



Customary Dispute Resolution Mechanisms in Wolaita: A Critical Analysis from Restorative Justice Context

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Abstract: In Ethiopia, various customary dispute resolution mechanisms have been practiced. Even today, these mechanisms are widely practiced among various ethnic groups. Wolaita ethnic group is one of among the other that has its own customary dispute resolution mechanism. In Wolaita, there are a number of customary dispute resolution mechanisms, inter alia, Chako(similar to 'oath'), Chucha Chitcha (blood compensation), and Chimeteta (similar to reconciliatory activities). These mechanisms have their own subject matter jurisdiction, institutional structure, and process. The purpose of this article is to discuss and critically analyze those dispute resolution mechanisms their institutional set up, their process, from restorative justice perspective such as from restorative justice principles, values, goals and theories; and their role to the formal criminal justice system.

Key Words: Customary dispute resolution mechanisms, *Chako*, *Chucha Chitcha*, *Chimeteta*, institutional structure, process, restorative justice, theories of restorative justice, re-integrative shaming.

I. INTRODUCTION:

In Ethiopian, customary dispute resolution mechanisms have been practiced for centuries. Even today, these mechanisms are widely practiced and deep rooted with varying degrees among the different ethnic groups in the country.¹ For instance, the use of dispute resolution and reconciliation process in different forms among Wolaita ethnic groups is one of among the other. The Administrative Zone of Wolaita is one of among the other 14 zones of the Southern Nations, Nationalities and Peoples Region of Ethiopia. The people of Wolaita are composed of many clans in which these clans are divided into two main tribes, namely, *mala* and *dogola*. The *mala* tribes are royal families, whereas the *dogola* tribes include

religious leaders and other lower class of people.²

The Wolaitti language is categorized under the North Omotic Language and spoken without any dialect in all 12 Woredas.³ Moreover, the Wolaita Ethnic has its own customary dispute resolution mechanisms which play a prominent role in complementing the formal criminal justice system. In Wolaita, customary dispute resolution mechanisms are of three types, namely, *Chako*, *Chucha Chitcha*, and *Chimeteta* so that disputes have been resolved independently according to their types and natures. All of the three have their own institutional structures and process.⁴

The purpose of this article is to discuss and critically analyze those dispute resolution

¹ Jetu Edossa, *Mediating Criminal Matters in Ethiopian Criminal Justice System: The Prospect of Restorative Justice*, Oromia Law Journal, Vol.1, No.1, 2012, at 100.

² Yilma Teferi, *Dispute Resolution and Reconciliation Mechanisms in Wolaita*, Gebre Yentiso, et al (Ed), *Customary Dispute Resolution Mechanisms in Ethiopia*, The Ethiopian Arbitration and Conciliation Center, Addis Ababa, 2011, at 103-104.

³ *Id.*

⁴ *Id.*, at 105-106.

mechanisms their institutional set up, their process, from restorative justice perspective such as from restorative justice principles, values, goals and theories; and their role to the formal criminal justice system.

II. Restorative Justice: General Overview

Restorative justice (RJ) is one of the emerging system in which disputes are intended to be resolved by the stakeholders such as victims, offenders and the community amicably. In view of this fact, there are various definitions proposed by scholars. Howard Zehr, for example, in his *The Little Book of Restorative Justice* defined restorative justice as: “a process to involve, to the extent possible those who have a stake in a specific offense to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible”.⁵ Tony Marshall in his document “Restorative Justice An Overview” uses a similar, less specific definition which has been widely quoted in which he states that “Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.”⁶ At the institutional level, the UN Office on Drugs and Crime Handbook on Restorative Justice Programs defines the term restorative justice as “a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict”.⁷

⁵ Howard Zehr, *The Little Book of Restorative Justice*, Good Books, Pennsylvania, 2003, at 41.

⁶ Katherine S. Van Wormer et al (editors), *Restorative Justice Today: Practical Application*, SAGE Publications, Los Angeles, 2013, at 8.

⁷ See United Nations Office on Drugs and Crime, Handbook on Restorative Justice Programs, Criminal Justice Handbook Series, New York, (2006), at 6.

