

Policy Oriented Study



**Customary Institutions of Conflict Resolution
and their Relevance to Dialogue and
Reconciliation Efforts in Ethiopia**

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**Eyasu Yimer, Tessema Getahun, and Markos Debebe were commissioned by UNDP-Ethiopia to write this report as part of a wider support to the governance, peace building, and social sector.

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Table of contents

CHAPTER ONE - GENERAL INTRODUCTION	3
1.1. Background	3
1.2. Objectives of the Study	4
1.2.1. Main objective	4
1.2.2. Specific Objectives	4
1.2.3. Scope of the Study	4
1.3. Approach and Methodology	4
1.3.1. Approach	4
1.3.2. Methodology	6
1.3.3. Data Collection Instruments	6
CHAPTER TWO - LITERATURE REVIEW	8
2.1. Customary Dispute Resolution Institutions in Ethiopia	8
2.1.1. Concepts, Actors, and Process	8
2.1.2. Merit and Demerits of Customary Dispute Resolution Institutions	10
2.1.3. Trajectory and Legal Status-quo	10
2.2. National Dialogue and Transitional Justice: In General, and Ethiopian Context	15
2.2.1. National Dialogue and Transitional Justice in General	15
2.3. National Dialogue and Transitional Justice: Ethiopian Context	19
2.4. Customary dispute resolution mechanisms in Political transition: the experience of selected countries	22
CHAPTER THREE - FINDINGS	27
3.1. Presentation of Data in the Sampled Regions	27
3.1.1. Somali Regional State	27
3.1.2. SNNP Regional State	32
3.1.3. The Amhara Regional State	41
3.1.4. Oromia Regional State	45
CHAPTER FOUR – DATA ANALYSIS	55
4.1. Drivers of Conflict	55
4.2. A Brief Analysis of Customary Institutions	56
4.2.1. Common values and principles	56
4.2.2. Characterization of Elders/Shimagles	57
4.2.3. Link with the formal justice institutions	58
4.3. Evolution of Customary Institutions: from latency to apparent	59
4.4. Customary Institutions Relevance to National Dialogue and Reconciliation: the National and Regional Level Efforts	61
4.5. Possible Roles of Customary Institutions and Authorities in the National Dialogue Process	62
4.6. Possible Role of Customary Institutions and Authorities in National and Regional Level Reconciliation Efforts	65
4.7. Participation of Stakeholders in national and regional reconciliation efforts	68
4.8. Possible Challenges against Customary Institutions and Authorities in their contribution to National Dialogue and Reconciliation	71
CHAPTER FIVE – CONCLUSIONS AND RECOMMENDATIONS	73
5.1. Conclusion	73
5.2. Recommendation	75
ANNEXES	77
List of Interviewee and FGD Participants	77
Data Collection Tools	81
REFERENCE	84

List of Diagrams

Diagram 1: Three dimensional approach to the study of peace	6
Diagram 2 Structure of the Somali Guurti	29
Diagram 3: Somali elders' conflict resolution process	31
Diagram 4: Shimglina structure in Gamo Community	36
Diagram 5: Gurage Shmglina Structure.....	36
Diagram 6: Conflict Resolution Process in Gamo Society	38
Diagram 7: Amhara Shimagles Conflict Resolution Process	44
Diagram 8: Gada system	48
Diagram 9: Conflict drivers	55

Acronyms and abbreviations

ACHPR	African Commission on Human and Peoples' Rights
AU –	African Union
AUTJP –	African Union Transitional Justice Policy
CC –	Customary Court
CDRMS	Customary Conflict Resolution Mechanisms
CI	Customary Institutions
CSOs –	Civil Society Organizations
EHRC –	Ethiopian Human Rights Commission
EIO –	Ethiopian Institution of the Ombudsman
ENDC –	Ethiopian National Dialogue Commission
ERC –	Ethiopian Reconciliation Commission
FDRE –	Federal Democratic Republic of Ethiopia
FGD –	Focus Group Discussion
ICC –	International Criminal Court
KII –	Key Informant Interview
LPI –	Life and Peace Institute
LRA –	Lord Resistance Army
MIND –	Multi-stakeholder Initiative for National Dialogue
MoP –	Ministry of Peace
NGOs –	Non-Governmental Organizations
NNPs –	Nations, Nationalities, and Peoples
OLF-	Oromo Liberation Front
RPF –	Rwandan Patriotic Front
SNNPR	Southern Nations, Nationalities, and Peoples Regional State
TC –	Truth Commissions
CDRI –	Customary Dispute Resolution Institutions
CDRM –	Customary Dispute Resolution Mechanisms
CIs -	Customary Customary Institutions
TJ –	Transitional Justice
ToR –	Terms of Reference
UN –	United Nations
UNDP –	United Nations Development Programme
WPE -	Workers Party of Ethiopia

EXECUTIVE SUMMARY

Ethiopia is known as a mosaic of more than 80 ethnic groups with their social traditions, values, norms, beliefs, rules, and lifestyles. Among the multitude of cultural traditions, one is Customary Conflict Resolution Institutions which have been in use from time immemorial to the present day in the country. Cognizant of the relevance of these institutions to conflict resolution, dialogue and reconciliation efforts of the Government of Ethiopia, UNDP Ethiopia, and Life and Peace Institute commissioned this policy-oriented study.

The main objective of the study is to contribute to the current dialogue and future reconciliation efforts by various stakeholders with a focus on the roles and functions of indigenous conflict prevention, resolution, dialogue, and reconciliation mechanisms in the country. To achieve this objective, a team of consultants was commissioned and conducted the research in four sampled national regional states (Somali, SNNPR, Amhara, and Oromia).

The research team used relevant theories and frameworks which are scientifically accepted for the study. The study was conducted based on an eclectic method where the study team mainly used Functional, Structural-Functional, Conflict Transformation, and Social Capital theories. In terms of methodology, the study was conducted using a qualitative research method to draw the views, experiences, and opinions of government officials, experts, Customary Institutions representatives, CSO representatives, and others on the relevance and roles that CIs play in dialogues and reconciliation efforts in Ethiopia. Data gathered from primary sources were augmented by secondary sources from government offices, CDRMs, CSOs, research institutions, and online data sources. Concerning primary data sources, Key Informant Interview was conducted with 65 individuals from the four regional states. In addition, 5 FDGs with a total number of 39 participants were organized with customary conflict resolution institutions representatives in the sampled regions.

Data collected from both primary as well as secondary sources were synthesized and written in a scientific research report where it has preliminary pages (Cover, Table of Contents, and abbreviations) and five chapters (General Introduction, Literature Review, Findings, Data Analysis, and Conclusion, and Recommendations).

An assessment conducted in the sampled regions has shown that most of the key root causes of conflict, more or less, are similar. The data show that the identified conflicts can be categorized into five groups based on their nature. These are competition for resources, boundary-related issues, mismanagement of the quest for ethnic identity, extremism (manifested in terms of ethnic, religious, and power grip,) and lack of good governance

The study further revealed that CIs have their peculiar nomenclature in each community. In this respect, Somalis named CDRMs as Gaarad, Ugaz, or Sultan while Gamo's (Kawo, Ogade, Kere, Ganna), 'Gurages' (Shimgilina), Amharas' (Shimglina,) and Oromos' (Gada). The source of power for the elders is through lineage and nomination based on the personal qualities of individuals. The number of elders in CDRMs varies from ethnic group to ethnic group.

The CDRMs have common values which guide their services to their respective communities. These common values include; mending social relationships, unraveling the truth, openness, and participatory where the public is allowed to attend hearing like in Gamo, confidentiality, flexibility, simplicity, and inclusivity.

Regarding the cases CDRMs handle, the study reveals that they resolve all types of disputes. However, their engagement in criminal matters is in a very restricted way except in the Somali Regional State wherein they do have a very active role. In general, whether the law/policy gives space or not, the mandates of the CDRMs in all the sampled regions are not about resolving only individual cases but are also about resolving criminal cases which include group conflicts.

Moving to the procedure they followed to resolve conflicts, the study showed that CDRMs commonly follow, more or less, similar steps except for minor variations in nomenclature. The steps usually start with the submission of a case to the elderly institutions and concluded with some rituals. The analyzed



data further depicts that enforcement of decisions is usually attached to a curse and social sanctions. In the conflict resolution process, there are remedies in the form of compensation or pardon to heal the victims and establish peaceful co-existence between the two conflicting parties and their relatives and communities. The study revealed that the participants in the conflict resolution process include elders, disputing parties, the public at large, families, and even potential guests either directly or indirectly.

The study findings showed that CDRMs are trusted and efficient mechanisms to dispute resolution and can repair broken relationships. However, they are not also free from weaknesses. For example, they are criticized for lack of inclusivity and lack of capacity-related issues. Furthermore, they are vulnerable to co-option and failure to fulfill human rights standards, among others. With the above strong and weak features, CDRMs can contribute to the dialogue process in all phases and activities of the national dialogue and reconciliation process. In general, the data analysis discloses that CDRMs face challenges associated with a lack of clarity in the legal framework; public perception of CDRMs are being co-opted by third parties for personal gains other than the public interest; awareness gap of mostly the youth towards the CDRMs, heavily dependent on oral tradition than a codified procedure; lack of infrastructure/facilities to operate and others.

In terms of the CDRMs and the formal justice nexus, CDRMs are deeply rooted in the cultural practices of communities. However, they do not have formal communications with the formal justice system, and their mandate and participation in resolving criminal matters contentious and limited.

Currently, there is a strong desire by the CDRMs themselves and other actors for a more institutionalized approach.

Customary Conflict Resolution Mechanisms in the sampled regions, the findings indicated that they could make positive contributions to the national dialogue and reconciliation process.

With these conclusions in mind, the study team recommended that CDRMs should enhance inclusivity, and align with modern jurisprudence without compromising their values and norms. Respective government Offices such as the Ministry of Peace, Ministry of Justice, and Ministry of Culture and Tourism and their respective organs at different levels should play roles in building the capacity of CDRMs and recognize them as important institutions for conflict prevention, resolution, reconciliation, transformation, and dialogues. Although with cautionary measures, CDRMs should be involved in the dialogue process with defined relationships with Ethiopian National Dialogue Commission. Furthermore, other actors such as Academia, CSOs, and Community groups should play in capacity building for CDRMs so that CDRMs can play fruitful roles in the process.

CHAPTER ONE - GENERAL INTRODUCTION

1.1. Background

Customary Institutions have served as important platforms in preventing and resolving conflicts and smoothing broken societal/communal relationships. The same is true in building and improving/sustaining peace in different localities. For a country like Ethiopia which is the home to various ethnic groups which have developed their indigenous mechanisms of conflict resolution with peculiar features. These features comprise social traditions, values, norms, beliefs, rules, and laws, communicated and respected through generations among the respective communities for peaceful co-existence.¹

Customary Conflict Resolution Mechanisms (CDRMs) provide preventive measures for conflicts within the community. They focus on balance, compromise, and restoration of peace within the community not on punishing the offender. To this end, the concept of justice for local communities extends much more than simply punishing the criminal. It includes things like compensating the victim, rebuilding harmony inside the community, and reconciliation of the two conflicting parties. CDRMs facilitate the restoration of relationships among conflicting parties and ultimately facilitate a sense of community.

While various interest groups have studied their value addition and limitation to CIs it cannot be concluded that their contribution to national dialogue and reconciliation process is well known or understood equally by stakeholders, even by those working in the area.

In this respect, Ethiopia has been struggling to arrest ongoing conflicts, and misunderstanding among communities, political actors, and elite groups in the country that has created mistrust and fractures across localities and regions. At times, the efforts seem to bring no concrete results and even revert to the contrary. Among the various efforts undertaken by societies and communities using extant customary and religious rules, some have exhibited positive changes in their localities, if not on a wider scale.

Given this context, the government has tried and still trying to harness efforts of conflict resolution and peace-building dynamics in its sphere of the formal justice system, but still with little legal backing. Given the shortcomings/limitations of both the informal as well as formal justice mechanisms, there is an aspiration to create wider consensus on nation-building through national dialogue mechanisms and reconciliation processes. Literature is also consulted on previously conducted research, which is presented in the upcoming section.

In this conflict prevention and peace-building initiative, the customary dispute resolution system and processes could play a critical role, if not tantamount to the formal justice system. That is why; CIs could further be used as restorative justice tools, especially in the current Ethiopian context. As referred 'current efforts in Ethiopia are opening space and a sense of relevance to CIs. For instance, the ERC expressed interest in the CIs, especially in identifying points of articulation between the customary and formal transitional justice mechanisms.'²

In this connection, UNDP and LPI commissioned this research, on the one hand, to produce concrete evidence-based recommendations to inform national dialogue and reconciliation processes, on the other hand, to inform their peacebuilding programmes. Thus, this study is intended to acquire a thorough understanding of the roles those local customary institutions can play in conflict resolution through the National Dialogue and Reconciliation processes, thereby increasing the ownership and public acceptance of these processes at the national and local levels.

1 Daniel Mekonnen (2016).The Role of Sidama Indigenous Institutions in Conflict Resolution: In the Case of Dalle Woreda, Southern Ethiopia.; p,8

2 UNDP and LPI -Terms of Reference (TOR), Strengthening Peace and Dialogue in Ethiopia P- 6

Therefore, in this policy-oriented study, the result would have significance in impacting and helping to inform the work of ENDC and MoP for their engagement in conflict prevention and peacebuilding by providing evidence-based and policy recommendations about how indigenous conflict prevention, resolution, and reconciliations mechanisms can contribute to the national reconciliation and national dialogue processes in Ethiopia.³

1.2. Objectives of the Study

1.2.1. Main objective

This policy-oriented study is intended to contribute to the current dialogue and reconciliation efforts by various stakeholders with a focus on the roles and functions of indigenous conflict prevention, resolution, dialogue, and reconciliations mechanisms in Ethiopia (this includes local level and reconciliation efforts), both in the current context as well as in overcoming past divisions.

1.2.2. Specific Objectives

The main objective under 2.2 above is unpacked into the following specific objectives as achievement of these objectives fulfills the main objective. The specific objectives of this study are to:

- ▶ Undertake a thorough context analysis that includes drivers of conflict and peace dynamics.
- ▶ Stocktaking of what is already known, both in theory and in practice, on the added value and limitations of local institutions of conflict resolution for dialogue and reconciliation from a restorative point of view and in the context of transition
- ▶ Examine some of the existing indigenous mechanisms in Ethiopia and define their jurisprudence and legal standing as well as functionality at the local level with a potential for relevance to national and regional level dialogue and reconciliation efforts
- ▶ Assess the modus operandi and current status of these institutions
- ▶ Examine processes, perception, level of acceptance, and respect for existing indigenous mechanisms in Ethiopia as part of social capital with a potential for relevance to community-level dialogue and reconciliation efforts
- ▶ Assess gender responsiveness of indigenous mechanisms in Ethiopia as part of the community-level dialogue and reconciliation efforts

Based on the qualitative inter-disciplinary joint research, consultants were required to offer practical policy recommendations on the prospects/interface of indigenous mechanisms to complement state or formal dialogue and reconciliation processes at the national and regional levels.

1.2.3. Scope of the Study

As indicated in the ToR, the scope of work is conducting a policy-oriented study about customary institutions of conflict resolution and their relevance to dialogue and reconciliation efforts at the national and regional levels. With this in mind, the research team was required to produce data collection tools, gather data, and produce an assessment report and two policy briefs that satisfy both the main and specific objectives of the study. The study was conducted at a national scope where sample regional states were taken that represent the nation. The regions included in the sample were Somali, SNNPR, Amhara, and Oromia. These regions were set criteria indicated in the methodology section 4.2 below.

1.3. Approach and Methodology

1.3.1. Approach

The policy-oriented research process was geared towards the identification and characterization of various stakeholders with a focus on the roles and functions of indigenous conflict prevention, resolution, dialogue, and reconciliation mechanisms in Ethiopia, both in the current context as well as in overcoming past divisions. Given the nature of the research, participatory research approaches

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3 Ibid, p-3

were applied where multiple data sources were consulted—both primary and secondary. With these approaches in mind, the study was conducted based on three (Situational, Ideational, and Relational) dimensional approaches to the study of peace presented in diagram 1 below.

Ethiopia being a home of more than 80 ethnic groups has many customary conflict resolution institutions peculiar to each ethnic group with different rules and multiple actors. Given this situation, a ‘holistic’ approach was used to study the different features, actors, functions, and processes of Customary Institutions. To this end, the researchers applied an eclectic approach where Functional, Structural-functional, Social Capital, and Conflict Transformation theories were used as justified below. However, it should be taken into account that the team also used perspectives of other theories such as social equilibrium theory, based on the equilibrium theory of economics, and approaches such as infrastructure and industry to analyze deviations, facility needs, and actors involved in the process of conflict resolution and organizing dialogues.

With regards to functionalist theory, Bronislaw Malinowski states that functionalism refers to the perspectives theories in sociology and social anthropology that have explained social institutions or other social phenomena primarily in terms of the functions they perform. He emphasizes the study of culture as a whole (or the totality) with its functions and patterns. For him, functionalism attempts to explain the parts institutions play within the integrated whole of culture. Malinowski considers that every aspect (element) of culture has a function and they are all interdependent and interrelated. Functionalism, which is based on the notion that all the parts of society work together as an integrated whole, can be readily contrasted to the structuralism of Émile Durkheim and the structure-functionalism of Radcliffe-Brown – each of which places more emphasis on society as a whole, and the ways that its institutions serve and maintain it. Malinowski meanwhile placed greater emphasis on the actions of the individual: how the individual’s needs were served by society’s institutions, customary practices, and beliefs, and how the psychology of those individuals might lead them to generate change.⁴

According to Prof. J.K. Pundir, functional theory considers society (or culture) as a system like any other system, such as a solar system, mechanical system, atomic system, chemical system, or organic system where the system is with different parts working together to unify the whole system (society). The functionalist perspective emphasizes the interconnectedness of society by focusing on how each part influences and is influenced by other parts as summarized.⁵ With this understanding, the research team uses the above theories in conducting this research because it is intended to identify the roles and functions of indigenous conflict resolution mechanisms in conflict prevention, resolution, dialogue, and reconciliation efforts of actors such as the Ethiopian National Dialogue Commission and others.

The research team also identified that the structural-functionalism theory is relevant to this particular research as it views society as an entity composed of functionally interdependent institutions. In this respect, [Radcliffe-Brown](#) indicates that the components of the social structure have indispensable functions for one another—the continued existence of one component is dependent on that of the others—and for society as a whole, which is seen as an integrated organic entity. The theory helps to understand, relationships between/among entities in the social system.⁶ In this respect, Structural-functional theory emphasizes both the structural sources and the structural functions of conflict. It also views society as an equilibrium system whose parts play a role in the maintenance of the whole. Hence, as part of social life, conflicts work towards the maintenance of the ongoing social structure. Conflict and its resolutions have been groundbreaking for the shift from system-oriented approach toward actor-oriented approaches which take into consideration the new roles and choices in the face of the changing world.⁷

Although it is a new concept, Social Capital Theory is used as a framework to analyze multi-dimensional concepts which this study focused on. The theory of Social Capital is particularly rooted in the notion of trust, norms, and informal networks and it believes that “social relations are valuable resources. Social

4 J.K. Pundir(Prof) . Sociology Department, CCS University, Meerut. . Perspectives in Sociology-I Unit-2; The People’s University. <https://egyankosh.ac.in/bitstream/123456789/65140/1/Unit-2.pdf>., Accessed on Sept.10, 2022

5 J.K. Pundir(Prof) . Sociology Department, CCS University, Meerut. . Perspectives in Sociology-I Unit-2. The People’s University. <https://egyankosh.ac.in/bitstream/123456789/65140/1/Unit-2.pdf>., Accessed on Sept.10, 2022

6 Ibid

7 Abebe Demewoz Mengesha, Samson Seid Yesuf and Tessema Gebre, ‘Indigenous Conflict Resolution Mechanisms among the Kembata Society’ (2015) 3(2) American Journal of Educational Research, 225-242, 228.

