also told us that, in one occasion, a person visits the home of the offender to kill him at the presence of some local elders. The avenger had a gun pointed at the offender. The elders beg the avenger not to take any action. However, the avenger rejected the *ezgotaa* and attempted to shoot the slayer. Although the slayer had a gun on his shoulder, the elders had begged him not to use it. Instead, they advised him to run as fast as he could. The slayer run and the avenger chased him, whereas the elders run after both and observed the event. The avenger had come close to the slayer at a certain gorge and pulled the trigger. Unfortunately, the barrel of the bullet malfunctioned and exploded and killed the avenger. This particular event become public notice and the society had begun to respect the orders of the elders.

[26]When a person kills another person, the family of the victim and the offender will be accompanied with their respective relatives gathered at a particular place to perform *harka-bafannaa*. In that setting, one important element is a sheep. Without slaughtering that sheep, her stomach will be opened from both sides. A representative from the family of the victim and the offender are made to shake hands through the large intestine of slaughtered sheep. While shaking hands they rehash "*Mar'ummaan nu haagodhu. Nuhidhiiga.Nuyi garaacha.Wlaiif mar'immaani*." It means, your stomach is mine, we are one". In effect, it serves as a covenant between both families. The slaughtered sheep will be left there and will not be eaten. However, up on returning home, they slaughter male sheep, and prepare meal, known as *tolfannaa.*

[27] When a person kills another person, be it intentionally or out of negligence, the family of such offender informs/begs the traditional leaders to intervene and schedule for *harka-bafannaa.*

[28]Interview with Mr. Girma Seifu, in April 2019.

[29]Interview with Mr. Girma Seifu and Mr. Shewalul Segni, in April, 2019.

[30]Interview with Mr. Girma Seifu, in April, 2019.

[31]The 29th day of every month is known as "*balazgeri*". As the study area is highly influenced by the Orthodox tradition, the nomenclature of dates and their facets highly influences the livelihood of the residents.

Kuyu *woreda* are invited to take part in the meeting.[32] During this gathering, the council of elders report the cases settled through council of elders, the challenges they have faced and indicate the peace and security threats in their community. Although this experience is part and parcel of integrating the *gumaa* system into the conventional justice system, it lacks uniform application across the North Shäwa Zone.

It is important to note that even when the slayer is under the custody of law, either convicted or on trial, the elders approach the court to allow them perform *gumaanyaachisu*.[33] The court often orders the police to take the person out of custody and take to the place where *'harkabaafannaa*' is to take place. Once the performance is over, the police will take the slayer back to custody.[34] This helps heal the wounds, and make both families united, and when the slayer finishes his term, he will be able to be back and live in the community. Without paying *gumaa* and settling his matter, a slayer could not live peacefully in a village which is true whether or not the slayer was sentenced.[35] The key informants added that, when the offender is released, the court advises them to reconcile with the family and relatives of the deceased.

B. The *Gumaa* as a Restorative Justice System

As crime upsets the peaceful co-existence of a society, while justice attempts to balance it, and justice would have more meaning if it is about healing rather than hurting. It is also said that punishment adds to the amount of hurt in the world than restoring the community already in chaos.[36] Especially in revenge killings, therapeutic jurisprudence such as restorative justice is quintessential. Restorative justice which is established on cultural practices of the concerned society has social meaning. Dan M. Kahan rightly notes that "we can give satisfactory account of crime and punishment only if we pay close attention to their social meaning."[37]

Among the Oromo people of the North Shäwa, as shown above, there is well entrenched practice of conflict resolution system, the *gumaa*, between the family of the victim and the family of the offender. The notion of *gumaa* is understood both as 'compensation' and 'reconciliation'. In the system, knowledgeable elders, family and relatives of the victim as well as of the offender are made part of the traditional reconciliation process.

As a restorative justice system, the *gumaa* system confirms that decision should be reached at the satisfaction of both families (family of the slayer and of the victim) and the best interest of the community. The moral ground of treating an offender and a victim alike emanates from the belief that, as a community, they are interdependent and even if conflict or a crime is committed by a member of the community, they know that they definitely want each other in the near future. The main theoretical underpinning of restorative justice which coincides with the *gumaa* system is provided below.