However, RJ is an emerging concept that has rise to various interpretations in different countries.⁸

Restorative justice has also its own principles, goals, values and theories. Some of the principles of restorative justice are: restorative justice focuses on harms and consequent needs; it addresses obligations resulting from those harms; uses inclusive and collaborative process; it involves those with a legitimate stake in the situation; and seeks to put right the wrongs.⁹ These principles reveal a number of underlying values of RJ such as interconnectedness (i.e. those principles of harm and need, obligations, taking responsibility, participation or engagement, and re-integration are resulted or originated from this value); particularity (i.e. acknowledging individual differences and appreciating diversity); and respect (i.e. giving a due respect even for those who are deviant or enemy).¹⁰ Moreover, a given RJ practices are required to meet certain RJ goals. These goals are: empowerment of the stakeholder as a decision maker; to seek healing and transformative justice; and to reduce the likelihood of future offenses in the community.¹¹

III. Theoretical Framework

Restorative justice has much more theories that may help, *inter alia*, in crime prevention, rehabilitation, cost-effectiveness and in developing a better theory of justice.¹² One might encounter, in the field of RJ, a number of criminological theories such as labeling theory; shamming theory (either re-integrative shamming or disintegrative shamming theory); theory of responsive regulation;

⁸ *Id.*

⁹ Zehr, *supra* note 5, at 33.

¹⁰ *Id.* at 37-39.

¹¹ *Id.* at 40.

¹² John Braithwaite, *Restorative Justice and Responsive Regulation*, Oxford University Press, New York, 2002, at 73.

and peacemaking criminology theory. John Braithwaite's theory of re-integrative shaming is very much compatible with the customary dispute resolution mechanisms in Wolaita. Basically the theory of shaming has been divided into two main category i.e. re-integrative shaming and disintegrative shaming. Re-integrative shaming is the process by which an individual is punished, labeled, and made to feel shame for committing a deviant act, but done in a way that the individual who is shamed is brought back into the larger community.¹³ Whereas disintegrative shaming is a process by which an individual is punished, labeled and made to feel shame for committing a deviant act in a manner that degrades and devalues the individual.¹⁴ However, Braithwaite reason out why restorative justice process ought to prevent crime more effectively than retributive justice. The main claims are:

That tolerance of crime makes things worse; that stigmatization, or disrespectful, out-casting shaming of crime, makes crime worse still; and that re-integrative shaming, or disapproval of the act within a continuum of respect for the offender and terminated by rituals of forgiveness, prevents crime".¹⁵

In restorative justice conferences, victims and their families, offenders and their families, and the community are required to meet in order to discuss the consequence of the crime, to draw up the feelings of the crime victim and how such harm to be repaired.¹⁶ In view of re-integrative shaming theory, the discussion of the consequence of the

crime for victims or consequences for offender's family structures shame into the conference and structures the re-integration into the formal behavior by the support of the offender's family or the community.¹⁷

IV. Customary Dispute Resolution Mechanisms in Wolaita

As it has been mentioned hereinbefore, in Wolaita, there are various customary dispute resolution mechanisms among others, *Chako*, *Chucha Chitcha*, and *Chimeteta*, are the main one. All of the three have their own institutional structures and process.¹⁸

4.1. Chako

Chako (similar to 'oath'), which is mainly designed to resolve tribal disputes arising from: grazing land, border, cattle theft and the like. In order to resolve such kinds of disputes, only male community elders or religious leaders/fathers/ which consists of 12 elders from each tribe is to be elected.¹⁹ The basic requirements to be elected in such cases are: they are required to listen and speak both tribes language, they should be the respected one by the tribe/community/, they should be elder enough, they should know the culture very well, they should be persuasive and orator, and they should have the ability to condemn the offender or wrong doing.²⁰ These community elders or religious leaders are elected either by the community or the members of the tribe only for that specific dispute without any incentive. In this system, as soon as the elders have been elected, they try to investigate the truth of the dispute and collect evidences, mainly, the causes of the dispute, the offender and the harm (this can be

¹³ Ronald L. Akers et al, *Criminological Theories: Introduction, Evaluation and Application*, Student Study Guide, 4th (ed.), Roxburg Publishing Company, Los Angeles, 2004, at 25.