Capital is broadly defined to be a multidimensional phenomenon encompassing a stock of social norms, values, beliefs, trusts, obligations, relationships, networks, friends, memberships, civic engagement, information flows, and institutions that foster cooperation and collective actions for mutual benefits and contributes to economic and social development.⁸

Looking into the holistic nature of the institutions, ‘CIs cannot be compartmentalized into “political”, “juridical” or other; rather they are holistic, comprising also social, economic, cultural, and religious-spiritual dimensions. This is per the entirety of traditional lifestyles and world views in which the different spheres of societal life are hardly separated. This entails that a study to generate evidence on how to involve indigenous non-state actors and institutions for conflict resolution and conflict transformation should be based on holistic approaches. With this in mind, the team conducted the research based on the following three-dimensional approach which focuses on the situational, ideational, and relational nature of conflict and conflict resolution.’⁹

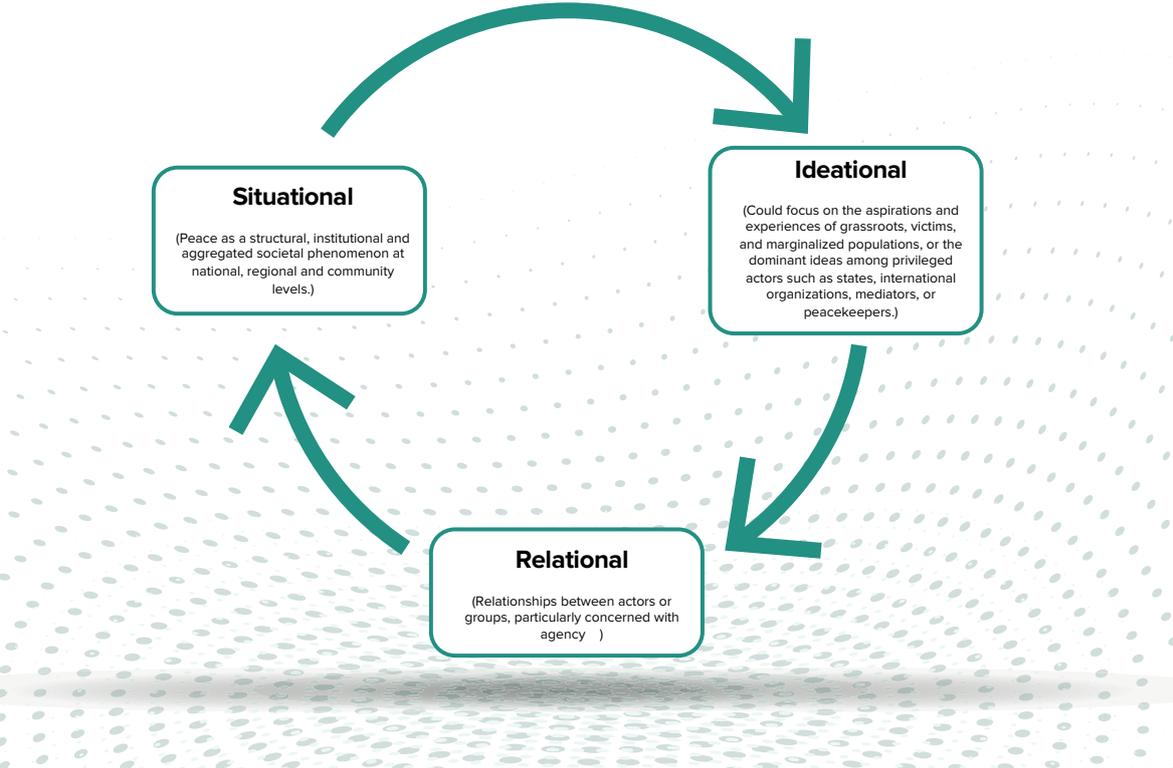


Diagram 1: Three dimensional approach to the study of peace

1.3.2. Methodology

Based on the approaches described above and illustrated in Figure 1, the research mainly used qualitative methods. As per the ToR, the researchers consulted various data sources including relevant government line offices, representatives of customary institutions, and CSO representatives. As the study requires the views and experiences of research participants, the qualitative method was employed to gather data from the respective relevant data sources. To this end, extensive Desk Review, Key Informant Interviews (KIIs), and Focused Group Discussions (FGDs) were used as described below.

1.3.3. Data Collection Instruments

Thus, in line with the theory, frameworks, and questions briefly described above, the researchers gathered diverse views from multiple stakeholders. In this respect, the team used collected data from

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8 Humnath Bhanari and Kumi Yasunobu, ‘What is Social Capital? A Comprehensive Review of the Concept’ (2009) Asian Journal of Social Science available at file:///C:/Users/HP/Downloads/WhatisSocialCapital_Acomprehensivereviewoftheconcept.pdf. accessed on September 15, 2022

9 Volker Boege, Potential and Limits of Traditional Approaches in Peace building in Beatrix Austin, et al, ‘Advancing Conflict Transformation’ (eds.), (Barbara Budrich Publishers, 2011).

four sampled regional states of the country briefly described hereunder. In terms of the selection of the sample four regions (Somali, Amhara, SNNPR, and Oromia), the research team identified these regions based on the criteria described here. In the first step, the four regions are more than 44% of the total regional representation of the nation. In terms of population size, these regions made-up more than 70% of the country's population. In addition, due to the mentioned criteria, the team also employed exclusion criteria of other regions with relative peace in the selected regions which did not affect/interrupt the study and due to the representation of neighboring regions with a relative similarity of their CIs historical existence, the peoples' way of life, and due to short span of the states as an administrative region in the country.

That said, the data collection methods were:

1. Context Analysis – was used to analyze trends, contexts, define strategies, and mechanisms, the nature of conflicts, and how the CIs respond to these changes especially their capacity in terms of responding to the new types of conflict of trans-local nature etc.
2. Desk Review: was the main tool for secondary data sources collection whereby it enabled researchers to gather data from available conflict and peace analyses, studies on indigenous conflict resolution mechanisms, academic reports, media archives, historical data, program reports, NGOs reports, government or intergovernmental reports on social issues and conflicts, national aid coordinating ministries compiled information about groups working in the peacebuilding arena, UN agencies similar reports, etc. Furthermore, for a deeper legal analysis, Doctrinal Legal Research methodology – was used to analyze the existing legal provisions concerning customary Institutions at the level of the constitutions, the national justice policies, proclamations, and other international instruments.
3. Key Informant Interviews: Sixty-five (65) purposively selected well-informed persons from different perspectives and constituencies were interviewed to get their views and experiences. These interviewees included government officials/experts, customary institutions leaders, community elders, public figures, religious leaders, and CSO leaders in the selected regions.
4. Focus Group Discussion: Five (5) FDGs with a total number of 39 participants were organized with customary conflict resolution institutions representatives in the selected regions. Data gathered was used to understand the root causes of conflicts, types of conflicts and to triangulate the roles of the customary institutions in conflict resolution and reconciliation efforts.

CHAPTER TWO - LITERATURE REVIEW

As a background and introductory point of this policy-oriented study, the research team used this section for stocktaking of what is already known, both in theory and in practice, on the added value and limitations of TDRI for dialogue and reconciliation. While various interest groups have studied the value addition and limitation of CIs, it cannot be concluded that their contribution to a national dialogue and reconciliation process is well known or understood equally by stakeholders, even by those working in the area, specifically in the Ethiopian context.

This chapter, hence, examines Customary Conflict Resolution Mechanisms in general, their legal status, and their relevance for the national dialogue and reconciliation efforts in Ethiopia. In addition, the chapter discusses the experiences of selected countries in using TDRM in a political transition.

2.1. Customary Dispute Resolution Institutions in Ethiopia

2.1.1. Concepts, Actors, and Process

Conflict is an inevitable phenomenon in human interactions. Social, economic, religious, and political issues are the sources of conflict.¹⁰ In other words, the causes of conflict are unfulfilled or threatened human needs,¹¹ including security, identity, dignity, recognition, and justice. Conflict resolution is “a situation where conflicting parties enter into an agreement that solves their central incompatibilities, accept each other’s continued existence as parties, and cease all violent action against each other.”¹²

To achieve peace, resolution of conflict is crucial for day-to-day coexistence as societies are in constant search of resolution mechanisms to achieve peace. These arguments show that conflict is a fact of life but what matters is the way it is resolved and transformed into sustainable peace and wellbeing between and among actors.¹³ Every society has its mechanisms for handling disputes/conflicts. Customary Conflict Resolution Institutions have conflict resolution mechanisms. These mechanisms are customary practices used to resolve conflicts and maintain peace and stability in the community. These mechanisms emanate from the custom of the people and drive their legitimacy from participation, and consensus of the community as practiced over a long period; a breach of which entails social reaction and even punishment.¹⁴

These mechanisms provide preventive and deterrent measures intending to maintain balance, compromise, and restoration of peace within the community not punishing the offender. In this regard, universal justice is not only punishing the criminal, but it also includes compensating the victim, rebuilding social ties, and reconciliation of the two conflicting parties. Restorative justice provision is guided by key principles or values such as: making amends or repairs to the harms, involving the legitimate

10 Esayas Awash, 'Indigenous Conflict Resolution Institutions: A Study among the Gofa People of the Demba Gofa District, SNNPR' (MA Thesis Addis Ababa University School of Graduate Studies, 2015),1.

11 Tibebe Kefale Muluken, 'The Role of Indigenous Conflict Resolution Mechanisms in the Pastoral Community: An Implication for Social Solidarity in Somali Region, Shineli Woreda' (2020) 7(2) Open Access Library Journal, 2. https://www.scirp.org/pdf/oalibj_2020022714141041.pdf. Accessed on 30/09/2022

12 Gebre Yntiso, Understanding customary laws in the context of legal pluralism in 'Legal Pluralism in Ethiopia' (2020) available at <https://www.degruyter.com/document/doi/10.1515/9783839450215-005/html>, accessed on October 10, 2022

13 Alula Pankhurst and Getachew Assefa (eds.), Grass-Roots Justice in Ethiopia: The Contribution of Customary Dispute Resolution (2019) available at https://heinonline.org/HOL/LandingPage?Handle=hein.journals/jethiol23&div=13&id=&page:last_accessed_on_09/30/2022

14 Gebre Yntiso,(2020) Understanding customary laws in the context of legal pluralism,pp86-88 <https://www.transcript-open.de/doi/10.14361/9783839450215-005>. Accessed 09/30/2022

stakeholders, encouraging voluntary participation of the parties concerned, envisioning a collaborative sanctioning process, and aiming to restore and reintegrate the parties into the community in line with models of restorative justice to achieve peaceful coexistence in communities and beyond. The models used include Victim-Offender Mediation, Family Group Conferencing, and Sentencing Circles.¹⁵

With these models in mind, the goals of Mechanisms are anchored to achieve social order; the quest for truth; public participation; collective responsibility; accessibility, efficiency, and affordability of justice provisions.¹⁶

To achieve these goals, CDRI involves actors such as wrongdoers, victims, and other participants. Among other actors are conciliators who are actors appointed based on their experience, expertise, availability, language, and cultural knowledge.¹⁷ These parties expect four important dimensions to be present in reconciliation to succeed: truth, justice, regard/respect, and security.

The power of the customary judges/conciliators and others handling conflicts emanate from at least one of four sources: 'i) the consent of the parties to have their case handled by them; ii) an administrative position (e.g., clan chief) in the society; iii) participation in certain rituals that entitle them to become judges or iv) leadership in religious institutions.¹⁸ Elders have indigenous jurisdiction in facilitation, arbitration, and monitoring outcomes. Indigenous conflict mediators typically possess moral status, seniority, neutrality, and respect for the community; they are acceptable to all parties and demonstrate leadership capacity. The processes used will allow community members to pursue remedies and resolve conflicts outside of the courtroom and still within their cultural confines.'¹⁹

'Customary court judges/conciliators are influential clan leaders, ritual specialists, religious leaders, senior elders, village administrators, and lineage heads. These well-versed individuals are known for their wisdom, impartiality, knowledge of their culture, rhetorical skills or power to convince, and rich experience in handling disputes/conflicts.'²⁰

Reporting cases to customary courts to start the process is a collective responsibility rather than a matter to be left to those directly involved. In this regard, family members, relatives, neighbors, or anyone who knows the dispute/conflict is expected to report it. In many cases, the culprit or his/her kin admit their guilt and report incidents to ensure quick conciliation.²¹ In terms of the process or procedure of customary legal norms, the issues are set in motion by the offender him/herself, by his/her family or close relatives; and in some minor crimes by the victim or his/her family.²²

These practices are deeply rooted in different ethnic groups of Ethiopia and arise from age-old practices that have regulated the relationships of the people in the community. These institutions are associated with the cultural norms and beliefs of the people and gain their legitimacy from the community values instead of the state.²³ These mechanisms are handled by elders, and non-specialized specialists to use the words of Nils Christie, who are well-known and respected members of the community and may comprise religious leaders, wise men, and other community leaders.²⁴

15 Ajanaw Alemie and Hone Mandefro, 'Roles of Indigenous Conflict Resolution Mechanisms for Maintaining Social Solidarity and Strengthening Communities in Alefa District, North West of Ethiopia' (2018) 7(2) Journal of Indigenous Social Development, pp1-21. http://umanitoba.ca/faculties/social_work/research/jisd/, accessed on 09/30/2022

16 Gebre Yntiso (2020). Understanding customary laws in the context of legal pluralism. pp79-86. <https://www.transcript-open.de/doi/10.14361/9783839450215-005>, Accessed on 09/30/2022

17 Gebre Yntiso (2020). pp78-97.

18 Endalew Lijalem Enyew, 'Ethiopian Customary Dispute Resolution Mechanisms: Forms of Restorative Justice?' (2014) African Journal on Conflict Resolution 125-154.

19 Endalew Lijalem Enyew (2014).

20 Gebre Yntiso (2020). pp78-97

21 Tibebe Kefale Muluken (2020), The Role of Indigenous Conflict Resolution Mechanisms in the Pastoral Community: An Implication for Social Solidarity in Somali Region, Shineli Woreda. https://www.scirp.org/pdf/oalibj_2020022714141041.pdf. Accessed on 09/30/2022. p4.

22 Regassa et al. 2008:Ethiopian Customary Disput Resolution Mechanisms. AJCR 2014/1 <https://www.accord.org.za/ajcr-issues/ethiopian-customary-dispute-resolution-mechanisms/>

23 Alula Pankhurst and Getachew Assefa (2008). Grassroots Justice in Ethiopia: Introduction Understanding Customary Dispute Resolution in Ethiopiapp1-76.

24 Endalew Lijalem Enyew (2014). Ethiopian_Customary_Dispute_Resolution_Mechanisms_Forms_of_Restorative_Justice. Accessed on 09/30/2022 <https://www.researchgate.net/publication/335603442> p27.

Generally, the mechanisms of Ethiopia involve mediation between the conflicting parties and their respective families; involves restitution, and reconciliation, and aims to settle the conflict between the parties, restoring the previous peaceful relationship within the community as well as maintaining their future peaceful relationships by circumventing the culture of revenge.²⁵

2.1.2. Merit and Demerits of Customary Dispute Resolution Institutions

Many scholars consider CIs as one of the instruments for conflict resolution and peacebuilding initiatives. Scholars also recognize that institutions have merits and demerits. Here it is worth describing the merits and demerits to understand them better and use them in a way that maximizes benefits.

One way of characterization of the merits and demerits description of advantages with counter disadvantages. In this case, CIs are an effective tool because they can 1)save time; 2)may improve communication between disputant parties; 3) are flexible; 4) increase satisfaction and compliance with settlements; 5) may assist in clarifying and narrowing issues; 6) are risk-free and 7) give space for disputing parties to select mediators. For these merits there are counter demerits because CIs may be used as time-wasting tactics, parties may not want to continue negation or mediation; limit bargaining authority; depends on good faith; lack of neutrality in complex disputes; may not adequately respect parties' legal rights and the strong-willed or incompetent mediator can exercise too much control respectively.²⁶

Instead of describing CIs advantages with counter disadvantages, other scholars also prefer to characterize merits and demerits separately. Concerning merits, they pointed out that CIs are accessible; are time-saving; require low cost; improve Legitimacy and appropriateness; have restorative capacity; use participatory procedures; have predictable processes and outcomes; enforceable community-based sanctions; and have enforceable community-based sanctions; avoid coercive measures; builds community cohesion. However, CIs are also characterized as having demerits including equitability; noncompliance with human rights standards; the undermining of individual rights; inability to guarantee procedural fairness, and lack of uniformity.²⁷

2.1.3. Trajectory and Legal Status-quo

Ethiopia is a mosaic of different ethnolinguistic groups with their own native governance and dispute settlement institutions, laws, and mechanisms.²⁸ As the way of life and history of each ethnolinguistic group is not similar, CDRMs in Ethiopia are not identical.²⁹ Moreover, it is often difficult to exactly point out the time when a certain TDRM emerged. However, it is possible to indicate the trajectory and current status of such dispute resolution mechanisms in the Ethiopian legal system.

Accordingly, the path of TDRM recognition and role in Ethiopia can be seen from the following broad period perspectives:³⁰

Before the mid-15thC: One of the typical manifestations of this period is the absence of codified formal laws. It is recorded that the first ever attempt to compile a law was made in the 15th during the reign of Emperor *Zar'a Ya'eqob*.³¹ This compiled law was, mainly on criminal laws, called the *Fewuse Menfessawi* (Canonical Penance).³² Before this time, justice was predominantly administered based on religious and cultural rules.³³

25 Endalew Lijalem Enyew (2014). Ethiopian customary dispute resolution mechanisms: Forms of restorative Justice? <https://www.accord.org.za/ajcr-issues/ethiopian-customary-dispute-resolution-mechanisms/> p148)

26 AFSEL Consulting Services) (2021). The study of Traditional Peace-making Practices in Gamo, Konso, Gedeo Zones .Funded by European Union Civil Society Resources Center for Sustainable Change (RCSC).

27 Getachew Assefa and Alula Pankhurst (eds.), Facing the Challenges of Customary Dispute Resolution: Conclusion and Recommendations, (2008), <https://books.openedition.org/cfee/516?lang=en>, accessed on 09/30/2022 pp 257-273.

28 Getachew Assefa, *Towards widening the constitutional space for customary justice systems in Ethiopia*, in Susanne Epple and Getachew Assefa (eds.), 'Legal Pluralism in Ethiopia: Actors, Challenges, and Solutions' (Majuskel Medienproduktion GmbH, Wetzlar, 2020) 43- 61, 44.

29 Getachew Assefa (2020), 44.

30 Getachew Assefa (2020), 44-45.

31 Aberra Jembere, *An Introduction to the Legal History of Ethiopia (1434-1974)*, (Rehobot Printing PLC, Addis Ababa, 2019), 183.