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[32] In Kuyu, the council of elders is doing incredible work in settling criminal cases and restoring peace. This good experience may be expanded to the neighboring woredas.

[33] Interview with the President of Kuyu *woreda* court, in April 2019.

[34] Interview with Mr. Shewalul Segni, in April, 2019.

[35] Interview with Mr. Girma Seifu and Shewalul Segni, in April 2019.

[36] See Dan M. Kahan, *supra note* 7.

[37] *Id.*

Crime defined by harm to people and relationships
Harm defined concretely, victims are people and relationships
Crime recognized as related to other harms and conflicts
People and relationships as victims
Victim and offender seen as primary parties
Victims' needs and rights central
Interpersonal dimensions central
Conflictual nature of crime recognized
Wounds of offender important
Offense defined in—moral, social, and economic terms

Table 1: The *Gumaa* as a Restorative Justice System[38]

Macfarlane argued that, in order to introduce restorative justice to Ethiopia's criminal justice system, restorative justice may be used for it has effective outreach.[39] Seconding to Macfarlane's perspective, we argue that customary institutions might have weaknesses. However, there is a strong case for acknowledging the *gumaa* system in legally recognized manner.[40] Inter alias, the *gumaa* system may support the State to minimize the tradition of blood feud and revenge killings. Thus, comprehensive approach to criminal issues and an objective use of customary justice system can contribute to meaningful criminal justice system. This in turn, requires partnership and collaboration between the state and customary justice system so that culturally acceptable and meaningful justice could be delivered.

III. CAUSES OF MURDER IN NORTH SHÄWA ZONE AND BLOOD-FEUD CASES TRIED AT NORTH SHÄWA ZONE HIGH COURT

A. Alcoholism, Land Disputes and Perjury

Through the interview with the judicial professionals and local elders, we have tried to probe the causes of murder in general and revenge killings in particular. The main concerns the informants have seriously been raising as fundamental causes of the killings is alcoholism. Once people, who had some disagreements previously, drink local alcohol such as *areke*, they will tend to take revenge. Revenge killing is not necessarily because the victim had attacked or killed one of his relatives as such. It may rather happen for any disagreements. For example, boarder issues, insults, petty offenses of the past can easily be fuelled once the parties drink alcohol. The elders are of the opinion that once a drunkard person murders another person, he would remorse on the next day.

In the past, dispute over land is one of the causes that could lead to deadly clashes. These days, however, land related issues are brought before the court and the courts often refer the

[38]Adopted from Zehr, H.A., *Changing Lenses: A New Focus for Crime and Justice*, Herald Press, USA, 184-185, 1990.

[39]Macfarlane J. *Working towards Restorative Justice in Ethiopia: Integrating Traditional Conflict Resolution Systems with Formal Legal System*,8(4)CARDOZO JOURNAL OF CONFLICT RESOLUTION487-509. (2007).

[40]*Id.*

cases back to the local elders to settle amicably. Nevertheless, where the cases are decided by the court unfairly based on false testimonies or parties fail to settle their differences amicably, it grows to serious disagreements and results in revenge killings.

The problem of perjury has been one of the common critics against the judicial administration in North Shäwa Zone. Perjury becomes another cause leading to distrustful relationship and disintegration of the society. Since witnesses often give false testimony, informants underscored that perjury is a serious challenge worth fighting for its eradication. Key informants also stated that courts often rely on the false testimony and adjudicate cases without serious scrutiny which, in effect, weakens the trust between the people and judiciary. On the other hand, it makes the aggrieved party to take personal remedy, such as taking revenge, for his lost claim. The informants earnestly expressed that the people know how courts are working nowadays and that they can maneuver them. One of the key informants said that:

> These days, people are accustomed to legal proceedings. Since they know what the judge would ask, she or he responds to the question of judges and the judge adjudicates accordingly. Although there are judges who deeply investigate into the cases, others decide based of false testimony.[41]