¹⁴ *Id.*, at 24.

¹⁵ Braithwaite, *supra* note 12, at 74.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Yilma, *supra* note 2.

¹⁹ *Id.*, at 107.

²⁰ *Id.*

equally seen with the basic restorative justice principle i.e. identifying the harm). Finally after the offender guilt has been established (either s/he admitted or denies and his/her guilt has been proved i.e. assuming obligations by the offenders), the community elders would decide on the offender to put things right, mostly, that might be taking back of the stolen property or cattle, keeping the *status quo* of the border, monetary compensation for damaged or destroyed properties.²¹

Basically, such reconciliation required to be conducted on the river which is found between the borders of both tribes because of the traditional belief that the river may take away the dirt of revenge between both parties. In this place all customary practices that are helpful for the reconciliation process and helpful in resolving the disputes for once and for all would be conducted. By the offender side, the offender is required to conduct customary practices (practices such as: 'shala'-it is a practice in which the offenders painting his/her face with black powder or ash; and 'konshie'-it is a practice of wearing or covering the offender's whole body with dry banana tree leaves) before the elders and the victim and victim's families that show: self-blaming on his acts, apologizing and asking forgiveness on his wrongful act.²² All these customary practices which intend to show how the offender assumed obligations and taking responsibility as well as empathy reflect how Braithwaite's theory of re-integrative shaming works in the *Chako* process. By the side of the victim, customary practices which are amount to forgiving the offender act for once and for all, usually, the practice that shows the future peaceful relations between the tribes is conducted. It is similar to basic restorative justice goals i.e. the

offender look at how to avoid future offences, healing the harm and reducing the likelihood of future offences respectively.²³

If the offender fails to effect or execute the decision, s/he would encounter bad consequence. The consequence might be stigmatization from his/her social life such as exclusion from some informal sector like '*idir*';²⁴ exclusion of his cattle from the rest of the community and by abstaining from where his families sick or even died.²⁵ In this regard, it has a bit disintegrative shaming because the community is not willing to integrate the offender in the community due to his/her failure to do so.

In this process, only males are eligible to be elected to resolve disputes as a community elder. In other words, female community elders do not required to be involved. While one of the cornerstone or pillars of RJ is engagement of the stakeholder without any gender preference, the *Chako* customary dispute resolution process is not participatory of women in this regard.

Generally, we evaluate this process in terms of some restorative justice elements or 'pillars', there is a situation where the *harms and related needs* of the victims as well as the community/tribe/ and offenders. Furthermore, the offender addresses *obligations* resulted from those harms. However, the *engagement* of women, especially in terms of as a community elder in resolving the dispute, is almost none.

²³ *Id.*

²⁴ *Idir* is one of an informal sector that is widely practice in Ethiopia. This informal sector is established mainly for assisting or helping and sharing of condolence at the event of death to the deceased family in terms of financial and moral support

²⁵ *Id.*

²¹ *Id.*

²² *Id.*, at 108.

4.2. Chucha Chitcha

Chucha Chitchat (blood compensation), which is the second type of dispute resolution mechanism, is designed to resolve issues of homicide.²⁶ In this process, the requirement to be elected for community elders is similar to that of the *Chako* process. However, the number of the elected elders can be three or five from each offender and the victim side. Where the victim's family has been convinced to solve such dispute amicably, the offender is required to conduct all customary practices that show his condolence and blameworthiness, and compensation for the victim's family (usually ox or cattle). While the victim's family, all practices which show their forgiveness and their future peaceful relations between the parties. These practices are useful to achieve one of the goals of restorative justice i.e. gaining a sense of 'closure' between the victim and offender and both are reintegrated into the community. Usually, this process is conducted at the place called *Gottara* which means squares or streets or a place of public domain. This process again acknowledges the re-integrative shamming theory of RJ. Of course, this process is subjected to the willingness of the victims and the victims' family. Because sometimes they may be ready to the next revenge unless otherwise the community elders immediately handle the matter.²⁷