32 Aberra Jembere(2019), 183.

33 Getachew Assefa, *Towards widening the constitutional space for customary justice systems in Ethiopia*, in Susanne Epple and Getachew Assefa (eds.), 'Legal Pluralism in Ethiopia: Actors, Challenges, and Solutions' (Majuskel Medienproduktion GmbH, Wetzlar, 2020) 43- 61, 45.

From the mid-15th to the early 20th: Albeit not adequately systematized and comprehensive, as indicated above, the first attempt at a compilation of laws was made during this period. The codification of *Fewuse Menfessawi* was inspired by the Emperor's desire to govern based on formal centralized law rather than amorphous customary rules.³⁴ However, this compiled law did not serve too long and was replaced by another traditional document; the *Fetha Nagast* (the law of the kings).³⁵ The main difference between this period and the pre-15th period was the introduction of these compiled laws. Concerning the operation of the customary rules, there was no significant difference. The compiled laws were criticized for being un-systematized, incomprehensive, and inaccessible. Stated differently, the introduction of the laws did not stop the application of TDRM. Therefore, most people continued to use their TDRI and laws to maintain peace and order and to go about their daily lives.³⁶ Moreover, no evidence showed that the then regimes followed an abolishing approach towards customary laws and dispute resolution mechanisms.

To recap, during this period, it was almost impossible to govern everything solely based on compiled traditional documents. These laws were not systematized, not comprehensive, and inaccessible.

From the early 20th to the FDRE Constitution in 1995: One of the turning points in the legal system of Ethiopia was the 1907 measure taken by Emperor Menelik II. This year, the Emperor established ministerial departments for the first time in the country's history.³⁷ Among the ministries established was the Ministry of Justice. Besides introducing the *Fetha Nagast* to the formal justice system, from that time on, the formal institutions for the administration of justice were more pervasively applied, at least in theory.³⁸

After almost half a century, during the time of Emperor Haile Selassie I, the country went through a huge codification process. In the 1950s and 1960s, Ethiopia codified six laws; specifically, Penal Code, Civil Code, Commercial Code, Maritime Code, Criminal Procedure Code, and Civil Procedure Code. In doing so, in *de jure*, Ethiopia made a policy decision that it would no longer be governed by any customary rules. In other words, the codification of these laws created a break from traditional beliefs and values.³⁹ Here, it is worth noting that the drafters of the laws were mainly Europeans.⁴⁰ Hence, as they were oblivious to the customary and cultural practices of Ethiopia, the legal transplantation they made lacked the necessary adaptation to the local context.

On this point, Endalew adds that "...the transplantation process was not healthy in a sense that it did not take into account the customs and traditions of peoples, and the realities on the ground".⁴¹ Similarly, Alemayehu writes that "[t]he formal legal system possesses little legitimacy; partly because it has not been introduced via a democratic process as long as the forces of difference accounting for the vast majority of the country's population, were not represented in the Codification Commission; and Partly because the drafters, having turned a deaf ear to the voices of difference and legal pluralism, adopted the method of copying foreign laws that have been imposed on the rich and matured indigenous legal culture of the country."⁴²

In a nutshell, during this great wave of legal codification, customary laws were deemed as anti-modern

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34 Aberra Jembere, *An Introduction to the Legal History of Ethiopia (1434-1974)*, Shama Books, Rebot Printing PLC, Addis Ababa, 2019, 183.

35 Aberra Jembere, *An Introduction to the Legal History of Ethiopia (1434-1974)*, Shama Books, Rebot Printing PLC, Addis Ababa, 2019, 184.

36 Aberra Jembere, *An Introduction to the Legal History of Ethiopia (1434-1974)*, Shama Books, Rebot Printing PLC, Addis Ababa, 2019, 184.

37 Bereket Habte Selassie, 'Constitutional Development In Ethiopia' (1966)10(2) *Journal of African Law*, 74-91, 78.

38 Getachew Assefa, *Towards widening the constitutional space for customary justice systems in Ethiopia*, in Susanne Epple and Getachew Assefa (eds.), 'Legal Pluralism in Ethiopia: Actors, Challenges, and Solutions' (Majuskel Medienproduktion GmbH, Wetzlar, 2020) 43- 61, 46.

39 Endalew Lijalem Enyew, 'A Move Towards Restorative Justice in Ethiopia: Accommodating Customary Dispute Resolution Mechanisms with the Criminal Justice System' (Master's Thesis, University of Tromsø, 2013), 74.

40 Endalew Lijalem Enyew(2013), 74.

41 Endalew Lijalem Enyew (2013), 74 -75.

42 For further discussion, see, Alemayehu Fentaw, 'Legal Pluralism: Its Promises and Pitfalls for Ethiopia' (2007) 1(1) *Jimma University Journal of Law*, 35-66, 48.

and anti-change.⁴³ This position is palpably reflected by the 1960 Civil Code's repeal provision. The Code provides that "[u]nless 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."⁴⁴ This provision made an absolute prohibition against all customary laws and practices. Transliterated, it followed an abolitionist approach towards customary laws and practices, which made them lose formal legal recognition and standing.⁴⁵ On condition that the matter is covered under the Code, it is irrelevant whether the customary laws are in tandem or not with the then newly introduced civil code. The only exception where customary laws and practice can be operational is when there is an otherwise provision.

For example, the Civil Code does incorporate some rules on family/customary marriages, succession, and property. Concerning these issues, customary rules are applicable. Regarding the approach followed by other codes, Getachew submits that "[a]lthough the other codes did not include [...] clear repeal provisions, they were enacted to bring about the complete displacement of any non-formal sources of law that were hitherto in operation."⁴⁶ Finally, it is pertinent to mention that neither the first written constitution nor the 1955 revised constitution of Ethiopia had provisions on customary rules and institutions.

In 1974, the military government (also known as Derg or Dergue) dethroned the Imperial regime. The Derg regime did suspend the application of the imperial regime's revised constitution.⁴⁷ However, it did not follow the same route when it comes to customary dispute resolution mechanisms. The imperial government's policy of derecognizing customary justice systems persisted even during the Derg regime with minor modifications. With regards to the customary justice systems "...the Derg's policy position had the same effect of relegating and disregarding customary justice systems as that of the previous regime."⁴⁸

While the above is the *de jure* status of CDRMs in the imperial and military regimes; in *de facto*, since the transplanted laws did hardly penetrate the local communities and got legitimacy as well as not accessible, the operation of customary dispute resolution mechanisms did not cease.⁴⁹ Hence, as Endalew rightly depicts it, the formal exclusion of customary laws while they are practiced on the ground, makes legal pluralism a *de facto* phenomenon.⁵⁰

Post-1995 constitutional period: The approach towards customary laws and practices was changed with the coming into force of the EPRDF in 1991. Unlike its predecessors, the EPRDF government followed a policy of cultural self-determination for the NNPs of the country.⁵¹ This is echoed by the 1991 Charter of the Transitional Government; which was the interim constitution.⁵² Article 2(a) of the Charter reads "[t]he right of nations, nationalities, and peoples to self-determination is affirmed. To this end, each nation, nationality, and people are guaranteed the right to preserve its identity and have it respected, promote its culture and history, and use and develop its language." Although this is a deviation from the previous trends, the Charter did not make a specific reference to customary laws or courts. In this regard, it followed the same trend as all the earlier Ethiopian constitutions.

Akin to the Charter, the 1995 Ethiopian Federal Constitution bestows due attention to the identity questions of the NNPs' of Ethiopia. For example, after stating the NNPs' strong commitment or aspiration to building a political community founded on the rule of law and capable of ensuring lasting peace,

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43 Endalew Lijalem Enyew(2013), 75.
 44 The Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, Negarit Gazeta, Article 3347(1).
 45 Endalew Lijalem Enyew (2013), 75. See also, Getachew Assefa (2020), 43.
 46 Getachew Assefa (2020), 43.
 47 Provisional Military Government Establishment Proclamation, Proclamation No. 1/1974, Negarit Gazeta, Article 5(a).
 48 Getachew Assefa, Towards widening the constitutional space for customary justice systems in Ethiopia, in Susanne Epple and Getachew Assefa (eds.), 'Legal Pluralism in Ethiopia: Actors, Challenges, and Solutions' (Majuskel Medienproduktion GmbH, Wetzlar, 2020) 43- 61, 49.
 49 Endalew Lijalem Enyew (2013), 75. See also, Getachew Assefa (2020), 43.
 50 Endalew Lijalem Enyew (2013), 76.
 51 Getachew Assefa, Towards widening the constitutional space for customary justice systems in Ethiopia, in Susanne Epple and Getachew Assefa (eds.), 'Legal Pluralism in Ethiopia: Actors, Challenges, and Solutions' (Majuskel Medienproduktion GmbH, Wetzlar, 2020) 43- 61, 43.
 52 Transitional Period Charter of Ethiopia, Peaceful and Democratic Transitional Conference of Ethiopia, 1991, Article 18.

guaranteeing a democratic order, and advancing economic and social development;⁵³ the constitution reiterates the NNPs’ “rich and proud cultural legacies”.⁵⁴ Understandably, this expression includes the various customary dispute resolution mechanisms that have been practiced for a long by different ethnic groups of the country. Consistent with this, the Constitution under its Article 39(2) provides “[e]very Nation, Nationality, and People in Ethiopia has the right to speak, to write and to develop its language; to express, to develop and to promote its culture, and to preserve its history.”⁵⁵

Moreover, unlike its predecessors, the FDRE Constitution makes a specific reference to customary laws or courts. Accordingly, the Constitution provides “[t]his Constitution shall not preclude the adjudication of disputes relating to personal and family laws per religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.”⁵⁶ Consonant with this provision, while dealing with the structure and powers of the courts, the same constitution provides “[p]ursuant to sub-Article 5 of Article 34 the House of Peoples’ Representatives and State Councils can establish or give official recognition to religious and customary courts. Religious and customary courts that had state recognition and functioned before the adoption of the Constitution shall be organized based on recognition accorded to them by this Constitution.”⁵⁷ The close reading of these two constitutional provisions brings some important points to light. The first but apparent point is the need for detailed legislation that regulates the adjudication of disputes relating to personal and family laws following religious or customary laws.

Following the constitutional direction, the federal legislative organ enacted the Federal Courts of Sharia Consolidation Proclamation.⁵⁸ This being the current governing laws concerning religious laws, no detailed law has been proclaimed concerning customary laws and courts at the federal level. Cognizant of the multitude number of cultural communities in Ethiopia, Getachew states “regulating the particulars of customary courts and laws in Ethiopia is not an easy task because of the sheer number of cultural communities in the country, each with their customary norms.”⁵⁹ However, at the regional level, for example, the Oromia Regional State has enacted a Proclamation that established and recognized customary courts.⁶⁰ While providing the First Instance Customary Court’s jurisdiction, the proclamation provides that they have jurisdiction over petty offenses and crimes punishable upon complaint.⁶¹ This being the principle, the law also states that⁶² “[n]otwithstanding with the provision of sub-article 1(b) of this Article, the Customary Court shall have the following powers with criminal matters to be instituted by the Public Prosecutor:

- a. Reconciling parties having a stake in the dispute;
- b. Determining ‘Gumaa’ and effecting it;
- c. Determining compensation to be paid;
- d. Ensuring the payment of costs.”

The second but bewildering concern regarding the above constitutional provisions is related to the mandate of customary and religious laws and courts. Undoubtedly, if the consent of the parties to the issue is secured, they have power over personal and family issues.⁶³ The question is: Do customary justice systems have power over civil matters save personal and family law and criminal law? The Ethiopian fountainhead of laws is silent on this issue. According to Endalew, this silence on the part of the Constitution invokes the following interpretative arguments.

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53 The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal Negarit Gazeta (hereinafter The FDRE Constitution) Preamble, paragraph 1.

54 The FDRE Constitution, Preamble, para, 3

55 The FDRE Constitution, Article 39(2).

56 The FDRE Constitution, Article 34(5).

57 The FDRE Constitution, Article 78(5).

58 See, Federal Courts of Sharia Consolidation Proclamation, Proclamation No. 188/ 1999, *Federal Negarit Gazeta*.

59 Getachew Assefa(2020), 51.

60 Proclamation to Provide for the Establishment and Recognition of Oromia Region Customary Courts, No. 240/2021, Megeleta Oromia.

61 Oromia Customary Courts Proclamation, Article 8(1)(b).

62 Oromia Customary Courts Proclamation, Article 8(4)

63 Family disputes like disputes over inheritance, marital disputes; and personal disputes for example breach of contract can be adjudicated based on customary dispute resolution mechanisms.

The first argument is that its silence should not be construed as a prohibition. For this line of argument, “the absence of express recognition to customary laws` application to criminal matters in the Constitution does not necessarily mean that they are excluded from an application; they further claim that the Constitution would have provided express provision excluding customary law`s application to criminal matters had the legislature intended as such; and they call for a broad and holistic interpretation of the Constitution, as the total exclusion of customary laws` application to criminal matters would defeat the overall objectives of the Constitution to ensure lasting peace and maintaining community safety.”⁶⁴

On the other hand, the second line of argument is based on the contrary reading of Art. 34 (5) of the Constitution. Accordingly, the silence following an explicit authorization on personal and family matters should be interpreted as a prohibition of the CDRMs` application on criminal matters.⁶⁵

Although the above two lines of argument are tenable, hitherto, the issue has not appeared for a constitutional interpretation. Moreover, the understanding is that the mandate of CDRMs is limited to personal and family matters. In practice, however, there is no limitation on the power of CDRMs. Accordingly, there has been a call for widening the power of CDRMs so that they can entertain criminal matters.⁶⁶ Seemingly in line with these calls, there seems a policy shift in Ethiopia in the direction of being more accommodative towards customary justice systems in the area of criminal matters.⁶⁷ Specifically, the 2011 Criminal Justice Policy of Ethiopia and the draft Criminal Procedure and Evidence Law manifest the policy shift on this point. When the 2011 Criminal Justice Policy of Ethiopia states the situation when a case can be closed, it provides, besides others, “the following as yardsticks: Even if the crime committed is serious, and the Attorney believes that the cause for the criminal offense between the plaintiff and suspect would better be resolved by the customary laws and institutions than the formal justice system, and better be resolved by the customary laws and institutions than the formal justice system, and “the case only could sentence the suspect with simple imprisonment or punishable upon personal complaint or if the plaintiff and suspect have already reconciled” (own translation).⁶⁸

In line with the Policy, the draft Criminal Procedure and Evidence Law also devotes a sub-section (from Articles 180-185) to the customary justice system. Accordingly, the draft law provides that the aim of allowing customary laws to settle criminal cases is to bring sustainable peace to the community.⁶⁹ It also provides that any case at the investigation, prosecution, and trial stage can be settled in a customary system. However, the draft law provides an exceptional circumstance in the following manner: “Notwithstanding article 1, if the crime charged violates human rights or against the dignity of Human beings and the national security then customary rules cannot be applicable” (Own translation).⁷⁰ The crimes mentioned in this exceptional circumstance are not clear enough. For example, it is not clear enough what crimes constitute crimes that violate human rights mean.

The constitutionality of the approach of the Policy and the draft Criminal Procedure and Evidence Law seems debatable. However, it seems that the drafter of the criminal procedure and evidence law is influenced by the policy and left the question of constitutionality unaddressed. On the other hand, they seem to construe the constitutional provision`s silence on the criminal law as permissive rather than prohibitive. Moreover, one may argue from the perspective of Articles 8(1) and 39(2) of the Constitution itself. As per Article 8(1) “[a]ll sovereign power resides in the Nation, Nationalities, and Peoples of Ethiopia”. Moreover, as indicated in Article 39(2) of the Constitution, it confers every Nation, Nationality, and People in Ethiopia the right to speak, write, and develop its language; to express, develop, and promote its culture; and to preserve its history. Hence, the cumulative reading of these two constitutional provisions appears to suggest the absence of limitation of the mandate of the customary dispute resolution mechanism provided that the party concerned consented to it.

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64 Endalew Lijalem Enyew (2013), 77.
65 Endalew Lijalem Enyew (2013), 77.
66 Endalew Lijalem Enyew (2013), 77.
67 Getachew Asseffa (2020), 53.
68 የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የወንጀል ፍትሕ ፖሊሲ, ፍትሕ ሚኒስቴር, የካቲት 25/2003 ዓ.ም, 14-15. In the Ethiopian Criminal Code, there are no specific crimes that are left for the jurisdiction of customary courts. However, one may submit that with regard to upon complaint crimes, the inured party can take the matter to traditional institutions if he or she wishes to.
69 The Draft Criminal Procedure and Evidence Law, 2013, Article 180.
70 The Draft Criminal Procedure and Evidence Law , Article 181(2). በዚህ አንቀጽ ንዑስ አንቀጽ ፩ የ ተመለከተው ቢኖርም ሰብዓዊ መብትን የሚጥስ ፣ በሠው ልጅ ክብር እና በሀገር ደህንነት ላይ በሚፈፀሙ ወንጀሎች የተጠረጠሩ ወይም የተከሰሱ አንደሆነ ባሕላዊ ሥርዐት ተፈጻሚ አይሆንም: ፡

Furthermore, the approach of the policy and the draft law is supported by the practice and is more pragmatic than the previous approach. Hence, even without the amendment of the Constitution, one may submit that the House of the Federation can give a binding interpretation in favor of flaring the power of customary justice systems.

2.2. National Dialogue and Transitional Justice: In General, and Ethiopian Context

2.2.1. National Dialogue and Transitional Justice in General

I. National Dialogue in General

A national dialogue is and should be a “nationally owned political process aimed at generating consensus among a broad range of national stakeholders in times of deep political crisis, in post-war situations or during far-reaching political transitions”.⁷¹ This definition makes it clear that national dialogue is not a measure used during ordinary times but when the survival of the polity is at stake. It appears “when the fundamental nature or survival of a government is in question and are meant to resolve political crises, improve the legitimacy of institutions, and lead countries into political transitions”.⁷² Hence, it is a political process held to create a consensus among different stakeholders. In other words, a national dialogue process is a means that brings “all major political decision-makers and stakeholders together after serious conflict or when constitutional bodies (parliament or government) or the constitution itself fail to address the needs, rights, and expectations of all groups and communities”.⁷³ This means that a national dialogue process is an extra-constitutional process. In short, a national dialogue process is a mechanism of “redefining the relationship between the state, political actors, and society through the negotiation of a new social contract”.⁷⁴

A national dialogue is also a negotiation forum that aims to expand the participants in a political transition beyond the political and military elites. This is done, maybe, to save the political transition from being only an elite-level dealmaking and be a process in which diverse interests are represented.⁷⁵ It is equally important to note that national dialogue is not a purely democratic process in the sense that the participants are not chosen through direct one-man-one-vote elections; and in their deliberations, they do not usually follow parliamentary or other established procedures but design their debating and decision-making rules.⁷⁶ Moreover, the focus of a national dialogue is often limited to issues of national concern, typically longstanding causes of conflict that have been brought to the fore by political protest or armed insurrection.⁷⁷ Stated differently, it is not about all issues that may exist in the country but only the decisive national issues that could upset the continuity of the nation.