Our informants were also of the opinion that had the court and council of elders worked together on the finding of truth, especially in criminal cases, adjudication based on false testimony would have been mitigated. For instance, the traditional leaders may step in and make such witness enter into traditional oath. This would have tremendous psychological impact on the disputing parties and witnesses. Moreover, since the elders are part of the community and more informed than judges (who are mostly strangers to the community); they rely on their own wisdom and observations. Thus, their approach to a criminal would take a form of telling a story which touches the mind and heart of such offender and witnesses. Such approach has the potential of producing an environment of harmony and taking back the enemies to the essence of humanity.

One of our key informants likened the importance of local elders in peace, development, social cohesion and justice administration.[42] He said;

> Although elders are illiterate, they are rich in experience. We believe that gun, violence and murder are diminutive. There is nothing to benefit from killing a human being. The council of elders endeavors to sustain peace and social-cohesion. For our community, we have been working relentlessly and will continue to do so. However, the council of elders was not given due attention from the government.[43]

In areas where elders are influential and the *gumaa* system is intact, the practice of blood feud is less common.[44]

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[41] Girma Seifu, interview made in April 2019 at Kuyu town.

[42] The powder of barely can be used to make traditional foods such as snack, beer, bread (injera), chuko and others. Likewise, the local elders are indispensable parties to local development activities such as collecting fertilizers, health sector, education, peace and security etc. In sustaining peace, elders play invaluable role.

[43] Girma Seifu, interview made in April, 2019.

[44] Shawalul Sagni, and Girma Seifu, interview made in April, 2019.

B. Blood Feud Induced Cases Tried at the North Shäwa High Court

There are plenty of blood feud induced homicide cases and revenge killings that have been tried and adjudicated at the North Shäwa High Court.[45]

In the case of *Public prosecutor v. Zelalem Gelan*,[46] the accused person was charged with the breach of Article 32(1)(a) and 539(1)(a) of the FDRE Criminal Code.[47] The accused person had murdered Hojisa Tullu in collaboration with his brother, who was not apprehended, for the deceased had killed their father. Hojisa had been sentenced to rigorous imprisonment for the crime he committed and, upon completion of the sentence, he was released. The case, which was tried at North Shäwa High Court, showed that Hojisa had killed a person with the intention of taking revenge. Thus, he was avenged by the deceased person's son, Zelalem Gelan who was, in turn, found guilty of first degree homicide and sentenced to 20 years of rigorous imprisonment.

It is pertinent to underscore that, after serving the sentence, Hojisa was back to the community without undertaking the *gumaa* ceremony. For this reason, he became to be the target of the victim's family and he was eventually murdered. This case indicates that, unless one undergo the *gumaa system* and settles the matter amicably, completion of the punitive measures could not end the grievance between the family of the victim and of the offender. Therefore, a person who was released from custody may not be reintegrated into the society as long as the social dimension of justice remains undone. From this case, it can be understood that convicting and sentencing the slayer is one thing while restoring the peace of the community is another. In other words, the state criminal justice system may not achieve its mission unless such offenders undergo the *gumaa* ceremony indicating that the *gumaa* system is indispensable to criminal administration.

The other case tried by the High court was the one between the *Public Prosecutor and Gichaw Amberbir*. In this case, the accused person was charged with breach of Article 32(1)(b) and 539 (1)(a) of the FDRE Criminal Code. The accused person, in collaboration with five