In this process, children and youths from both sides are required to follow the process so as to show how they can solve disputes amicably.²⁸ Amazingly, this process is pretty much fascinating in involving those children and youths which are intend to show how these groups of the ethnic can resolve the dispute in case it happened and to keep

the custom for the next generation. Though women are not participatory, the principle of restorative justice seeks the process to involve all the stakeholders. In this regard, the involvement of children and youths as a stakeholder is pretty much interesting.

4.3. Chimeteta

Chimeteta (similar to reconciliatory activities) is an institution which is designed to resolve minor disputes such as divorce, succession, theft, simple robbery, family disputes, husband-wife disputes, peer disputes, neighbor disputes, kidnapping and the like.²⁹ The requirements to elect community elders is similar with the above two processes. In this process, however, the elders are elected by both offender and victim themselves or by their consent so that they required to safe issues or matters confidentially. Like others process, the community elders are elected only on a specific disputes and serves for free except cases of husband-wife dispute.³⁰ In other words, from other disputes, husband-wife dispute is subjected to fee by the community elders.

In this process, just after the community elders identified the resulted harm, they imposed the *chetcha* (which means compensation) accordingly. If the offender failed to effect the decision, the consequence is similar to the *Chako* process.³¹ For example, where the offender commits kidnapping, he is usually required to compensate in the form of cloth, butter, honey, cattle etc. to the victim's family. Mostly, this process has been seen failed to resolve kidnapping cases where there is a tribal mismatch between the kidnapper and the kidnapped-where the kidnapper tribe is assumed to

²⁶ *Id.* at 109.

²⁷ *Id.*

²⁸ *Id.* at 111.

²⁹ *Id.* at 113.

³⁰ *Id.*

³¹ *Id.* at 114.

be lower class than the kidnapped tribe (or if there is a class difference or tribal difference).³² When we analyze it critically, failure to address a given kidnapping case by mere tribal or class difference might be against the underlying values of restorative justice i.e. interconnectedness, particularity (individual differences or appreciating diversity) and having respect to each other by mere being human. Thus, it can be considered as one of the limitation of this process. In this process, victims or the kidnapped girl are not the center or given a due attention. Here again, the primary victim harm and needs to such kidnapping case are not given a due concern. It is rather the secondary or indirect victims i.e. the victim's family harms and needs are being amend.³³

When we compare the goals of restorative justice i.e. putting key decisions into the hands of those most affected by crime; making justice more healing and more transformative; and reduce the likelihood of future offence with this process, it is hardly possible to say that the available compensation of *Chemeteta* is more healing for the case of homicide. Moreover, as it has been stated in the kidnapping case, the key decision is not made by the victim most affected by the crime-the kidnapped, rather by her family. A part from the lack key decision, even the reparation or compensation is also hand over to the victim's family. Of course the achievements of RJ goals can be gauged where victims are participated in the process and come out with satisfaction; when offenders understand how their actions have affected other people, and take responsibility for their actions; and when the outcomes help to repair the harms done and address the reasons for the

offense.³⁴ Thus, one of problematic area in this process is assuring victim satisfaction for the one who is being kidnapped and secondary victim satisfaction for those who lost their lives.

V. The Institutional Relations

In many writings, the relations of these restorative justice practices and the formal criminal justice system have been discussed from different perspectives i.e. from diverging or converging or integrating perspectives.