Finally, it is necessary to bear in mind that there is no unanimously applicable formula concerning the period of operation, size, composition, and other details of a national dialogue. It varies from jurisdiction to jurisdiction and the issue the country is confronting. This, however, does not mean that there are no acceptable principles that should be observed in a national dialogue process. Inclusion; transparency and public participation; credible and neutral convener; clear mandate and appropriately tailored structure, rules, and procedures; agreed-on mechanisms for outcomes implementation; and absence of foreign interference are amongst the vital national dialogue principles which must be observed.⁷⁸ It

71 Marike Blunck, Luxshi Vimalarajah, Oliver Wils, Corinne von Burg, David Lanz and Mir Mubashir, 'National Dialogue Handbook: A Guide for Practitioners' Berghof Foundation, Berlin,, 2017, 21

72 Thania Paffenholz, Anne Zachariassen, and Cindy Helfer, *What Makes or Breaks National Dialogues?*, Inclusive Peace and Transition Initiative, Report 2017, 9. Available at <https://www.inclusivepeace.org/sites/default/files/IPTI-Report-What-Makes-Breaks-National-Dialogues.pdf> last accessed on December 12, 2022.

73 Hannes Siebert, *National Dialogues as Catalyst of Fundamental Change*, in Charlotta Collén and Elisa Tarkiainen (ed.s), 'National Dialogue and Internal Mediation Processes: Perspectives on Theory and Practice, A conference on national dialogue and Mediation process' (2014), 41-45, 44.

74 Thania Paffenholz, Anne Zachariassen, and Cindy Helfer (2017), 9.

75 Katia Papagianni, *National Dialogue Processes in Political Transitions*, Civil Society Dialogue Network Discussion Paper No. 3, 1-12, 1.

76 Katia Papagianni, 1.

77 Thania Paffenholz, Anne Zachariassen, and Cindy Helfer (2017), 9.

78 Dehinasew Shemelis Andualem, 'National Dialogue of Ethiopia: is it on the right track?' (2022) 18(20) European Scientific Journal,

is often, therefore, submitted that observing these principles would have a positive influence on the process of the national dialogue and then the implementation of its outcome.

Be the above definitions of national dialogue as it may, the Ethiopian National Dialogue Commission Establishment Proclamation also enshrined a definition for a national dialogue. It stated that a “[n]ational dialogue means consultation of different bodies facilitated by the Council of Commissions at the Federal and Regional level[s] on the agendas identified] following this Proclamation and the Directives to be issued by the Council of Commissions.”⁷⁹

This definition of Ethiopian law indicates that a national dialogue is a consultation. The consultation is between different bodies. However, the proclamation is not expressed enough as to what “different bodies” constitute. Stated differently, the Ethiopian law is not specific and clear enough about the participants of the national dialogue. This phrase, however, should be construed to include different interest groups. Conceptually, the national dialogue process typically involves “key national elites, including the government and the largest (armed or unarmed) opposition parties, and occasionally the military. Other groups who participate include those representing wider constituencies such as civil society, women, youth, business, and religious or traditional actors. The wider population is often indirectly included through broader consultation processes.”⁸⁰

As per the definition, the Council of Commissions is mandated to facilitate the consultation. According to the Ethiopian national dialogue law, the Council of the Commission is a Council constituted of all the Commissioners of the National Dialogue Commission.⁸¹ The other important point that the proclamation touched on by way of definition is the level at which the consultation could be held. The law states that the consultation could be at the Federal and Regional levels. The definitional provision also states that the consultation is on the agendas identified following the national dialogue establishment proclamation and the Directives to be issued by the Council of Commissions.

Commonly, as a process, national dialogues went through three phases: preparation, negotiation, and implementation:⁸²

- ▶ the preparatory stage/process: this is the most important stage wherein the foundation for the whole process lays on. As a process, this stage could be longer than the negotiation process.⁸³ The preparation stage critically shapes the next phases. Hence sufficient time needs to be allocated. At this stage, efforts should be made to reach an agreement on at least major parameters of the dialogue including the mandate of the national dialogue, agenda, participant

71-81, 71. The Ethiopian National Dialogue Commission Establishment Proclamation, Proclamation No. 1265 /2021, under Article 3 provides the following: Article 3. Principles of the National Dialogue

1. The National Dialogue and the general works of the Commission shall be directed by the following principles:

- a. inclusivity;
- b. transparency;
- c. credibility;
- d. tolerance and mutual respect;
- e. rationality;
- f. implementation and context sensitivity;
- g. impartial facilitator;
- h. depth and relevance of Agendas;
- i. democracy and rule of law;
- j. national interest;
- k. using national traditional knowledge and values.

2. The Council of the Commission may include additional principles it deems necessary.

79 The Ethiopian National Dialogue Commission Establishment Proclamation No. 1265 /2021 (hereinafter Proclamation No. 1265/2021), under Article 2(3). For a better understanding we find it appropriate to reproduce the Amharic version of the provision here. It says ሀገራዊ ምክክር ማለት በዚህ አዋጅና የኮሚሽኖች ምክር ቤት በሚያወጣው መመሪያ መሰረት በሚለዩ እጅግዳዎች ላይ በተለያዩ አካላት ውይይት እንዲደረግባቸው የኮሚሽኑ ምክር ቤት በፈዴራልና በክልል የሚያመቻቻቸው ውይይቶች ናቸው፤

80 Thania Paffenholz, Anne Zachariassen, and Cindy Helfer (2017), 9.

81 Proclamation No. 1265/2021, Article 2(1).

82 Marike Blunck, Luxshi Vimalarajah, Oliver Wils, Corinne von Burg, David Lanz and Mir Mubashir, National Dialogue Handbook: A Guide for Practitioners' Berghof Foundation, Berlin,, 2017, 21.

83 Haider Huma, National dialogues: lessons learned and success factors, (K4D Helpdesk Report, Brighton, UK: Institute of Development Studies 2019), 4.

selection, convener, decision-making procedures, etc.⁸⁴ In the Ethiopian case, this stage of the national dialogue has been divided into two by adding a pre-preparation stage. Hence, in the Ethiopian national dialogue process, there are both pre-preparation and preparation stages.

- ▶ the negotiation stage: arguably, this is the most public phase. It is the formal national dialogue phase and covers major aspects related to implementing issues including agenda-setting, determining a convener, establishing principles, producing decision-making modalities, selecting participants, ensuring public consultation and outreach, establishing effective support structures, and thinking about timing and sequencing.⁸⁵
- ▶ the implementation stage: this stage comes after an agreement is reached by the participants of the national dialogue. The implementation phase is dedicated to executing the decisions taken during the negotiations.⁸⁶ Relatively, this is the most difficult stage of a national dialogue. Stated differently, reaching an agreement during the negotiation stage is not as difficult as implementing the terms of the agreement. Hence, reaching an agreement is not the end of a national dialogue process.

Table 1: Actors and process factors in a dialogue process

	Political factors	Process factors
1	National elites' resistance or support	Representation, number, and selection of actors
2	Public support or frustration	Decision-making procedures
3	Support or resistance of regional and international actors	Choice of mediators and facilitators
4	The existing culture of dialogue	Duration
5	Experiences from prior negotiations	Support structures for involved actors
6	Presence or absence of violence	Coalition building among included actors

Conducting a national dialogue is not an end goal. The national dialogue should help the political transition. In a very general way, the success of national dialogue can be seen on two levels, first in terms of whether an agreement was reached or not; and second, the extent to which the agreement was implemented.⁸⁹ However, evaluating whether a national dialogue has succeeded or not is not an easy task. This is so because the fruits of national dialogue are sometimes intangible. The intangible outcome of a national dialogue includes “strengthening of a culture of debate and free speech; the breaking of taboo issues which after the dialogue may be more openly discussed; the entrenchment of certain norms of inclusion and representation in politics of marginalized groups, including women and minorities; and the ability to keep all the political actors inside the political process by averting conflict.”⁹⁰

Different factors determine the success of a national dialogue. Paffenholz, Zachariassen, and Helfer argue that the following political context and process factors, but illustrative, play a decisive role in influencing the outcomes of a national dialogue.

84 Abdulqadir Adem, *National Dialogue in Ethiopia: Towards Sustainable Peace and Democratic Transition*, Paper presented for a conference to launch a national dialogue in Ethiopia, August, 2020, Addis Ababa, available at https://www.fepethiopia.com/sites/default/files/202009/National_Dialogue_in_Ethiopia_Towards_sustainable_peace_and_Democratic.pdf, last accessed on December 1, 2022, 1-19, 5.

85 Marike Blunck, Luxshi Vimalarajah, Oliver Wils, Corinne von Burg, David Lanz and Mir Mubashir, *National Dialogue Handbook: A Guide for Practitioners* Berghof Foundation, Berlin,, 2017, 21.

86 Abdulqadir Adem, *National Dialogue in Ethiopia: Towards Sustainable Peace and Democratic Transition*, Paper presented for a conference to launch a national dialogue in Ethiopia, August, 2020, Addis Ababa, available at https://www.fepethiopia.com/sites/default/files/202009/National_Dialogue_in_Ethiopia_Towards_sustainable_peace_and_Democratic.pdf, accessed on December 1, 2022, 1-19, 6.

87 See, Thania Paffenholz, Anne Zachariassen, and Cindy Helfer (2017), 10-11.

88 See, Thania Paffenholz, Anne Zachariassen, and Cindy Helfer (2017), 11-12.

89 Thania Paffenholz, Anne Zachariassen, and Cindy Helfer (2017), 11.

90 Katia Papagianni, 11.

II. Transitional Justice in General

Transitional Justice has been the focus of societies in conflict and post-conflict situations.⁹¹ It focuses on the question of how societies emerging from periods of civil war or dictatorship deal with the legacies of the past.⁹² In other words, it is a measure taken by societies to reckon with a repressive past. It recognizes that past systematic and massive abuses do require a distinctive approach that is both backward- and forward-looking.⁹³

As a concept, TJ is defined by different academics and policy documents. For example, according to Naomi Roht-Arriaza, TJ includes a “set of practices, mechanisms, and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of human rights and humanitarian law.”⁹⁴ For Naomi Roht-Arriaza, transitional justice in its broadest sense includes “anything that a society devises to deal with a legacy of conflict and/or widespread human rights violations, from changes in criminal codes to those in high school textbooks, from creation of memorials, museums and days of mourning, to police and court reform, to tackling the distributional inequities that underlie conflict”.⁹⁵

The other document that defines transitional justice is the AUTJP. This policy, apart from others, aims to “establish common standards, and offers guidelines to countries on how to bridge existing gaps and pursue transitional justice in compliance with relevant AU commitments.” For the AUTJP, TJ refers to

“the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt to overcome past violations, divisions, and inequalities and to create conditions for both security and democratic and socio-economic transformation. Transitional justice is meant to assist societies with legacies of violent conflicts and systemic or gross violations of human and peoples’ rights in their effort to achieve a transition to the future of justice, equality, and dignity. Going beyond retribution and drawing on traditional justice approaches emphasizing conciliation, community participation, and restitution, the conception of TJ advanced in this policy seeks to address African concerns on violent conflicts and impunity through a holistic policy that considers the particular context and cultural nuances of affected societies, as well as the gender, generational, ethnocultural, socio-economic and development dimensions of both peace and justice.”⁹⁶

While discussing the notion of TJ, it is important to note that it is not limited to situations of post-conflict and/or regime change, in particular transition from dictatorship to democracy. Transitional justice also encompasses situations of peace processes within ongoing conflict and/or formal democracy.⁹⁷

In dealing with a legacy of systematic or massive abuse, the TJ process has two main goals; to provide some level of justice for victims, and to reinforce the possibilities for peace, democracy, and reconciliation.⁹⁸ In clear terms, promoting peace, democracy, and reconciliation are long-term goals of TJ measures.⁹⁹ In doing so, TJ aspires to prevent the systematic or massive violation of human rights. In general, the success of TJ is measured depending on to what extent it contributes to true reconciliation and the consolidation of democracy.¹⁰⁰ Transitional justice measures aim not only to dignify victims but also to help prevent similar victimhood in the future.

Transitional justice is not an overnight act but a process. In the process, there are essential activities such as statement taking, selection of cases, proceedings/hearings, characterization of cases, writing

91 Kai Ambos, *The Legal Framework of Transitional Justice: A Systematic Study with a Special Focus on the Role of the ICC*, in Kai Ambos et al. (eds.), ‘Building a Future on Peace and Justice: Studies on Transitional Justice, Peace and Development’ (Springer-Verlag Berlin Heidelberg 2009), 19-102, 19.

92 Naomi Roht-Arriaza, *The New Landscape of Transitional Justice*, 2012, Cambridge University Press: 1.

93 The United Nations, *What Is Transitional Justice?* (2008), available at https://www.un.org/peacebuilding/sites/www.un.org/peacebuilding/files/documents/26_02_2008_background_note.pdf Last accessed December 3, 2022.

94 Naomi Roht-Arriaza (2012), 2.

95 Naomi Roht-Arriaza (2012), 2.

96 The AU Transitional Justice Policy, 2019, 4.

97 Kai Ambos (2009), 19.

98 The United Nations (2008).

99 The United Nations (2008).

100 Kai Ambos (2009), 19.

of the report, and implementation of the recommendations. For this process to be successful, it requires the participation of different stakeholders in different capacities. There must be room for the victim to speak about the harm they sustained, the wrongdoers to apologize, and the witness to present their testimonies.

To achieve the above end goals, TJ uses different mechanisms or measures. As indicated in the above definitions too, the measures that can be taken as TJ mechanisms are various and include prosecutions, reparations, truth-seeking/truth-commission, institutional reform, vetting, dismissals, or a combination thereof.¹⁰¹ The appropriateness of these measures in a certain country/society depends on many factors and the unique circumstances of a period of abuse.¹⁰² In determining the mechanisms, the United States Institute of Peace urges to answer the following questions “Are crimes widespread, or focused on one region or ethnic group? Are many perpetrators responsible, or only a few? Were the crimes acts of the State, or those of insurgents, or both? Are the perpetrators still more or less in power, or has there been a clean transition to a new government? Does the state have sufficient resources to implement a justice mechanism? Are the courts credible? Can the state afford individual reparations?”.¹⁰³ However, the general understanding is that the mechanisms are effective when they are used holistically rather than in isolation. It is not often advisable to use only a single TJ mechanism.

For example, the most commonly adopted TJ mechanism is prosecution. Nonetheless, in a transitional context, prosecution may not always be a wise option. Because, although in the wake of massive violations, interest in criminal justice often takes center stage, during massive human rights abuse like genocide, there may be tens or even hundreds of thousands of victims and perpetrators.¹⁰⁴ This may lead to an acute caseload problem in the formal justice system. Moreover, during this time, the formal justice system institutions like the judiciary may be dysfunctional. In other words, the majority of police, prosecutors, and judges may be too weak or corrupt, or too few, to be able and willing to act in the public interest and ensure victims’ rights to justice.¹⁰⁵ Hence, aside from the question of whether judicial measures can redress systematic or massive violations of human rights, there is the question of whether they are adequate, by themselves, to doing so.¹⁰⁶ Hence, TJ operates on the conviction that the formal justice systems- judicial measures- are not adequate to address the systematic and massive past abuses by themselves alone.¹⁰⁷ As the problems are many and too complex it is suggested that to be effective, TJ should be holistic.¹⁰⁸

2.3. National Dialogue and Transitional Justice: Ethiopian Context

I. National Efforts

Ethiopia’s history is not free of turbulence. There have been contested egregious human rights violations and unaddressed (historical) injustices, grievances, and questions.¹⁰⁹ To address such problems, in Ethiopia, various forms of measures have been taken by different regimes. For example, when the EPRDF took control of the political power, it established a Special Prosecutor’s Office and followed a retributive approach.¹¹⁰ The enabling law of the Office provides that “the office shall, following the law,

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¹⁰¹ Kai Ambos (2009), 22. For a close discussion of these measures, see, United States Institute of Peace, Transitional Justice: Information Handbook, 2008, available at https://www.usip.org/sites/default/files/ROL/Transitional_justice_final.pdf last accessed December 3, 2022.

¹⁰² United States Institute of Peace, Transitional Justice: Information Handbook, 2008, available at https://www.usip.org/sites/default/files/ROL/Transitional_justice_final.pdf last accessed December 3, 2022.

¹⁰³ United States Institute of Peace (2008).

¹⁰⁴ The United Nations (2008).

¹⁰⁵ The United Nations (2008).

¹⁰⁶ The United Nations (2008).

¹⁰⁷ The United Nations (2008).

¹⁰⁸ The United Nations (2008).

¹⁰⁹ Marshet T Tessema and Markos D Belay, ‘Confronting past gross human rights violations in Ethiopia: Taking stock of the Reconciliation Commission’ (2020) 33 *South African Journal Of Criminal Justice*, 562-578, 562.

¹¹⁰ Proclamation Establishing the Office of the Special Prosecutor, Proclamation No. 22/ 1992 (hereinafter Proclamation No. 22/1992) .

have the power to conduct investigation and institute proceedings in respect of any person having committed or responsible for the commission of an offense by abusing his position in the party, the government or mass organization under the Dergue – Workers Party of Ethiopia (WPE) regime.”¹¹¹ This quoted provision of the enabling law clearly shows that the justice aimed to be served was not fair but Victor’s justice. This is so because it empowers the Office only the crimes related to the Dergue – WPE regime. While investigating and prosecuting the Derg officials, no evidence showed the use of TDRM. Generally, the holistic assessment of the trial suggests that the retributive approach taken by the EPRDF was not successful. The country has re-submerged into (may arguably continue to live in) the quagmire of gross human rights violations.

After almost three decades, in 2018, the question of TJ has become formally an issue in Ethiopia. During this time, the government has taken various measures such as “opening up the political space, releasing political prisoners, lifting terrorist labeling specifically for political organizations such as Ginbot 7, Oromo Liberation Front and Ogaden National Liberation Front as well as legal and institutional reforms, but also openly accepted the commission of widespread gross human rights violations and apologized for the wrongs done.”¹¹² Once the Attorney General of Ethiopia also said that “Ethiopia had been overwhelmed with gross human rights violations that only transitional justice – and not ordinary criminal justice – could address”.¹¹³ Accordingly, the government took an additional measure of establishing a Reconciliation Commission.¹¹⁴ Even if the objective of the Commission is “to maintain peace, justice, national unity and consensus and also Reconciliation among Ethiopian Peoples”,¹¹⁵ it did not expressly mention the possible role that can be played by different CDRMs of Ethiopia. After the initial terms of the Commission expired,¹¹⁶ Ethiopia established another commission, the ENDC.¹¹⁷

Compared to the Reconciliation Commission, arguably, the ENDC enabling law is more comprehensive and accommodative of the TJ systems of Ethiopia. For instance, illustrative but long lists of principles by which the national dialogue and the general works of the Commission are governed, one of such principles is “using national traditional knowledge and values”.¹¹⁸ Moreover, albeit not explicit, while dealing with the duties and responsibilities of the Commission, the proclamation seems to have a reference that can relate to CDRMs. To be specific, the proclamation provides that the Commission shall have the duty and responsibility of identifying “differences among different political and opinion leaders and also between societies on national issues through studies, public discussions or other appropriate modalities”.¹¹⁹ This specific provision mentions not only the specific responsibility of the Commission but also the means via which it can discharge its responsibility. Accordingly, to identify the differences among different political and opinion leaders and also between societies on national issues, the Commission is advised to conduct studies, conduct public discussions, or use other appropriate modalities. Undoubtedly, the expression “other appropriate modalities” is broad and encompasses using the *fora* of traditional systems to identify the difference in national issues.