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[45] Case No. 44928, NSHC, *Public prosecutor v. Zelalem Gelan*, Charged with First degree homicide *[blood feud], f*ound guilty under art. 539(1) (a) of cr.cd and sentenced to 20 years of rigorous imprisonment, Kuyu *woreda* 2008; Case No. 47876, NSHC, Prosecutor v. Melaku Hiruy and et. al., charged with first degree homicide *[blood feud]. F*ound guilty under art. 539(1) (a) and Art. 27(1) of Cr.cd., sentenced to 16 years and 6 months rigorous imprisonment, from Aleltu *woreda*, 2010; Case No. 67190, NSHC, Prosecutor v. Gichew Amberbir, First degree homicide *[Blood feud]* Found guilty under art. 539(1)(a) and Art. 32(1)(a, b) of Cr.cd. sentenced 20 years of rigorous imprisonment, from Dagem *woreda*, 2011; Case No. 43371, NSHC,, Prosecutor v. Dinku Tolera& et. al., Second degree homicide *[Revenge killing]* found guilty under art. 32(1)(a) and 540 of Cr.cd. and sentenced to 15 years of rigorous imprisonment, from Kuyu *woreda* 2006; Case No. 41273, NSHC, Prosecutor v. Tsega Tekalign, first degree homicide *[revenge killing]* found guilty under art. 540 of Cr.cd. and sentenced to 6 years of rigorous imprisonment, from Girar Jarso *woreda*, 2005; Case No. 67190, NSHC, Prosecutor v. Gichew Amberbir, First degree homicide [blood feud] Found guilty under art. 539(1)(a) and Art. 32(1)(a,b) of Cr.cd. and sentenced to 20 years of rigorous imprisonment, from Dagam woreda 2011; Case No. 5529, NSHC, Prosecutor v. Zinabu Tadesse & Bayenew Tadesse, First degree homicide *Blood feud* Found not guilty, Acquitted as per article 149(2) of Cr.Pr.Cd (*appeal taken to Oromia Supreme Court*), from Dara *woreda*, 2010; Case No. 4827, NSHC, Prosecutor v. Kebebush Lema, First degree homicide, *Blood feud*, Found guilty under art. 539(1)(a) of Cr. Cd., sentenced to 23 years of rigorous imprisonment, Dara woreda, 2008.

[46] *Case number – 44928, High Court of North Shäwa Zone Fitche, Oromia. Public prosecutor v. Zelalem Gelan.*

[47] See: Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, *Federal Negarit Gazeta*, Proclamation No.414/2004.

friends who were not caught by the police, killed Habtamu Desalegn. The accused person had killed the deceased in the form of revenge killing for the murder of his brother by the deceased. After evaluating the evidences produced, the court had found the accused person guilty of intentional killing of a person. Citing Article 84(1) (a) of the Criminal Code, the fact that the accused person took revenge was taken by the court as an aggravating circumstance. Finally, the accused was sentenced to 20 years of rigorous imprisonment.[48] From this case, it is clear that, in blood feud induced homicide as well as revenge killing cases, there is serious challenge in bringing the perpetrators to justice. In the case at hand, three persons have escaped justice. This tells us that only a few persons are brought to court of law while, in most cases, the offenders hide themselves in woods. In turn, this raises serious human rights issues and it repudiates the legitimacy of the state.

In the case of *Prosecutor v. Gezu Shiferaw and Zewde Shiferaw*,[49] the accused persons were charged with first degree murder. The cause of the offense was revenge killing. They avenged the slayer, Mr. Seyoum Bedane. The second person stroked on the neck of the deceased and made him fall on the ground; and also had beaten him repetitiously on his face and his head with *maresha (plow).* Whereas, the first accused person had stricken the deceased with *shimela* (stick*)* on the deceased's face and head and caused the immediate death of the deceased. Therefore, they were charged with first degree homicide. The court had heard prosecution witnesses as well as defence witnesses. Upon reviewing the facts of the case, the court found the first accused person not-guilty of committing the crime and acquitted him as per Article 149 (2) of the Criminal Procedure Code. Whereas, the second accused person was found guilty of second degree murder under Article 540 and Article 149(1) of the Criminal Code. Although the latter defended as he killed the deceased because of legitimate self-defense, the court had rejected it. Finally, as per the Sentencing and Execution Proclamation No.2/2006, the court sentenced the second accused person, Mr. Zewude Shifera, to twelve years of rigorous imprisonment.