Unlike the RJ perspective, the Ethiopian Criminal Justice System views crime primarily as an *offense* against the state and a violation of its criminal law. Under the Ethiopian criminal justice system, neither the victims are given an opportunity to fully participate in the process nor is there a legal procedure which enables the public prosecutor to adequately protect the victim's interest. The Ethiopian criminal justice system also excludes the community from participation except in the form of providing information about the commission of crime or appearing as a witness in the criminal proceedings. On the other hand, the customary dispute resolution practices of Wolaita (*Chako*, *Chucha Chitcha*, and *Chimeteta*), which are almost similar to the circles model of restorative justice, are playing an important role in resolving crimes which are stated above and maintaining peace and stability in the ethnic groups, even if they are not well recognized by law. These customary dispute resolution mechanisms are always run by community elders; involve reconciliation of the conflicting parties and their respective families using the available customary rituals; emphasizing on the restitution of victims and re-integration of offenders, and aims at restoring the previous peaceful relationship within the ethnic/community/

³² *Id.*

³³ *Id.*

³⁴ Zehr, *supra* note 11.

as well as maintaining their future peaceful relationship by avoiding the culturally accepted practices of revenge. Generally, the Wolaita customary dispute resolution mechanisms have values that resonate well with the values and principles of restorative justice, namely encounter, inclusion, participation, restitution or compensation, and reintegration.

To be more specific, the Ethiopian law in general and the Revised Family Code of Southern Nations Nationalities and Peoples Region in particular prohibits kidnapping, rape, and aggravated homicide issues from being resolved by customary dispute resolution institutions. Thus, these customary practices' role in dispute settlement is now decreased. One should note that the Ethiopian Civil Code has an exclusionary provision of those customary laws from application considering them anti-modernity and change which is manifested by the repeal provision of the Ethiopian Civil Code that abrogates the application of customary laws. Under the repeal provision of Article 3347(1) of the Civil Code, it has been stated that: "*Unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this code shall be repealed by this code and hereby repealed.*" This legal provision excludes all customary practices irrespective of whether they were consistent or inconsistent with the provisions of the Civil Code.³⁵

However, the enactment of the 1995 Federal Democratic Republic of Ethiopia (FDRE)

Constitution revives a formal legal recognition to customary laws. One of the relevant constitutional recognition is provided under Art. 34 (5) of the FDRE Constitution which reads: "*This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws with the consent of the parties to the dispute.*" These articles obviously show that the FDRE Constitution takes some important steps to recognize legal pluralism by recognizing customary laws and their institutions. However, such recognition is still limited to civil matters and it fails to extend the legal recognition to the customary mechanisms application in the area of public laws such as criminal matters, despite the fact that they are still being used on the ground to resolve criminal matters and serve as the main ways of obtaining justice especially in rural Ethiopia.³⁶ All types of criminal cases which range from petty offences to serious crimes, such as homicide as well as inter-ethnic and inter-religion conflicts can be and are being resolved via customary dispute resolution mechanisms in many regions of the country. Hence, the status of customary dispute resolution mechanisms' application to criminal matters still remains *de facto*.³⁷

However, the steps on the use of customary dispute resolution mechanisms as a basis to implement restorative justice in Ethiopia is further strengthened by the enactment of new Criminal Justice Policy and other draft legislations which provide conducive environment to implement restorative justice through customary dispute resolution mechanisms. The new criminal justice policy, which is intend to rectifying the age old problems of the criminal justice system and to

³⁵ Endalew Lijalem, A Move towards Restorative Justice in Ethiopia: Accommodating Customary Dispute Resolution Mechanisms with the Criminal Justice System, Master's Thesis, Faculty of Humanities, Social Science and Education, University of Tromsø, Norway, unpublished, 2013, at 75.

³⁶ *Id.* at 76-77.

³⁷ *Id.*

introduce new legal thinking, practice and procedures in the Ethiopian criminal justice system, create a procedure for the use of customary dispute resolution mechanisms so as to provide fair and sustainable solution for crimes. The policy states that “the criminal case can be referred to the customary dispute resolution mechanisms at any stage of the criminal justice process upon the request of the public prosecutor or the accused, or upon the motion of the court” so as to make the criminal justice system speedy and accessible.³⁸ However, the formal criminal justice and the Wolaita customary dispute resolution mechanisms are working with integration in some issues like succession, family issues, tribal issues and border cases.