To recap, it is safe to submit that the ENDC has foreseen or is allowed to use CDRMs of Ethiopia in different ways. In practice, the ENDC has been having a consultation with different sections of society

111 Proclamation No. 22/1992, Article 6.

112 Marshet T Tessema And Markos D Belay (2020), 562.

113 Tadesse Simie Metekia, *Ethiopia Urgently Needs A Transitional Justice Policy*, (Institute for Security Studies, 31 August 2022), available at <https://issafrica.org/author/tadesse-simie-metekia> Lasted Accessed October 4, 2022.

114 Reconciliation Commission Establishment Proclamation, Proclamation No. 1102/2018, *Federal Negarit Gazette* (hereinafter Proclamation No. 1102/2018).

115 Proclamation No. 1102/2018, Article 5. The proclamation under Article 6(3) provides that the Commission shall have the Powers and Duties to identify principles and values, which will be base for national Reconciliation by making discussion with groups of society which have different view. It is the opinion of the writers that this provision hardly includes the traditional dispute resolution mechanisms practiced in different parts of the country. For comment on the objective, see, Marshet T Tessema And Markos D Belay(2020), 571.

116 For closer examination on the commission, see, Marshet T Tessema And Markos D Belay (2020), 562-578. See also, Moges Zewiddu Teshome, ‘Confronting past atrocities: A critical analysis of the defunct Ethiopian Reconciliation Commission’ (2022) 26 *Law, Democracy & Development*, 342-363.

117 Proclamation No. 1265/ 2021.

118 Proclamation No. 1265/ 2021, Article 3(1)(k). It is illustrative because the enabling proclamation under Article 3(2) empowers the Council of the Commission to include additional principles if it deems necessary.

119 Proclamation No. 1265/ 2021, Article 9(3).

since its establishment. For example, the Commission has had a consultation with elders (customary authorities), youth, women, the disabled, political parties, civil societies, religious leaders, traders, teachers' associations, and woreda and zonal leaders.¹²⁰ The ENDC also signed a memorandum of understanding with the Ethiopian Civil Society Organizations Council to work together.¹²¹

Finally, the government has expressly acknowledged the positive role that CDRMs can play in peace development activities. Recently, Prime Minister Abiy said "Ethiopians should understand that we can solve our issue by ourselves. Instead of listening from far better to respect our law, better to respect our own culture, better to respect our customs. If we could do that peace is achievable. I hope we will achieve that."¹²²

II. Regional and Local Level Efforts

At this juncture, although the Ethiopian Reconciliation Commission's period is expired, it is worth mentioning that there have been regional efforts. A prominent example of this effort is the Somali Regional State. The regional state has enacted a law that establishes a commission for Investigation of Violence and Reconciliation and Reparation of Victims in the Somali region.¹²³ The Somali regional state Commission is not alien to CDRMs. The establishment proclamation refers to CDRMs both directly and indirectly; expressly and impliedly.

Under Article 6, the enabling proclamation lists arguably five exhaustive objectives of the Somali Commission. One of the objectives of the Somali Commission is to "[e]stablish appropriate directions that can lead to reconciliation and forgiveness between communities and societies that cause violence and conflict between them."¹²⁴ Certainly, one of the possible appropriate directions that can be established to lead to reconciliation and forgiveness in communities and societies is the use of CDRMs. In conformity with this objective, the Somali Commission has been given the power to organize a council or a forum for members of criminals to confess or admit their mistakes.¹²⁵ One such forum could be CDRMs. Moreover, the Somali Commission is given the power of collaborating with "government and non-government actors aimed at achieving the objectives of the Commission and the performance of its functions"¹²⁶ and creating "programs and steps to enable retrieval of real reconciliation between the part of society that the atrocities that took place created hatred, malice, and lean sideways."¹²⁷ Furthermore, the power and functions of the Somali Commission are illustrative. In this sense, the proclamation under Article 7(22) provides that the Commission has the power to perform such other activities deemed necessary for the achievement of its goals. Accordingly, this provision gives the commission the power to use CDRMs, as it deems appropriate.

While the above roles are arguably indirect and implicit mentioning of CDRMs, the Somali Commission Proclamation devotes one specific provision to them. This provision of the proclamation reads as follows:-

Article 23:- Recognition of Alternative Dispute Resolution Mechanisms

The Commission shall not recommend the prosecution of a case resolved through the Alternative Dispute Resolution Mechanism if such case does not fall under Article 24 of this proclamation and the following requirements are cumulatively met:

The victim must have consented in writing, without inducement or any form of threat, to the resolution of his or her case through Alternative Dispute Resolution Mechanisms;

120 Ethiopian National Dialogue Commission Official Facebook Page, available at <https://www.facebook.com/EthioNDC>, Last accessed December 4, 2022.

121 Ethiopian National Dialogue Commission Official Facebook Page, (November 10, 2022), available at <https://www.facebook.com/EthioNDC/posts/pfbid02YpP7Nu9M6cULk7a8uGuRtjcnwRDJGv8Vjm3ra6t49e4k7mUoZS5UgBkNinQfWVp3l>, Last accessed December 2, 2022

122 CGTN Africa, *Ethiopian PM shares his views on peace talks with Tigray rebels*, (October 31, 2022), available at <https://www.youtube.com/watch?app=desktop&v=MZGVD-I3Ft4%EF%BF%BD> Last accessed December 3, 2022.

123 Establishment of the commission for Investigation of Violence and Reconciliation and Reparation of Victims in Somali region, Proclamation No. 205/2021, *Dhool Gazeta* (hereinafter Proclamation No. 205/2021).

124 Proclamation No. 205/2021, Article 6(5).

125 Proclamation No. 205/2021, Article 7(18).

126 Proclamation No. 205/2021, Article 7(19).

127 Proclamation No. 205/2021, Article 7(20). The Amharic version is clearer than the English version: የተፈጸመው ግፍና የመብት ጥሰቶች፣ ተንኮል ፈጻሚዎችና በጎጂ ማህበረሰብ መካከል አውነተኛ አርቅን ለማስመለስ የሚያስችሉ ፕሮግራሞችን እና አርምጃዎችን ይወስዳል ያደራጃል፤

At the time of giving the consent, the victim must have been fully aware of his or her rights to seek justice through the Commission as well as other formal justice institutions. If a dispute arises, the burden of proof about the victim's awareness of his or her right to seek justice through the Commission and other formal justice institutions is on anyone who wants the Commission to abstain from the prosecution of the perpetrator;
 The perpetrator must have acknowledged the abuses committed by apologizing and requesting forgiveness from the victim.

The above provision, in addition to expressly recognizing CDRMs as one means of dispute resolution, also lists some conditions to be observed. The conditions are: the crimes should not be those that are listed under Article 24 of the Proclamation,¹²⁸ the consent of the victim, the victim must be fully aware of his or her rights to seek justice through the Commission as well as other formal justice institutions, the perpetrator must have acknowledged the abuses committed by apologizing and requesting forgiveness from the victim. Concerning its organization, the Somali Commission also has an innovative approach toward CDRMs. The enabling proclamation gives the Commission the discretion to form an advisory council, which includes elders.¹²⁹ Finally, although the law got effective on July 19, 2021, there has not been much on the ground except for the appointment of Commissioners.

In addition to the formal effort made by the Somali Regional State, there have been other efforts made by different groups to negotiate peace and reconciliation both at a regional and national level. In this regard, one can mention the efforts made by (loosely-translated Mothers of Peace)¹³⁰ and the Multi-Stakeholder Initiative for National Dialogue.¹³¹

2.4. Customary dispute resolution mechanisms in Political transition: the experience of selected countries

As discussed above, there is no one-size-fits-all mechanism to come to terms with the past. Countries, by considering their local context, adopt various mechanisms. One such mechanism is applying CDRMs. As the practice indicates, since recent times, there is a tendency of leaning to use CDRMs as a means of healing past gross human rights violations and historical injustices.¹³²

The AUTJP explicitly recognizes the importance of customary norms and traditional justice mechanisms in addressing the legacies of violence on the African continent.¹³³ The policy defines what customary justice mechanisms mean. Accordingly, customary and complementary justice mechanisms are “the customary processes, including rituals, which communities use for adjudicating disputes and for restoring the loss caused through violence per established community-based norms and practices. They include

128 Article 24: Abuses or Violations that Should Always be Recommended for Prosecution

1. Regardless of whether the case was resolved through Alternative Dispute Resolution Mechanisms, the commission shall recommend the prosecution of anyone found to have committed any of the following abuses or violations:
 - a. Unlawful killings;
 - b. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - c. Enforced disappearance of persons
 - d. Enslavement;
 - e. Deportation or forcible transfer of an individual or group;
 - f. Torture;
 - g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - h. Genocide, crimes against humanity and war crimes as defined under the International law.

129 Proclamation No. 205/2021, Article 8(2).

130 Ethiopian Press Agency /የኢትዮጵያ ፕሬስ ትራንስፎርሜሽን ሰነድ አድቫኬት የአውቅና ሽልማት ተብረትተላቸው.(December 21, 2018), Official Facebook page, available at <https://www.facebook.com/ethiopianpressagency/posts/1203330183151661/> Lasted accessed October 12, 2022. See also, VOA, “የሰላም አምባሳደር” ተብሎ የተሰየሙ አዳዲስ ሰውታሪቶች በመቀሌ, (November 27, 2018), available at <https://amharic.voanews.com/a/mother-peace-ambassador-in-tigray-11-27-2018/4676738.html> last accessed October 12, 2022.

131 The Reporter, *Consortium plans national dialogue*, (October 10, 2020), available at <https://www.thereporterethiopia.com/10245/> last accessed October 12, 2022. See also, ENA, *National Forum for Dialogue Established*, (October 8, 2020), available at <https://www.ena.et/en/?p=17454> last accessed October 12, 2022.

132 Nomathamsanqa Masiko-Mpaka, *Traditional Transitional Justice Mechanisms – Lessons From Africa*, (Policy Brief Centre for the Study of Violence and Reconciliation, 2020), 1-12, 3.

133 The AU Transitional Justice Policy, 2019, 12.

customary adjudicative processes such as clan or customary courts and community-based dialogue. Such mechanisms form an important part of the AUTJP conception of TJ. They should inform and be used alongside the formal mechanisms to address the justice, healing, and reconciliation needs of affected communities with due regard to the ACHPR and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. African traditional justice mechanisms may assume the following characteristics: Acknowledgement of responsibility and the suffering of victims; Showing remorse; Asking for forgiveness; Paying compensation or making reparation; and Reconciliation.¹³⁴

The use of CDRMs or resorting to them in the TJ context is not an uncontested issue. Stated differently, there are some arguments both in favor of and against it. Those who support the use of CDRMs in the TJ context argue that they (Customary Institutions and authorities) have several cultural and practical benefits over top-down models. The most commonly claimed benefits include “they are more culturally salient; they are more cost-effective and expedient; they are closer to the victims of mass crimes and, therefore, are more reflective of and responsive to their needs; and they can facilitate reconciliation in communities torn apart by civil war.”¹³⁵ Customary Institutions are celebrated for being closer to the victims because they take place in the actual communities where mass atrocities have occurred, rather than in faraway capitals. Hence, starting the TJ process at the local level would activate civil society and encourages the active participation of survivors in the process, which can make the TJ process more meaningful and sustainable in the long run.¹³⁶ Adopting this would make the TJ process a “victim-centered approach,” wherein the response is given to the explicit needs of victims, as defined by the victims themselves.¹³⁷

There is also a concern from the perspective of the wisdom of imposing TJ in a top-down direction. This approach, for them, would not work in most non-Western societies, as the notion is not a homegrown model as it stands. Instead, as cited in Adam Kochanski, they argue for the use of customary law and other local forms of justice as a complement—or even as an alternative—to trials, TCs, and other institutional options.¹³⁸ The concern bases itself on the principle that top-down methods prioritize global norms and procedures over local conceptions of justice and the truth, which has generated “friction” in their on-the-ground applications.¹³⁹ Further, trials and TCs have been criticized for their sluggish pace, prohibitive costs, and for privileging a legal discourse that is often too complex for most victims to understand.¹⁴⁰ Moreover, in state-level TJ efforts, there is no adequate participation of local agencies like CIs and authorities.

Adam Kochanski, however, argues that the localization of the TJ process should be carried out in a very cautious manner. He submits that studies conducted in this area have two related shortcomings. He says “Most studies have viewed local TJ processes as judicial (or quasi-judicial), rather than political instruments, and have focused narrowly on the local context of these processes, thereby overlooking or even masking the power dynamics at play between different categories of actors (i.e., local, national, international) that have the potential to distort these processes.”¹⁴¹ It means that customary institutions may be used by different interest groups such as the government, elites, and foreign forces/actors as political instruments. These bodies may use customary institutions to shield themselves from responsibility and publish their narration rather than the whole truth. In simple terms, presuming the local institutions as if they are judicial (or quasi-judicial) organs might lead to a wrong conclusion. They are susceptible to the influence/pressure of politics and other possible interests. Moreover, there is a power dynamics at play between different categories of actors (i.e., local, national, and international). If due care is not made such power dynamics have the potential to distort the TJ processes.¹⁴² Be the above arguments as they may, as discussed below, some countries have used CDRMs to respond to egregious human rights violations of the past.

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¹³⁴ The AU Transitional Justice Policy, 2019, 4.

¹³⁵ Adam Kochanski, ‘The “Local Turn” in Transitional Justice: Curb the Enthusiasm’, *International Studies Review* (2018) 22(1), 1–25, 2.

¹³⁶ Adam Kochanski (2018), 5.

¹³⁷ Adam Kochanski (2018), 5.

¹³⁸ Adam Kochanski (2018), 4.

¹³⁹ Adam Kochanski (2018), 4.

¹⁴⁰ Adam Kochanski (2018), 4.

¹⁴¹ Adam Kochanski (2018), 2.

¹⁴² For detail discussion see Adam Kochanski (2018), 1–25.

The Gacaca Courts of Rwanda

Rwanda is not a homogeneous country but is mainly composed of two ethnic groups: Hutus and Tutsis. After the commission of the heinous crime, of genocide, the nation has struggled to account for the perpetrators. The case went up to the UN Security Council and established a tribunal named the International Tribunal for Rwanda in Arusha, Tanzania; while the Appeals Chamber is located in The Hague, Netherlands.

The primary aim of the Tribunal was to prosecute the so-called big fishes; “prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and neighboring States, between 1 January 1994 and 31 December 1994”.¹⁴³ In addition, Rwanda’s government, led by Paul Kagame and his RPF party, followed a retributivist approach - prosecution. Accordingly, it arrested tens of thousands of suspected génocidaires to put them on trial. However, the mass arrest, in due course, became beyond the capacity of the formal justice system and a cause for human rights violations. Consequently, Rwanda resorted to a CDRM - the Gacaca courts.¹⁴⁴ Loosely translated Gacaca refers to “justice amongst the grass” and is a tradition-based practice of informal arbitration, historically used to settle relatively minor disputes at the village level such as theft, property damage, land rights, and marital issues.¹⁴⁵ A total of 12,103 Gacaca courts functioned between 2005 and 2012 across the country hearing nearly two million cases.¹⁴⁶ Presided over by a panel of lay judges, the central objectives of these rural courts were to expedite the pace of trials, identify appropriate reparations, and advance the causes of national unity and reconciliation.¹⁴⁷ Gacaca courts did help Rwanda to deal with a tremendously high volume of offenders and ease the load the formal judicial system would otherwise bear.

Gacaca courts are not purely customary in the sense that it also uses the modern punitive legal system to deliver justice for victims of the genocide.¹⁴⁸ The Rwandan experience shows that CDRMs can be used together with the formal justice system as a means to mitigate the burden of the formal justice system. Furthermore, given the fact that the Tribunal was in Tanzania, the Gacaca courts brought justice closer to the people.¹⁴⁹

Overall, the Gacaca courts were celebrated as creative and a Rwandan solution to Rwandan problems.

The Rwandan experience of using CDRMs was not free of challenges and criticisms either. Different groups observed problems such as a lack of protection for the accused including defense counsel, lack of protection for witnesses, the expertise of the local judges,¹⁵⁰ and questions of corruption and impartiality. Moreover, there was a tendency of using the Gacaca courts as a means for exercising a victor’s justice because crimes committed by the RPF-led government were excluded from the Gacaca process. Owing to this, the Gacaca courts were considered by some as a mouthpiece of the government that champions the government’s narrative of the genocide than genuine, open, truth-telling and reconciliation.¹⁵¹ Hence, many people were dissatisfied with the process of Gacaca courts even if they supported its ambitions.¹⁵²

Hence, there was a tendency of viewing the Gacaca courts as another top-down, state-imposed imposition from Kigali. Because of this, sometimes attendance at the hearings was by force. Furthermore,

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¹⁴³ United Nations International Residual Mechanism for Criminal Tribunals, *The ICTR in Brief*, available at <https://unictr.irmct.org/en/tribunal#:~:text=The%20United%20Nations%20Security%20Council,1994%20and%2031%20December%201994%22> Lasted accessed October 4, 2022.

¹⁴⁴ For further reading, see, Bert Ingelaere, *The Gacaca courts in Rwanda*, in Luc Huyse and Mark Salter (eds), ‘Traditional Justice and Reconciliation after Violent Conflict Learning from African Experiences’, (International Institute for Democracy and Electoral Assistance 2008), 25-59. See also, Jennie E. Burnet, ‘The Injustice of Local Justice: Truth, Reconciliation, and Revenge in Rwanda’ (2008) 3(2) *Genocide Studies and Prevention: An International Journal*, 173-193.

¹⁴⁵ Nomathamsanqa Masiko-Mpaka(2020), 5.

¹⁴⁶ Mary Thibodeau, *Analyzing the Social Impact of Gacaca Courts in the Reconciliation Process in Rwanda*, 2020, Independent Study Project (ISP) Collection, 1-41, 6.

¹⁴⁷ Adam Kochanski (2018), 10.

¹⁴⁸ Adam Kochanski (2018), 5.

¹⁴⁹ Adam Kochanski (2018), 5.

¹⁵⁰ Adam Kochanski (2018), 5.

¹⁵¹ Adam Kochanski (2018), 5.

¹⁵² Adam Kochanski (2018), 17.

there was criticism by some that genocide is too serious a crime to go before ‘village courts’ and that the Gacaca process resulted in impunity for some groups of perpetrators and no justice for many victims.¹⁵³ The above deficiencies show that similar to the formal justice system, justice through CDRMs is not a panacea to address all TJ dilemmas. The Rwandan experience underlines the need to pay attention to how local TJ instruments, such as Gacaca, can work to reinforce the uneven distribution of power between national and subnational actors, and the effects of such imbalances on local justice provision.

I. The Mato Oput tradition of the Acholi people of Uganda

The conflict in Uganda was between the government of Uganda, led by Yoweri Museveni, and LRA, led by Joseph Kony.¹⁵⁴ The government has largely attempted to defeat the LRA militarily while paying little regard to the effects of its strategy on the population or to the wider factors that underlie the conflict.¹⁵⁵ However, the strategy used by LRA was brutal in the sense that it did not often directly fight with the government but with the Acholi people themselves.¹⁵⁶ In other words, the LRA has been targeting civilians, the majority being their tribe, the Acholi.¹⁵⁷ The group killed and disfigured suspected government supporters, and kidnapped young people to be used as child soldiers or sex slaves.¹⁵⁸ This, however, does not mean the government of Uganda was free from the plight. In the course of its conflict with the LRA, the government forces also committed brutal acts of repression against the civilian population.¹⁵⁹ The conflict in Uganda was complicated because it crossed northern Uganda’s borders and adversely affected the Central African Republic, the Democratic Republic of the Congo, and Southern Sudan.¹⁶⁰

Despite the various military measures taken by the government of Uganda, it was not able to control the conflict for long and capture the leader of LRA, Joseph Kony, and other high-level commanders. In addition, the government of Uganda tried using amnesty as a solution to end the conflict but in vain.¹⁶¹ Hence, it took the solution of referring the matter to the ICC in 2003.¹⁶² Moreover, since 2006, Uganda has been in the process of setting up a National Transitional Justice Policy.¹⁶³ The policy aims to resolve the various forms of violations that took place during the conflict.