As we observed from the case between public prosecutor and the accused persons, the challenge of identifying the participation of the different individuals that took part in human killings in diverse capacities. It is challenging to identify who did what and who was the immediate cause for the death of a deceased person. This in turn raises serious legal and evidentiary problems. First, the principle of individualization of punishment dictates that an offender has to be punished for his offence and/or acquitted if s/he is found not guilty. The court's decision, in this regard, has shown limitation. Second, the grounds up on which the first accused person acquitted was not proven beyond reasonable doubt. Moreover, the first accused person's level of participation and gravity of his offense was not seriously investigated. The bottom line is that although different offenders in different capacities took part in the process of revenge killing, there is a lacuna in establishing offender's role in revenge killing.

In contrast, under the *gumaa* system, any person that has participated in the murder will not escape the local community's observance regardless of his capacity in the murder. As members

[48] See: *Case number – 67190 of High Court of North Shäwa Zone of Oromia Regional State*.

[49]*Case number – 44419, High Court of North Shäwa Zone, Fitche, Oromia. Public Prosecutor v. Gezu Shiferaw and Zewde Shiferaw.*

of the community, the customary conflict resolution leaders will have the leverage of listening and knowing the root causes of the revenge killings and how the offenders reached the level of taking revenge and so on. This fact makes the offenders not to hide anything from the local elders. Instead, what they often hide from court and keep secret will no longer be kept as secret before the council of elders. Hence, where truth and reconciliation process is at stake under the *gumaa* system, evasion from truth and sticking to adversarial litigation blurs the conventional criminal proceedings. The case of *Prosecutor v. Gezu Shiferaw and Zewde Shiferaw* is a testament to this reality.

As stated somewhere, the *gumaa* process of finding the truth requires the involvement of wise and respected elders. These elders approach not only the slayer, but also the clan, and family of the slayer. Then the person who is suspected of having killed a person will be urged to enter into oath. According to one of the informants, if the slayer wants to admit, he would not say that he had killed a person. But he replies saying "let me discuss with my close relatives. I will pay whatever you decide."[50] This implies that the offender is pleading guilty. If he pleads not guilty, then such person will be forced to enter into oath. In finding the truth, *kallacha*,[51] a traditional instrument which is believed to have originated from *Walabu*, plays crucial role. Among the Oromo Tulama, the *kalalcha* shall be in the custody of the *hangafa* (senior) lineages.[52]

IV. CONCLUDING REMARKS

Throughout this paper, an attempt has been made to clarify the contradictory relation between the state criminal justice system and the customary criminal justice from the perspective of blood-feud induced homicide cases in North Shäwa Zone. It is indicated that both systems have different philosophical underpinnings towards the notion of crime and punishment. Where the *gumaa* system leans towards restorative justice and efficient than the modern criminal justice system; the state criminal justice system is mainly retributive and lacks efficiency. In particular, where the *gumaa* system aims at healing the wounds and restoring community's tranquility, the aim of conventional court is mainly punishing the offender. Moreover, the court has no space for the family of the victim, and often there is no compensation for the latter. However, in the *gumaa* system there is a payment of blood money (*gumaa* payment) to the family of the victim. For instance, one of the roles of the *gumaa* system is allowing the family of the victim to receive some sort of compensation in kind or in cash. This has the role of making damage good, and thus paying blood money may be regarded as compensatory for victim's family, and as punitive measure for offender's family. In an interview with the local elders, we have learned that nowadays some ten to twenty thousand Birr is required to be paid by the offender/offender's

[50] Girma Seifu, interview made in April, 2019.

[51] *Kallacha* is not the same with which Gadaa leaders traditionally tie on their forehead. It is made up of metal and believed to be natural. Besides, it is usually hidden in the abode of the senior custodians and is usually covered with cloths. It is when the elders demand to be taken out for the sake of cursing certain person or groups to find the truth. If *kallacha* is taken out for such purpose, the people believe that it is inevitable the truth sought will shine.