Comparatively, there are some advantages of these customary dispute resolution mechanisms (*Chako*, *Chucha Chitcha*, and *Chimeteta*) over the formal criminal justice systems such as: confidentiality, victim participation and satisfactions, reducing further revenge, accessibility, saving time and money, speedy in decision, the decision is highly respected and effective due to the ethno-cultural belongingness of the process and the output. However, these customary dispute resolution institutions, sometimes, manifested some sort of partiality based on: relationship, affinity relationship, tribal relationship etc. which may impair their acceptance on the community. This can be taken as the main limitations of these mechanisms. While one of the features of restorative justice is facilitators needs to be impartial and properly trained. Arguably, these customary dispute resolution mechanisms are used as a complementary tool for the formal criminal justice system in Ethiopia. Thus, the Ethiopian

government should accommodate various customary dispute resolution mechanisms, more specifically in criminal matters, through legal recognition, and integrate those relevant dispute resolution mechanisms for victim, offender and the state.

Conclusion

In Ethiopian, customary dispute resolution mechanisms have been practiced for centuries. Even today, these mechanisms are widely practiced and deep rooted with varying degrees among the different ethnic groups. Customary dispute resolution mechanisms in Wolaita ethnic, namely, *Chako*, *Chucha Chitcha*, and *Chimeteta* played very prominent role in resolving disputes amicably. All these customary practices which intend to show how the offender assumed obligations and taking responsibility as well as empathy reflect how the theory of re-integrative shaming works in these process.

More or less customary dispute resolution practices in Wolaita shares the principles, goals values, theories and assumptions. However, these customary dispute resolution institutions, sometimes, manifested some sort of partiality based on: relationship, affinity relationship, tribal relationship etc. which may impair their acceptance on the community. This can be taken as the main limitations of these mechanisms. While one of the features of restorative justice is facilitators needs to be impartial and properly trained. Arguably, these customary dispute resolution mechanisms are used as a complementary tool for the formal criminal justice system in Ethiopia. Thus, the Ethiopian government should accommodate various customary dispute resolution mechanisms, more specifically in criminal matters, through legal recognition, and integrate those relevant dispute

³⁸ See e.g. Criminal Justice Policy of the Federal Democratic Republic of Ethiopia, 2011, Ministry of Justice, Addis Ababa, preamble.

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References

Gebre Yentiso, et al. (2011). (Editors). *Customary Dispute Resolution Mechanisms in Ethiopia: The Ethiopian Arbitration and Conciliation Center*, Addis Ababa.

Zehr, Howard. (2003). *The Little Book of Restorative Justice*. Pennsylvania: Good Books.

Sullivan, Dennis et al. (2006). (Editors). *Handbook of Restorative Justice: A Global Perspective*. London: Routledge.

Woolford, Andrew, et al. (2008). *Informal Reckonings: Conflict Resolution in Mediations, Restorative Justice, and Reparations*. USA and Canada: Routledge-Cavendish

Van Ness, Daniel W., et al. (2010). *Restorative Justice: An Introduction to Restorative Justice*. Fourth edition. New Jersey: Anderson publishing.

Jetu Edossa, (2012), *Mediating Criminal Matters in Ethiopian Criminal Justice System: The Prospect of Restorative Justice*, Oromia Law Journal, Vol.1, No.1

S. Van Wormer, Katherine et al (editors). (2013). *Restorative Justice Today: Practical Application*. Los Angeles: SAGE Publications.

United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programs*, Criminal Justice Handbook Series, (2006), New York.

Braithwaite, John. (2002). *Restorative Justice and Responsive Regulation*. New York: Oxford University Press.

L. Akers, Ronald et al. (2004). *Criminological Theories: Introduction, Evaluation and Application-Student Study Guide*. Fourth Edition. Los Angeles: Roxbury Publishing Company.

Endalew Lijalem (2013), *A Move towards Restorative Justice in Ethiopia: Accommodating Customary Dispute Resolution Mechanisms with the Criminal Justice System*, Master's Thesis, Faculty of Humanities, Social Science and Education, University of Tromsø, Norway, unpublished

Criminal Justice Policy of the Federal Democratic Republic of Ethiopia, 2011, Ministry of Justice, Addis Ababa