In the process of finalizing the formal framework of the policy, the Acholi tradition of *Mato Oput* has taken center stage.¹⁶⁴ *Mato Oput* ceremony (drinking the bitter herb) of a clan and family-centered reconciliation incorporates the acknowledgment of wrongdoing and the offering of compensation by the offender and then culminates in the sharing of a symbolic drink.¹⁶⁵ In Uganda, many kinds of cases including homicide are resolved using traditional means like *Mato Oput*.¹⁶⁶ *Mato Oput* is a ceremony/ritual that is carried out in the event of an intentional or non-intentional killing. In the Acholi culture, when a crime such as murder or manslaughter has been committed, the two clans involved are barred

153 Nomathamsanqa Masiko-Mpaka (2020), 5.

154 International Crisis Group, *Northern Uganda: Understanding and Solving the Conflict*, (Report 2004), 1.

155 International Crisis Group (2004), 1.

156 International Crisis Group (2004), 6.

157 Payam Akhavan, ‘The Lord’s Resistance Army Case: Uganda’s Submission of the First State Referral to the International Criminal Court’ (2005) 99(2) *The American Journal of International Law*, 403-421, 407.

158 International Crisis Group (2004), 6.

159 Dustin N. Sharp, *Transitional Justice and ‘Local’ Justice*, in Dov Jacobs (ed.), *Research Handbook On Transitional Justice* (Edward Elgar Publishing), 2015, 1-18, 12.

160 Dustin N. Sharp(2015) 12.

161 See Cecilia Kituri, ‘Amnesty in Conflict Resolution: A Case Study of Uganda’s Lord’s Resistance Army (LRA)’ (Master Thesis, University of Nairobi, 2016). See also, Barney Afako, ‘Reconciliation and Justice: ‘Mato oput’ and the Amnesty Act’ (2002) 11 *Accord: An International Review of Peace Initiatives*, 64-67; and Payam Akhavan (2005), 409.

162 International Criminal Law, *ICC - President of Uganda refers situation concerning the Lord’s Resistance Army (LRA) to the ICC*, (Press Release, 29 January 2004), available at <https://www.icc-cpi.int/news/icc-president-uganda-refers-situation-concerning-lords-resistance-army-lra-icc> lasted accessed October 4, 2022.

163 This policy is not endorsed as a law yet.

164 Barney Afako (2002), 67. See also, Owor Lino Ogorai, ‘Traditional Justice: A significant Part of the Solution to the Question on Accountability and Reconciliation in Northern Uganda’ (2008) 6 *Uganda Law Reform Commission, Uganda Living Law Journal*, 1-12, 1.

165 Barney Afako (2002), 67.

166 Barney Afako (2002), 67.

from associating with each other until death compensation has been paid and *Mato Oput* carried out.¹⁶⁷

In addition to *Mato Oput*, individual cleansing rituals called *Nyouo Tong Gweno* (a welcome ceremony in which an egg is stepped on over an *Opobo Twig*) routinely take place whenever former LRA members return to the community. This welcoming ceremony ritual was often conducted by Women. This ritual is a healing and cleansing ceremony for child ex-combatants to help them reintegrate into the community.

Initially, the government of Uganda was disinterested in local justice. However, since the 2006–08 Juba Peace Talks between the Government and representatives of the LRA, local forms of justice taken as a cornerstone of a peace agreement by the government negotiators.¹⁶⁸ The change of stance may be related to the fact that the ICC investigates and prosecute both sides of the parties to the conflict. If used properly, in the ICC system, there would be no impunity. Hence, the government did not find this apposite for it. Hence, it is submitted that the government saw the CDRMs, arguably, as an appropriate means to escape responsibility. Generally, the argument is that officials both in Rwanda and Uganda did sway local TJ processes to sidestep their misdeeds.

Although the LRA leader failed to show up at the 2007 “Agreement on Accountability and Reconciliation,” the document identified several rituals that could be used to reconcile LRA returnees. However, it was vague on specifics and exempted the Ugandan army and rebel commanders indicted by the ICC from taking part in traditional measures.¹⁶⁹

Similar to the Rwandan traditional system, in Uganda too, there are some challenges while applying the customary dispute resolution systems. The primary challenge in the Ugandan case was resolving the relationship between the ICC and *Mato Oput*. It triggered a question of whether justice is served via the retributive approach of the ICC or the restorative approach of *Mato Oput*. The answer to this question is not straightforward as the conflict (LRA’s activities) went beyond the border of Uganda. Where human rights abuses have crossed borders, the applicability of one ethnic group’s CDRMs becomes uncertain.¹⁷⁰ Moreover, similar to the critics against Rwandan *Gacaca* courts, there was an argument that the *Mato Oput* practice was not compatible to address large-scale human rights abuses.

In both selected countries’ experience, restorative justice complements the retributive justice approach whereby the communities after the verdict and reconciliation have been allowed to live in harmony and peace – since it is a win-win approach.

167 Owor Lino Ogorai (2008), 1.

168 Adam Kochanski (2018), 15.

169 Adam Kochanski (2018), 15.

170 Nomathamsanqa Masiko-Mpaka (2020), 6.

CHAPTER THREE - FINDINGS

In this chapter, the report presents factual data collected from the selected regions, namely Somali, SNNP, Amhara, and Oromia regional states. To achieve the objective of the study, data was collected from different relevant stakeholders, including the customary authorities (elders/leaders), and government offices such as the MoP, Bureau of Justice, Bureau of Peace and Security, Bureau of Culture and Tourism, EIO, EHRC, and Courts. In addition, data was collected from other institutions like CSO. This chapter, in addition to a general description of the CDRMs in the research sites, shows their current status.

Accordingly, the collected data is presented by regions as follows.

3.1. Presentation of Data in the Sampled Regions

3.1.1 Somali Regional State

I. Profile

The Somali Regional State is primarily inhabited by the Somali ethnic group, but it is ethnically heterogeneous.¹⁷¹ Moreover, the Somalis in Ethiopia have social and political links with other ethnic Somalis in the neighboring countries, as in Somali culture, clan links are the most important social and political unit of an organization.¹⁷² By 2017, the Central Statistics Service estimated that the population in the Somali Region is around 5.7 million.¹⁷³ Much of the region is desert or semi-desert, its vast area. Almost 99% of the population is Muslim, and most of the population is pastoralist. The important Wabe Shebelle River runs through the region.¹⁷⁴

II. Primary Data Sources

Primary data sources from Somali Regional State are presented in Table 2 below disaggregated by institutions and research participants.

Table 2. Profile of primary data sources from Somali Regional State

Data Sources	Number of interviews
Customary Institutions (Clan Leaders)	13 persons/1 FGD
Bureau of Justice	2
Bureau of Culture and Tourism	2
Ethiopian Institution of Ombudsman	2
Ethiopian Human Rights Commission, Jijiga Office	2
Bureau of Peace and Security	2
Regional High-Court	2
Regional Supreme Sharia Court	1
Regional Truth and Reconciliation Commission	3
Civil Society Representative	2
Total	31

As indicated in Table 1 above, in the Somali regional state, a total of 29 individuals provided primary data through KII and FGD. Key Informant interview was conducted with 16 individuals from 7 different institutions and 2 FDGs were conducted with a total number of 13 participants. In terms of disaggregation

171 Ethiopia Peace Observatory, Somali Region, available at <https://epo.acleddata.com/somali/>, last accessed January 15, 2023.

172 Ethiopia Peace Observatory, Somali Region, available at <https://epo.acleddata.com/somali/>, last accessed January 15, 2023.

173 Ethiopia Peace Observatory, Somali Region, available at <https://epo.acleddata.com/somali/>, last accessed January 15, 2023.

174 EthioVisit.com, Somali, <https://www.ethiovisit.com/somali/73/>, accessed date January 18, 2023.

by gender, only 4 women were reached out while the vast majority were men.

II. Drivers of Conflict

According to the data collected from all research participants, conflicts across the Somali regional state are emanates from competition for scarce resources.¹⁷⁵ Specifically, competition for grazing and ownership of land is the primary cause. Regarding ownership of land, all the research participants indicated that it practically belongs to clans. In addition, conflicts in the region emanate from the absence of the rule of law, the absence of strong government institutions, and poverty.¹⁷⁶ According to the research participants, historical injustice and controversial narrations propagated by previous governments and the way these conflicts were handled are some of the causes of conflict.¹⁷⁷ Furthermore, political plots are among the drivers of conflict in the region. For example, there is a belief that the August 4, 2018, conflict in the region was the work of politicians.¹⁷⁸

III. Customary Institutions and Authorities

Nomenclature of the Institutions and Elders: Having spoken to leaders, government bureaus, and other non-state actors in the region, nobody has a quantified number of CIs in the region, neither the mandated Bureau of Culture and Tourism nor the CIs' council. However, most agree that there are about 38 major CIs/umbrella clan leaders who serve at the highest level of leadership for the sub-clans and the lower tiers in the hierarchy. They all said that all clans have their CDRMs. However, it was also pointed out by the research participants that there are no substantive differences between and among the CDRMs. The differences are mainly in the naming of the clan leaders and sometimes in the amount of compensation ordered as a remedy.

In the Somali regional state, the highest clan leader of CDRMs is known as either Gaarad, Ugaz, or Sultan. Despite the difference in naming, all play similar roles as a leader or 'Chief' in their respective clans. Currently, for instance, the coordinating role of the clan leaders rests upon an elder called Gaarad Kulmye¹⁷⁹, who is the 26th generation of one of the oldest clan leaders' families.

Source of power of Customary Authorities/Elders: Regarding the source of power of the leaders, all clans are more or less similar. The main source of power is heredity/lineage. As explained by almost all interviewees and FGD participants, the Somali CIs nominate and elect their leaders through unwritten laws or oral traditions locally called Xeer; however, the *Issah* clan has well-documented and developed bylaws. This means, there are two main sources of power in the Somali community. First, clan leaders may be elected based on their hereditary line. The second means to be a leader is through an election based on already determined criteria by the community. In the *Isah* clan, the upcoming leader is not known in advance. One of the reasons, according to the key informant, that the successor of the clan leader is not known in advance is to avoid power competition. The interviewee recalled instances when the *Issah* clan waited for some time without a clan leader as they were looking for someone who meets all the criteria. After assuming the clan leadership, he elects his advisors. In all Somali clans, leaders remain in power for their lifetime.

Composition and Structure of the Customary Institutions: In every locality of the Somali region, some elders serve their local area and their clan. The number of elders ranges from 3 to 11 depending on the size of the population and the area size of their jurisdiction equivalent to the Kebele administration. The second higher level is those who lead different sub-clans where the number of elder members ranges from 3 to 21 or more, at the level of Woreda or Zone. The third higher level is the 'Guurtis' which is the councilor's assembly at the regional level. Currently, in the Somali region, the Guurti¹⁸⁰ is a council with 51 elders who represent all zonal and woreda structures under their clans and sub-clans. This

175 Interview with Dr. Abdurashi Abdulahi, Bureau of Peace and Security, Planning and Policy Adviser/Director, October 17, 2022. See also, FGD with Clan leaders, October 10, 2022.

176 Interview with Dr. Abdurashi Abdulahi. Group discussion held on members of the Somali Regional State Commission for Investigation of Violence and Reconciliation and Reparation Compensation of Victims in the Somali region.

177 Interview with Dr. Abdurashi Abdulahi. See also, Interview with Kedir Mohammed, Peace and Security, Conflict Resolution and Prevention Director, October 17, 2022.

178 Interview with Kemal Abdulnasir, Security, Conflict Resolution Directorate Head, October 19, 2022. See also, Interview with Kedir Mohammed, Peace and Security, Conflict Resolution and Prevention Director, October 19, 2022.

179 The Jijiga airport 'Garaad Wulwal' is named after his Grand Parent!

180 Guurtis is being set-up as the highest traditional council, which could even be a parallel structure similar to the Regional Council, if the draft law is endorsed and accepted by the regional government.

assembly/Guurti is the highest leadership council wherein 5 members are women. This Council often works as an appellate body and discharges higher administrative functions.

Moving to the structure of the CIs, it has a pyramidal shape where diverse families/households form the next higher structure where the next higher structure jointly forms the next higher structure until the hierarchy reaches the fifth row in the ladder. In other words, CIs in the Somali region are established in a way that reaches from the lowest individual household level/family level to the highest level/collective umbrella social structure or clanship. As was reflected in the validation workshop by the participant from the region, in the Somali culture, there is an exceptional dispute resolution mechanism that is used during exceptional circumstances where the survival of the population is at risk. In this process, everyone is entitled to participate and there is no time limit for the conclusion of the consultation. The consultation ends when the agreement is reached. Moreover, for the consultation, there is no specific agenda determined in advance. The agendas are determined by the participants in the consultation.

The structure of the CIs in the Somali region is depicted diagrammatically below:¹⁸¹ -

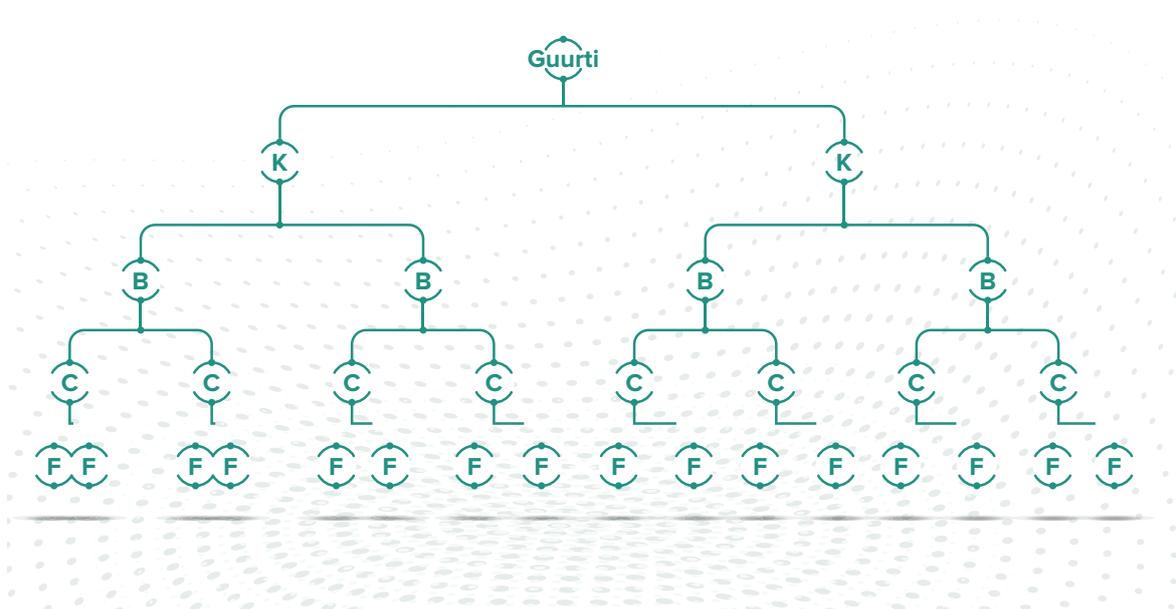


Diagram 2 Structure of the Somali Guurti

Type of cases CIs Handle (subject matter mandate): In Somali culture, CIs are highly accepted to resolve conflicts of both civil and criminal matters/offenses, within and among different clans. Among respondents and discussants of the study, all acknowledge the capacity and influences of clan leaders at all levels to resolve, prevent, and warn against conflicts.¹⁸² To be specific, in Somali Region, the different clans use CIs and Sharia courts to resolve conflicts from simple offenses such as insults to serious crimes, like homicides. According to a clan leader in the Somali Regional State, customary authorities handle all kinds of cases including homicide, property damage, theft, and other cases submitted by any party including the government or individuals. The conflict could be within a clan, among clans in Somali Region, with other ethnic groups in the region and other ethnic groups in other regions. In terms of the scope of the leaders' power, almost all interviewees and FGD participants confirmed that there is no case, that is beyond the scope of the CIs.

Having the rough estimates of the proportion of cases that the CIs handle in comparison to the modern justice system, except for one high-level court official (who said 50- 50), all other FGD discussants and

¹⁸¹ Description:-

- Guurti: This is equivalent to the regional council which represents the Somali Region
- K - Kabil: is equivalent to a clan/tribe, which has one Gaarad, Ugas or Sultan as the head of the Shimagles.
- B - Bell: is equivalent to a sub-clan
- C- Ches: is equivalent to a village
- F- Family: is equivalent to a household

¹⁸² Key Informant from Truth and Reconciliation Commission in Somali Regional State.

interviewees agree that the CIs handle 80 – 90% of all cases in the region¹⁸³. They claim that, although it needs extensive research, elders play the strongest role in resolving conflicts. As a result, they claim that the number of prisoners in the region is small in number.¹⁸⁴ Likewise, the research participants also alluded that the crime rate is small in the region possibly because of the active role of CDRMs.¹⁸⁵

A story from one case depicts how the elders in Somalia handle cases in the region and even beyond the region.

Text Box1: Imprisoned In Dire Dawa Prison Center and Freed In Jigjiga

There was one person who was sentenced in Dire Dawa with other criminals for committing homicide. After a while Shimagles from Somali Region asked Oromia Region Police and the formal legal system law enforcement and settled the case in the traditional legal procedure. The criminal was transferred to Somali Region, compensation was paid and the criminal was released. Then that criminal went back to Dire Dawa and visited other perpetrators who committed crimes with him, sentenced with him and serving their sentence. This incident created negative image among the prisoners and the public. The public assumed that criminal who committed crime in other regions are released unlawfully in Somali Regional State. This situation counterproductive for the legitimacy of the traditional conflict resolution institutions in Somali Region in the eyes of people in other regional states.

The Procedures of Conducting the Conflict Resolution Mechanisms: In Somali traditions, conflicts are managed in a manner that starts with an immediate interference of an elder to halt the violent conflict from a further escalation in a cultural set-up of elders group through “ergoo”/mediator. According to Peace and Security Bureau Informant, immediately after conflict happens, the victim, his family, or another person reports to a clan leader. Soon after the clan leader gets information, he together with his advisors starts the process of conflict resolution activities by reaching out to the conflicting parties or families and assessing the types of conflict, damages, or losses. Then the clan leader sets a platform for conflicting parties or families to hear their case.

With regards to elders who intervene in handling the case, if the conflicting parties are from the same clan, elders from another clan would be assigned to handle the case. But if the parties are from a different clan, a third party from the third clan intervenes to serve as “ergoo”. The involvement of the ergoo cools down the parties and prevents the parties from taking revenge measures. The primary function of an ergoo is to listen to the concern of the parties. Immediately after the violence stops, this third party starts the reconciliation process. In the Somali tradition, there is a saying ‘ኢርጎ የሚሰጠውን ደብላል የሚነገርውን ደሰማል’ (loosely translated an ergoo eats whatever given to him and listen whatever is told to him). In the process, the ergoo are not allowed to speak up. This is so to prevent them from uttering anything that could make the parties emotional and upset in the process.