[52] For example, in Kuyu, there are four lineages, namely: Aabbuu, Illaamuu, Haacoo and Kuraa. According to our informants, these groups do have *kallacha*.

family to the victim's family. In fact, it depends on the gravity of the offense and the financial capacity of the offender close relatives. Once the blood money is fixed, he shall pay through the contribution from his close relatives, and/or sometimes he will be made to beg in public to make him/her face social humiliation.

In fact, *gumaa* is not only meant to pay compensation for the past faults, but it also bars future revenge killings. It has also been indicated that the *gumaa* system recognizes that any person who kills another human person should not go unpunished; thus, it leaves 'to Caesar what belongs to Caesar.' That is, by and large, the formal criminal justice system has remained the *modes operandi*, whereas the informal criminal justice order is an additional traditional performative action which softens the impacts of criminal offenses.

As discussed elsewhere, one of the causes of conflict in the study area is perjury. Where judges adjudicate matters based on false testimony, the aggrieved party's option might be self-help action (violence) against a judgment creditor. On the contrary, the depth and seriousness of taking traditional oath before the elders is very serious, and it is mainly meant for the offender than witnesses; under the formal justice system the court often ask the accused party to plead guilty or not. If the customary justice system could be integrated into the formal one, perjury induced violence may be mitigated. Hence, to alleviate the problem of perjury and its impact, the local elders should work in collaboration with the criminal bench. The cooperation will contribute to the establishment of truth. It will also assist the administration of justice and increase the public's trust on the judiciary.

In a federation like Ethiopia, it is quintessential to have an accommodative system towards restorative justice systems such as the *gumaa* "for there is a strong case for acknowledging and make use of it in legally recognized ways."[53] The 2003 Draft Ethiopian Criminal Justice Policy allows that criminal cases may be alternatively settled through informal conflict resolution mechanisms. In particular, it allows 'treating the matter through alternative mechanism … where the suspect/offender has fully admitted that he has committed the offense and regret it.'[54] The Draft Ethiopian Criminal Procedure also attempts to encourage customary courts to dispose petty offences and simple criminal cases. In particular, from Article 163-169 – we can understand that the intention of the drafters was encouraging simple criminal cases to be settled amicably – based on customary conflict resolution mechanisms. It recognizes three forms of alternative modalities: conciliation (**ዕርቅ**); plea bargaining (**የጥፋተኝነት ድርድር**) and customary institutions (**የባሕላዊ ተቋማት ሥርዐት**). Article 188 of the Draft Proclamation states that matters that are resolved through customary courts may be produced before a court and such cases will be closed.

After three decades of "neutrality", the Oromia Regional Government took an initiative to reform its judicial system – in a way that integrates the customary courts into its conventional court system. The Oromia Regional State enacted proclamation No. 240/2021 to establish

[53] *Id.*

[54] **የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የወንጀል ፍትሕ ፖሊሲ ፍትሕ ሚኒስቴር የካቲት** 25/2003 **ዓ.ም**

customary courts across Oromia. In fact, these customary courts will not rely on state laws; rather they are expected to rely on customary rules that are consistent with state laws and international human rights standards. The recent developments in Oromia – that is, the enactment of laws that would facilitate the revitalization of customary courts (*Mana Murtii Aadaa*) across Oromia may further contribute to the co-existence of the customary and the modern criminal justice system.[55] This paper argues strongly that the state's attempt to recognize collective-oriented procedures of traditional Ethiopian culture such as the *gumaa* system is a commendable activity.[56] Nevertheless, a legislation that recognizes customary criminal justice system alone may not fully complement the criminal justice system in Ethiopia. Hence, legal actors such as judges, prosecutors, legal counselors and the investigation police officers should be made to sensitize the *gumaa* systems in their professional undertakings.

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[55] Proclamation to Provide for the Establishment and Recognition of Oromia Region Customary Courts, No. 240/2021; A Regulation to Implement Oromia Region Customary Courts, Proclamation. No. 10/2021, Regulation No 10/2021.

[56] *Id.*, at 535. See generally also Adamantia Pollis, *Cultural Relativism Revisited: Through a State Prism,* 18 HUMAN RIGHTS QUARTERLY 316-344 (1996).