Following the submission of a case, a clan leader and his team call the perpetrator(s) and the victim(s) for mediation. Somali Region elders group indicated that, in case of homicide, the conflict resolution process starts immediately before the body of the deceased is buried. The families of the wrongdoer often send money to cover the cost of the funeral ceremony including a burial shroud for the deceased. Gradually, the conflicting parties have the oath ceremony using the words from the scripture, Quran, where they promise not to break the conflict resolution process initiated by elders. Elders also perform an oath not to disclose the secrets of the conflicting parties. Once the elders assume their role, conflicting parties will be heard with their evidence and witnesses.

Mediation and investigation are performed by talking to witnesses, making observations of the crime scene, or gathering other pieces of evidence that show the damage caused by the perpetrator(s), to understand the nature and scale of the damage due to the conflict. To make a fair decision, the clan leader with his team also take lessons from previous decisions made on similar cases and benchmarks from other clans. With this information, the clan leader with his advisors makes decisions. An informant from the Security Office indicated that CIs in Somali Region use norms and customary laws accumulated from long-lived experiences in the region. These institutions focus on reconciliation and healing as

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¹⁸³ Observations in comparison with other regions is reflected in the analysis section.
¹⁸⁴ Gaarad who is the leader of the Shimagles’ in Somali Regional State
¹⁸⁵ Interview with Abdulnasir Bereket, Ethiopian Human Rights Commission Jijiga branch head, October 17, 2022.

they lack deterrence in their implementation.

After hearing the level of damage or loss, elders make decisions on the types and amount of compensation, establishing marriage relationships between conflicting parties where the victim marries the offender's sister or very close relative. In some extreme or repeated cases, the offender or his clan could be outcasted from the clan.

Finally, elders order the compensation to be effected. These compensations are paid not by the perpetrator(s) but it is shared among the clan members and paid to the victim. In case of payment of such compensation, the clan of the wrongdoer is the insurer through sharing compensation among the clan members.

Once the elders make decisions, the perpetrator is obligated to accept the decision. If in case he does not agree to the verdict given by the elders, he has the right to request for appeal. The appeal could be adding additional elders or taking the case to the next higher-level elder group. Again, if he is not satisfied with the decision of the next higher-level elders, he may take the case to the highest level (the regional Guurtis – councils), where he has to accept the final decision to be made whether it is in favour or against his will. Finally, the process ends through a ritual called 'Duaa' / prayer, followed by monitoring of the execution of the decision.

One point that should not be left unmentioned is that the clan leaders who participated in the FGD pointed out that the CIs and authorities' work is not limited to the geographical boundary of Ethiopia. They also work with other Somali ethnic groups irrespective of the national border of Ethiopia. For example, when the compensation is too much, then the clan leaders reach out to Somalis in neighboring countries for support. Moreover, whenever there is something serious like an election is planned, they all discuss issues as one Somali.

Somali clan leaders' conflict resolution process is presented in bellow diagram.



Diagram 3: Somali elders' conflict resolution process

Remedy: In the Somali region, the remedy to the victim is given by way of compensation. To this end, the customary authorities refer the Sharia. Often the compensation is expressed in terms of camels. For example, for the intentional murder of another person, it is 100 camels. This is what is provided in the Sharia. However, the customary authorities take the reality on the ground and make the necessary mitigation such as taking earlier prices of a camel to make the compensation affordable to pay in cash. After the amount of the compensation is determined, all the research participants mentioned that the Somalis use a clan insurance system through collecting contributions for the payment among the clan members where the wrongdoer belongs.

Rituals: It is by a 'Duaa' /Prayer that the conflict resolution process is started/opened. Similarly, after the conclusion of a case, the reconciliation process is concluded with the prayer/ 'Duaa'.¹⁸⁶ According to the clan leaders who participated in the FGD, both at the beginning and conclusion of the resolution stages, religious teachings like statements made by God about forgiveness and reconciliation are preached. The Executive Director of Relief and Development Organization, a local NGO in the Somali Region observed a ritual ceremony for serious cases involving the slaughter of animals as a sign of not having retribution between the wrongdoer and the victim.

186 FGD with clan leaders, October 18, 2022.

Follow-up and enforcement Mechanisms: Once the final verdict is given by the elders/Guurtis, it is a must for the perpetrator to implement the decision. If the perpetrator is declined to implement, then there are measures to be taken. These measures could range from social sanctions like out-casting from one's tribe, making the person clan-less to physically tying the person with a rope to a tree for a long-time. Nonetheless, they consistently witnessed that nobody has ever declined to implement the decisions of elders.

3.1.2. SNNP Regional State

I. Profile

The region has a diverse ethnic composition that had long existed in one or more than one administrative structure. It borders [Kenya](#) to the south, Kenya and [South Sudan](#) to the southwest, the [South West Ethiopia Region](#) to the west, the [Oromia Region](#) to the north and east, and the [Sidama Region](#) to the east. Based on the 2012 (EFY) figures from the Central Statistical Agency (CSA) of Ethiopia, the SNNPR has an estimated total population of 20,551,606 consisting of 7,916,042 men and 8,011,607 women. 91.1% of the population is estimated to be rural inhabitants, while 8.9% are urban making the Southern Nations and Nationalities Peoples Region the most rural region in Ethiopia. With an estimated area of 112,343.19 square kilometers, this region has an estimated density of 132.65 people per square kilometer. According to the 2012 (EFY) Health and Health Related Indicators published by MoH, SNNPR has 79 Hospitals, 731 Health Centers, and 3975 Health Posts.¹⁸⁷

Religion protestant (55.5%), Orthodox Christians (19.86%), Muslim (14.12%), Traditional religions (6.6%), Roman Catholics(2.4%), and Other religious affiliations(1.5%). The region has the greatest number of ethnic and language groups, including Gurage, Hadiya, Kambata, Wolayta, Sidama, Gamo, Goffa, Ari, Sheko, and the pastoral/agro-pastoral Hamar and Surma of the Omo River area. It has arable highlands (dega), midlands (woina dega) and lowlands (kolla), and pastoral rangelands (bereha). The region is a relatively fertile and humid midland that contains the densest rural populations in Ethiopia. The majority of woredas have more than 100 people per square kilometer, many have over 200 ppkm², several over 300 ppkm², and one, Wenago in Gedeo Administrative Zone, has as many as 600 ppkm².

Although there are different and diverse tribal groups in the region, the study has benefited to meet and understand two widely known CDRMs. These two CDRMs are the Gamo 'Ingisso' and the Gurage 'Joka' CDRMs. Hence, in the SNNPR, data is collected only from these two dispute resolution mechanisms. To achieve the objective of the study various stakeholders have been interviewed and FGD was conducted. The summary of the KII and FGD is presented in the data sources profile table xxx below.

II. Primary Data Sources

Primary data sources from SNNP Regional State are presented in Table 3 below disaggregated by institutions and research participants.

187 Ministry of Health, https://www.moh.gov.et/site/SNNP_Regional_Health_Bureau last accessed January 15, 2023.

Table 3:- Profile of primary data sources from SNNP Regional State

Data Sources	# of interviews
Customary Institutions ('Iginththo' and Joka Shimagles) Ye Shimagillina Street)	15/ 2 FGDs Gamo/ Joka
Bureau of Justice	2
Bureau of Peace & Security	4
Bureau of Culture and Tourism	1
EIO, Hawassa Office	1
EHRC, Hawassa Office	1
Regional High-Court/Gamo Zonal High-court and Wolkitie	2
Regional Supreme Sharia Court	2
None- State Actors/CSOs	2
Total	30

Table 3 above depicts primary data sources in the SNNP regional state where a total of 30 research participants provided primary data through KII and FGD. Key Informant interview was conducted with 15 participants from 8 different institutions and 2 FGDs were organized with a total number of 15 discussants. In terms of disaggregation by gender, researchers could not get women participants.

III. Drivers of Conflict

Similar to other regional states in Ethiopia, the SNNPR is not free from conflicts. These conflicts erupt because of different factors. As per the discussions made with informants¹⁸⁸, the drivers of conflicts are numerous and broadly categorized as internal and external. Research participants also characterized drivers of conflicts as political, social, economic, and cultural (harmful practices) in the region and beyond.

In the context of political factors, the research participants identified the root causes of conflict as boundary questions and identity questions for self-administration. They said the demand for self-administration is related to the quest for upgrading the administrative hierarchy to woreda, zone, and regional status from the previous lower administrative hierarchies at each level. Moreover, unsettled boundary relations within the regional administrative structure and neighboring regions like the Oromia regional State are sensitive issues that need due attention. These lingering issues have been a source of conflict in the SNNPR.

Similarly, the research participants disclosed that the lack of good governance is a source of conflict in the region. This is because the government is not responsive enough to the various demands for infrastructure and doing favor to politically influential and prioritized groups which brings inequality among the ethnic groups in the region. In addition, there are internal political struggles among different ethnic groups aggravated by deposed political leaders who conspire and create disputes among ethnic groups in the region. In this regard, research participants confirmed that deposed politicians are often behind most of the conflicts in the region. Participants were cognizant that the absence of adequate constitutional protection for non-titular ethnic groups is among the factors that contributed to conflicts in the region, in most areas of the region. Furthermore, research participants identified smuggling in persons and arms/weapons are sources of conflict in the region. They also witnessed instances where the smuggled weapons were used for robbery purposes.

Moving to the economic factors, the research participants noted that conflicts are caused by competition for resources including; grazing land, water, and minerals, among others. Moreover, poverty and unemployment are factors that should not be left unmentioned. When people who belong to other ethnic groups and areas become successful economically, they are becoming a target by the local community or there is an unhealthy attitude against them. They are being considered as if they are taking something that belongs to the local community/ethnic group.¹⁸⁹

188 Interview made with Experts in the Bureau of Peace & Security, Mr. Getahun Mengistu, Director for Peace Building, Mr. Melaku Kassa, Senior Expert for Peace Building, Mr. Tesema Ashenafi, Peace Building and Research Expert, Mr. Wogene Getachew, Director, for Religious Affairs Directorate, 2 Nov. 2022; at Hawassa Town. See also, Interview with Kassahun Bekele, Resources Center for Sustainable Change – RCSC and Destaw Asmare (Project Coordinator), November 4, 2022.

189 Interview with Chubaro Chondoro, Gamo Zone High Court President, November 1, 2022.

The other category which triggers conflict is social factors. In this category, the research participants stated that arguably the social fabric of tolerance and living together is degrading. It was mentioned that an ill attitude is being grown against those people or ethnic groups who come from other parts¹⁹⁰ of the country and other places within the region. In other words, there is a growing negative sentiment towards other ethnic groups. Although it needs further research, this could be the manifestation of the ethnically mobilized and driven politics of the country. The other factor that can fall under the social factor is religious extremism. According to the research participants, there is a growing threat of intolerance towards other religious groups where unhealthy competition is being witnessed among religious sects in the region. There are instances where religion-based conflicts have happened in the region.¹⁹¹

Finally, the last category of root causes of conflict is categorized as cultural factors. In this case, the research participants have mentioned local harmful traditional practices like abduction, and other issues like excessive use of alcoholic drinks are among the root causes of conflict in the region.

IV. Customary Institutions and Authorities

The SNNPR region has one of the oldest customary conflict-resolving, peacebuilding, and advising institutions in each of the societies and communities. Although most of the CIs share basic commonalities in their characteristics, this study limits itself to two of the CIs. These are the Gamo peoples' '*Iginththo*' CDRMs, and the Gurage Peoples' "*Ye Joka*" CDRMs' conflict resolution mechanisms.

Both CIs serve their population and a range of neighboring communities as well. For instance, the Gamo society has covenants¹⁹²/promises made between their communities as well as with the neighboring communities to prevent future conflicts in borderlands. For instance, some of the traditional agreements are made with '*Burjji*', '*Kembatta*', and '*Wolaita*', among others. Hence, discussions when conflict arose based on this covenant that has been made many decades back.¹⁹³ In this case, if the community encounters clan-based conflicts, then the elders of the two clans remind the covenant.

The Gamo peoples' '*Iginththo*' and Gurage Peoples' "*Ye Joka*" traditions are the dominant CIs in the respective peoples and localities which play roles in conflict resolution and peacebuilding along with the government apparatus in the areas.

Different thematic issues have been assessed to have a deeper understanding of CIs in societies. To this end, issues of nomenclature of the institutions and elders; source of the power of customary authorities/elders, composition and structure of the CIs, composition of membership, type of cases CIs handle, their subject matter mandate, procedures CIs follow in resolving conflicts, the remedy they provide, rituals performed, and follow-up and enforcement mechanisms to sustain peaceful co-existence as follows.

Nomenclature of the Institutions and Elders: As the study is focusing only on the selected two CIs, the discussion of nomenclature and leadership focuses on the two institutions as briefly presented hereunder.

Concerning the Gamo people, the structure of the community is based on 42 '*Dere*'¹⁹⁴ /states which they call their customary authorities by different names. Out of the 42 '*Dere*'; 31 are led by '*Kawoo*', and the rest of the 11th '*Dere*' are led either by '*Halaqa*' or by '*Daao*'. The '*Dere*' basically is a defined territory along with some lineage or clan-based system.

In line with '*Dere*', The Gamo society has a customary conflict resolution mechanism or justice system called '*Iginththo*'. The '*Iginththo*' system uses '*Dubbusha*' as its assembly/bench for public hearing and judgment.¹⁹⁵ Conflicts/disputes which have limited scope (like insults, small property theft, family

¹⁹⁰ Xenophobic thought is known to be a negative sentiment against strangers and foreigners in a different country. However, the case in point is a sentiment due to the ethnic difference within the nation.

¹⁹¹ For recent inter-religion conflicts in the region and other region, see, statement of United Nations Office of the High Commissioner or Human Rights, Inter-religious clashes in Ethiopia, May 7, 2022, available at <https://www.ohchr.org/en/statements/2022/05/inter-religious-clashes-ethiopia> last accessed January 14, 2023.

¹⁹² FGD with Gamo Shimagles Arbaminch Town, October 31, 2022.

¹⁹³ Interview with Shiek Abrar Shifa, Sheria High Court Head Judge, SNNPR, November November 3, 2022.

¹⁹⁴ Interview with Mr. Zenebe Beyene, Researcher on Gamo traditional and cultural institutions, November 1, 2022, Arbaminch town. He believed that some of the new Deres are missed from the current number of Dere and recommends updating of the Dere classification.

¹⁹⁵ FGD with Gamo Shimagles, October 31, 2022.

issues, etc.) are resolved by ‘*Shimagles*’ whereas ‘*Haleqa*’, ‘*Danna*’, and “*Kawoo*” resolve conflicts/ disputes of higher scale at the “*Dubbusha*”, a public gathering place in Gamo society. In other words, if the matter is not solved by ‘*Shimagles*’ through the ‘*Shimiglina*’ process, it would appear before ‘*Halaqa*’, ‘*Danna*’, and ‘*Kawoo*’.¹⁹⁶ In the process, there are elders called ‘*Ogades*’ who connect one Gamo village, Gamo clan, or Gamo ethnic group to other ethnic groups in the area. ‘*Ogades*’ are like diplomats. ‘*Ogade*’, ‘*Kere*’, and ‘*Ganna*’ can perform the functions of ‘*Murra*’, messenger, but the reverse is not possible.¹⁹⁷ Nomination of ‘*Shimagles*’ in Gamo society involves both heredity/lineage and election based on personal qualities.

The Gurage Zone societies (*Gurage*, *Kebena*, *Mareko*) ethnic groups have had their own TDRI since earlier times. According to Gurage *Shimagles* FGD participants, the nomination of ‘*Shimagles*’ is based on their wisdom, respect for the person by the community, and other personal qualities. Of all the qualities, FGD participants indicated that the communities’ main criteria in the selection of ‘*Shimagles*’ is wisdom. These ‘*Shimagles*’ emphasized the importance of wisdom recalling their communities’ saying, “A ‘*Shimagle*’ without wisdom is a judge without legal codes.” Unlike the Gamo society, the Gurage Zone societies in general and the Gurages, in particular, do not use hereditary or lineage as criteria to nominate “*Shimagles*’ rather personal wisdom plays a pivotal role.

Source of Power of Customary Authorities/Elders: According to research participants, the main source of power for elders/’*Shimagles*’ in the Gamo society is a nomination based on both lineage/heredity and election. In the first mode, the highest rank ‘*Kawoo*’ leadership is assumed usually through lineage from a father to an elderly son. The same is true of the ‘*Ogade*’¹⁹⁸. In general, *Kawo*, *Ogade*, *Kere*, and *Ganna* are titles inherited by blood. The ‘*Kawoo*’ position is a lifetime authority unless exceptional incidents happen that force the leader to lose his position. Exceptional circumstances could be breaking/ trespassing the prohibited or known deeds labeled as ‘*Gomes*’, *curses* in the society. According to an informant, who is also a Cls researcher, in some localities, ‘*Deres*’ and the ‘*Ogadee*’ have a three to seven years term of services. The second means of selecting elders in the Gamo society is using some yardsticks including the wisdom of an elderly person, the judgment shown in their daily life, etc.¹⁹⁹

Composition and Structure of the Customary Institutions: As per the informants and FGD discussants, conflicts in the Gamo society are dealt with at five different levels. The first conflict resolution begins at a family level where the father and additional kins (as the case may be) are responsible for resolving the conflict or dispute that happened at “*Gadho Debusshaa*” at the home/family level. If the case is not resolved at this stage, it can be taken to the next higher level called “*Guta Dubbushaa*”, at the village level to get a remedy and appeal up to the highest level. The highest two “*Dubbushas*”, ‘*Dere*’ and ‘*Sub-Dere*’ are managed by *Kawo*, *Haalaaqaa*, and *Daannaa*²⁰⁰. The *Qommo*/Clan *Dubbusha* is managed by *Koyirafire*, the head of the clan. These authorities are backed by *Ogaade*/*Kere*/*Ganna*.

The least authorized person in Gamo society’s TI structure is the *Muraa*/ *Ofalle*/*Tooquame*²⁰¹, who is appointed as a messenger by the rest of the higher-level leaders.²⁰² In general, Gamo society conflict resolution structure has different levels of ‘*Dubbusha*’, public hearing places at different levels, including ‘*Debo Dubbush*’ (family level), ‘*Guuta Dubbusha*’ (village level), “*Dere Dubbush*” (higher than a village), and ‘*Gamo Dubbusha*’ (whole Gamo ethnic group level). The number of ‘*Kawoos*’, ‘*Haalaaqaas*’, and ‘*Daannaas*’ depends on the number of villages under them. ‘*Kawoos*’ are supported by ‘*Maaga*’²⁰³ while ‘*Haleqas*’ are supported by ‘*Murras*’ in the process of conflict/dispute resolution. Diagram 3 below depicts the levels of Gamo ‘*Dubbusha*’.

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¹⁹⁶ FGD with Gamo *Shimagles*, October 31, 2022.

¹⁹⁷ FGD with Gurage Zone *Shimagles* at Wolkite, November 7, 2022.

¹⁹⁸ *Ogade* is a rank given to a person who is serving as diplomat when there is an issue of one *Dere* with another. He acts like the diplomat in the *Dere*. Sometimes this name is also used interchangeably as *Kere* or *Ganna*.

¹⁹⁹ FGD with Gamo *Shimagles*, October 31, 2022.

²⁰⁰ Interview with Mr. Zenebe Beyene.

²⁰¹ Interview with Mr. Zenebe Beyene

²⁰² Interview with Mr. Zenebe Beyene

²⁰³ ‘*Magga*’ as defined by Zenebe, is religious and administrative head.

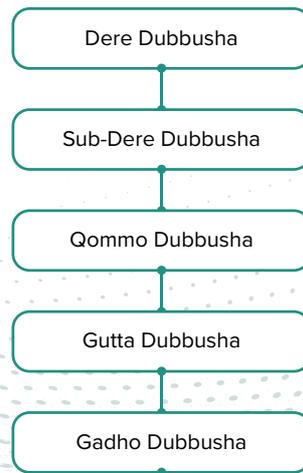


Diagram 4: Shimglina structure in Gamo Community

Sources: From the FGD with elders and Zenebe Beyene interview

According to Gamo ‘*Shimagles*’ FGD participants, the number of ‘*Dubbushas*’ in a woreda reaches up to 90. This entails, the TI is accessible to the public. Moreover, it has acceptance by the community even better than religious leaders. In terms of inclusivity, the research participants confirmed that relatively the ‘*Dubbusha*’ is inclusive as it participates in different ages, both sexes and people from other ethnic groups as observers.

Although there are similarities between the hierarchies of CIs in Gamo and Gurage zone “*Cultural Shego*”, there are some differences in the size and levels of the structure and the number of members at each stage between the two CIs, as presented in diagram 4 below.

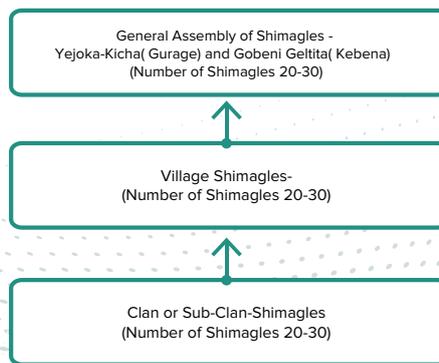


Diagram 5: Gurage Shmglina Structure

Source –Gurage Zone Shimagles FGD at Wolkite, November 7, 2022

Gurage Zone Shimagles group discussants pointed out that settling disputes starts at the village level where the number of ‘shingles’ selected for the case ranges from 20-30. If the conflict is easier and could be settled by them they settle it at the village level. If they find that the case is beyond their capacity or the victim is not satisfied, the case is taken to the higher level, clan, or sub-clan ‘*Shimagles*’. Similarly, the sub-clan ‘*Shimagles*’ analyze the case and if they can settle it they can follow the procedure and settle the case. If they cannot settle it, or if the victim is not satisfied, the case is submitted to the highest level ‘*Shimagles*’ who judge at “*Yejoka Kicha*”. As indicated in the diagram from Gurage above, cases move from the lower strata to the upper strata based on the difficulty level of the case or the

dissatisfaction of the disputants. This shows that like the CIs in Gamo, Gurages also have an appeal mechanism for settling disputes.

Gurage Zone has established GurageElders “*Shengo*”(Committee) with members from Gurage, Kebena, and Marko peoples residing in the Zone. The ‘*Shengo*’ has a management organ including General Assembly, Executive Committee, and Internal Auditor. General Assembly includes ‘*Shimagles*’ elected during the establishment of the ‘*Shengo*’ for peoples in the Gurage Zone. The General Assembly, in turn, elected a Chairman and Vice Chairman. The Executive Committee also has a Chairman, Vice Chairman, Secretary, and 12 members elected by the General Assembly.²⁰⁴ With this arrangement, Gurage Zone is in the process of formalizing the TI as in the case of the Somali Region. As the *Shengo* is newly established and hence too early to evaluate the practical peacebuilding efforts it played, it is presumed that it will play a positive role in settling the probable conflicts that could arise amongst Gurage, Kebena, and Mareqo peoples in an amicable away.

As per the discussion with the Gamo elders, the composition of the elders is determined on a case-by-case basis. When cases involve more than a village ‘*gutta*’, it involves all segments of the population to provide their observation during the ‘*dubbusha*’ hearing session. Elders, youth, grown-ups, women, possible guests, etc. do participate in the process.

During the discussion at the ‘*dubbusha*’, it could be the ‘*Kawoo*’, ‘*Bitanne*’, ‘*Maga*’ or so who sits to resolve the case, and the gathering will be given the chance to speak and contribute their part for the consideration of the leadership, before making a judgment, i.e., a kind of public hearing.²⁰⁵ If the resolution given by ‘*Bitane*’/‘*Shimagle*’, or ‘*Maga*’ seems flawless, people gathered will be quiet which is a sign of acceptance by the participants but if the participant at the ‘*dubbusha*’ or other hearing sites feels the decision is not right, especially the women signs loud saying “*Elelele, Elelele,*), the participants may murmur or walk-away. In that case, the hearing will be stopped to collect more evidence on the cases to better understand them and give a fair resolution.

Concerning ‘*Shimagles*’ in Gurage Zone, they are elected by people at village, sub-clan, or clan levels. According to Gurage Zone ‘*Shimagles*’ FGD participants, the total number of ‘*Shimagles*’ elected by the community ranges from 20-30. However, the number of ‘*Shimagles*’ for a case may be either 7, 9, or 11 where at least one *Shimagle* from the structure leads the process. The number of ‘*Shimagles*’ is made odd number to make decisions by vote easy. Selection of an equal number of ‘*Shimagles*’ for a case is made by victims and perpetrators where the victim elects ‘*Shimagles*’ from the side of the perpetrator and in reverse, the perpetrator elects ‘*Shimagles*’ from the side of the victim. Then the head ‘*Shimagle*’ from the main structure makes the number of ‘*Shimagles*’ either 7, 9, or 11.

Type of cases CIs Handle (subject matter mandate): According to the discussion made with the Gamo elders as well as the informants from different offices, customary conflict resolution in Gamo society was dealing with both civil and criminal matters that involve simple individual cases to community-level conflicts. However, due to the prohibition by the law to deal with criminal matters, the elders in the Gamo society have stopped to deal with criminal matters, at least officially. Nonetheless, according to a higher official²⁰⁶ in the zonal court, he is of the view that, if ‘*dubbusha*’ is handled by appropriate elders and procedure, the court would not have been needed in the society.” He also indicated that though there is doubt as to how the cases are being handled, there is still respect for CIs.

In connection with the type of cases handled, the lower courts are encouraging all cases of civil matters and simple offenses of criminal cases to be resolved and reconciled by CIs /elders.

Ye Joka “*Shimagles*” in Gurage Zone handles many cases except abduction, rape, and homicide. In homicide cases, while ‘*Shimagles*’ do the reconciliation only to bring peaceful co-existence between the families of the victim and the perpetrators, the homicide case is handled by the formal justice system. The reconciliation reached via the ‘*Shimagles*’ could be used as a mitigation factor, and during another post-conviction process like pardon. The assessment both in Gamo and Gurage show that CIs do handle civil cases but they are not resolving criminal matters at least officially except for a mere reconciliation between disputants and their families.

204 Gurage Zone Cultural “*Shengo*” Establishment Document, 2014 E.C.

205 FGD with Gamo *Shimagles*, October 31, 2022.

206 Interview with Mr. Chubaro Chondoro, November 1, 2022

Procedures of conducting Conflict Resolution: According to a key informant, elders in the Gamo society resolve conflicts using an oral tradition called ‘Woga’ which is an unwritten law, but it is open to discussion and amendment every seven years.²⁰⁷ In the case of violent conflicts, the application of ‘Woga’ in the resolution process starts through “Tuge” roughly translated as a stop where a person especially a woman intervenes and requests a violent conflict to stop.²⁰⁸ Women are much respected in Gamo culture and a woman uses that respect to stop violent conflicts. When facing such an incident, she unties her belt called “Mekenet” and begs the conflicting parties to stop fighting.²⁰⁹

Before resolution starts, ‘Shimagles’ warn the perpetrator and victim to be honest and speak the truth as the oath they say will bring Gome (curse) to them, their family, and the whole clan members. ‘Shimagles’ also guide the perpetrator and victim to utter the oath based on the culture of the society.

There are procedures for different stages²¹⁰ of conflict resolution in the Gamo society. But the case presented below would show after conflict just happened.



Diagram 6: Conflict Resolution Process in Gamo Society

In case of unidentified offenses by Gamo society, ‘Shimagles’ sit on two sides and let the public in the gathering walk between the Shimagles.²¹¹ Walking between the ‘Shimagles’ and hiding the truth is considered as breaking an oath that brings a curse to the families of those who hide offenses they committed. As a result of this belief, no one can go through without telling the truth for fear of the consequences believed to happen. This is used to identify offenses committed in darkness with no witnesses.²¹² Once the truth is exposed, the ‘Shimagles’, discuss among themselves and pass judgment on the types of compensation and other punishments as remedies. For the conclusion of the conflict/case, there is a ritual.

Concerning conflict resolution procedure in the Gurage Community, the resolution process depends on the nature and the scale of the conflict. When there are conflicts at a household level, they are resolved by the head of the family/ father. If the father cannot solve it, he invites a grandfather to solve the dispute. If the dispute is not resolved by the grandfather, then neighbors are invited to resolve it.

In case of violent conflicts in Gurage societies, ‘Shimagles’ hold green grass or other symbolic items and intervene saying “Gurda(stop) to the violence.²¹³ If the perpetrator or victim does not obey ‘Shimagles’ and continues the violence, the one who continues the violence is considered defeated by the opponent.

Upon submission or identification of a case, Gurage ‘Shimagles’ FGD participants indicated that ‘Shimagles’ meet to settle a case immediately. The two ‘Shimagle’ groups meet and shake hands. They utter an oath to stick to the truth and not to violate the truth. For the first two weeks, ‘Shimagles’ meet weekly until the situation settles but afterward, they meet once in two weeks. In the Gurage culture, there is a belief that if ‘Shimagles’, perpetrators, or victims tell lies to benefit or negatively affect another person, the liar faces a curse not only for that person but also for coming generations in his family. As a result, people are afraid of telling lies.²¹⁴ If any person takes another person’s property and hides the

207 FGD with Gamo Shimagles, October 31, 2022.

208 FGD with Gamo Shimagles, October 31, 2022

209 Interview with Zenebe Beyene.

210 Interview with Zenebe Beyene.

211 FGD with Gamo Shimagles, October 31, 2022

212 FGD with Gamo Shimagle, October 31, 2022.

213 FGD with Gurage Zone Shimagles, November 7, 2022

214 FGD with Gurage Zone Shimagles, November 7, 2022

truth about another person to get any benefit out of it, the victim curses the lair saying, “Let the bad thing that happened to me happen unto you.” In Gurage Culture, this is called ‘*Leche*’.”

According to Gurage Zone ‘*Shimagles*’, an investigation of a homicide case involves a selection of 12 individuals among the perpetrator’s relatives up to 5 genealogical kins called *Muras*. These individuals are advised to tell the truth and stay in an empty dark house for one day without eating any food or having drinks.²¹⁵ Before these persons utter the oath, they are given some days to think well on the case. Oath includes uttering the following promises/statements that are believed to bring curse if the witness lies;²¹⁶

- ▶ If I am not telling the truth, let my race perish from the face of the earth.
- ▶ If I am not telling the truth, let my race not live on the earth.

To utter the oath, on the next day, the 12 persons will be taken to a rocky place that does not have any vegetation on it. They are asked to take the oath. If they are not sure of the case, they will say no to taking the oath. If one of these persons says no to taking the oath, the perpetrator would be considered a wrongdoer. Accordingly, a decision would be passed against him. Then, the wrongdoer would be required to pay compensation. The amount of compensation is determined based on the state of mind of the person during the commission of the crime. In general, decisions are made with the intention of peaceful co-existence and bringing back sustainable peace between the parties to the conflict and with the society at large.²¹⁷

Unlike Gamos who let people attending the gathering walk between the ‘*Shimagles*’ group sitting on two sides in case of unidentified crimes, the Gurage ‘*Shimagles*’ also use oaths to investigate these kinds of cases. In doing this investigation, the ‘*Shimagles*’ use an investigation technique /ritual called *Muli*. In this investigation ritual, the perpetrator calls seven generations from his geological kins and says, “Let these generations of mine perish if I do not tell the truth.” If the ‘*Shimagles*’ are not convinced that the truth is coming out clearly, they bring a black cow and let the perpetrator take the oath by plucking its hair off. The black cow and the plucking of the cow’s hair symbolize that telling lies brings a curse to the perpetrator. This is not a common practice. Because the suspects often tell the truth before reaching this stage.

Remedy: Both elders in Gamo and Gurage societies ordered the wrongdoer to pay compensation as a remedy to the victim, in his absence to his closest relatives, for the loss they incur due to the conflict. Gamo ‘*Shimagle*’ FGD participants indicated that the usual compensation is not a big amount of money or in-kind payment. It rather is a gesture of redemption. It could be a lamb or some little money. There is also compensation for ‘*Shimagles*’ consumption at the ‘*Dubbusha*’ or other places. ‘*Shimagle*’ FGD participants reiterated that for homicide and other crimes, there was a low compensation amount in earlier times but these days compensation amounts for both victims and payment for ‘*Shimagles*’ is becoming more expensive than compensation by the formal courts. As a result, people are inclined to use the formal court rather than the customary conflict resolution mechanisms.²¹⁸

In the case of the Gurage’s conflict resolution mechanism, the ‘*Shimagles*’ use the payment of cash depending on the motive of the person during the commission of the crimes as compensation. Here, the state of motive refers to whether the person committed the wrong accidentally by mistake, negligently, or intentionally. The punishment in these three states is different. Accordingly, if the wrong is committed intentionally, it is locally called ‘*muradem*’, and the amount of compensation is subject to pay a compensation amount of 300,000 Ethiopian Birr. On the other hand, if the wrong is committed negligently, it is locally called ‘*medara*’, and the perpetrator is subject to a payment of 150, 000 ETB. Lastly, if the wrong is committed accidentally including by a mistake, it is locally called ‘*medara medara*’, where the perpetrator is subjected to pay 75,000 ETB. The sources of compensation in Gamo society emanates from their traditions and customs while compensation in Gurage society emanates from their religious practices.

Rituals: As part of the conflict resolution process, the Gamo elders do some rituals after the reconciliation. There is what is called the ‘*Gompaa*’ ritual. ‘*Gompaa*’ is a ceremonial process to show that there will

215 FGD with Gurage Zone Shimagles, November 7, 2022.

216 FGD with Gurage Zone Shimagles, November 7, 2022.

217 FGD with Gurage Zone Shimagles, November 7, 2022.

218 FGD with Gurage Zone Shimagles, November 7, 2022.

not be conflict again and promises will be made jointly. If failed to respect the promise, the trespasser is believed to be exposed to 'Gome'/curse.

Gamo 'Shimagles' FGD participants indicated that the 'Shimagles' come with a stick to the 'Dubbusha' and that stick stands near the place where the 'Shimagles' sit. This stick symbolizes that 'Shimagles' are performing dispute resolution activities. When The 'Shimagles' finish their activity, an assigned person brings the stick and gives it to the chief of the 'Shimagles'.

In cases of reconciliation made while the perpetrator was in prison, 'Gompa' is arranged for the second time, when the perpetrator is freed and released to join the community.²¹⁹ Usually, such ceremonies are held in areas believed to symbolize positive signs; such as rivers, the tip of the mountain, forests, and the like. As a sign of conciliation and healing, there is the slaughtering of a cow or an ox. The blood of the cow or the ox is collected and mixed with roughage remains from the cow's belly and poured on the weapons that were used for committing the wrong. Thereafter, both the perpetrator and the victim's family/kin walk over these items. This is seen as an oath to pardon each other and for the victim's side not to commit any wrong in the future as retribution, or for any other motive related to the previous wrong committed by the wrongdoer. However, until such last ceremonial activity is performed by the wrongdoer and the victim's family, utmost care is taken to prevent retribution.²²⁰ It must be noted that the ritual is committed at the place where the previous wrong is committed. Accordingly, if the wrongdoer committed the same mistake at the same place but before the final ritual is held, it would be considered a set-off. To prevent this, there must be due care.

Rituals in Gurage CDRMs involve the perpetrator and the victim's family hugging each other, and drinking milk or honey. As milk is white, it is considered by society a symbol of purity. The milk symbolizes disputants are back to the state where they were before the conflict happened. In addition, it symbolizes that the parties to the conflict accept the reconciliation with open and pure hearts. The other substance used for the ritual is Honey. Honey is also seen by society as symbolizing one's wish for reconciliation which brings happiness to the two parties.

Follow-up and enforcement Mechanisms: According to the FGD participants of Gamo elders, resistance to implementing the decisions of the elders once the disputants pass through the resolution process performed by 'Shimagles' is not a common problem. The customary authorities do follow whether their decision is implemented or not. Indeed, several social sanctions force both wrongdoers and victims to abide by the decision given by CIs and authorities. These social sanctions include a prohibition from sharing fire (this sanction was strong before the communities have access to matches), sharing water, refusal to attend the burial and other ceremonies, and others. It is believed that if the person refused to abide by the decision of the CIs and authorities, he would be exposed to 'Gome' meaning a curse. Accordingly, it is believed that something would happen to him/her and/or even the entire clan.

In this sense, it is possible to submit that the community is insurance for the implementation of the decision of the CIs and authorities. This comes from Shimagles' legitimacy. Society would outcast the perpetrator and the victim from their social relationships and will be socially sanctioned.²²¹

The follow-up concerning the implementation of the decision of the CIs and authorities is not significantly different when it comes to Gurage society. To enforce the decision of the customary authorities, the wrongdoer provides two persons as a guarantee. If the wrongdoer failed to pay the compensation, these two persons will be responsible on behalf of the defaulted wrongdoer. It is worth noting that even if the declaration is made against the individual wrongdoer, the compensation is paid by all the clan member/ethnic members of the perpetrator. According to the elders of the Gurage society, the wrongdoer cannot be compensated from his pocket. It is a must for him to go around and collect money for compensation from his ethnic group or community. To collect the money needed, the perpetrator begs his clan members for money. Until he collects all the money, the perpetrator will put a chain or something on his hand as a sign of guilt, and he is in debt for paying compensation. According to the research participants, the duty to collect money from the community and the symbol on his hand is a means of punishing the wrongdoer. It is a means of 'naming and shaming' so that it would deter from doing similar wrongs in the future.

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²¹⁹ FGD with Gamo Shimagles, November 7, 2022.

²²⁰ FGD with Gamo Shimagles, November 7, 2022.

²²¹ FGD with Gurage Zone Shimagles, November 7, 2022.

3.1.3. The Amhara Regional State

I. Profile

Amhara regional state, one of the federating units of the Ethiopian federation, is located in the northwestern and north-central parts of Ethiopia. According to the 2011 Census, the Amhara National Regional State has an estimated 27.5 million population. Islam is the second largest religion, the Ethiopian Orthodox Christianity is the dominant religion in the region. Regarding ethnic composition, the region is composed of the Amhara (the significant majority), and others such as Oromo, Agew/Awi, Kimant, and Agew/Kamyir. In the Amhara region, agriculture remains the dominant economic sector. The region is rich in man-made and natural tourist attractions. As is the other ethnic community of the country, the ethnic groups in the regional state have their dispute settlement mechanism.

Like many of the Ethiopian Regional State practices, the Amhara Peoples have got CDRMs, often called ‘Shimglina’ which refers to mediation and reconciliation. Even though Shimglina has long been practiced in resolving conflicts, relatively speaking, the institution and authorities are more active in the rural part than the urban part of the region. Customary Institutions and authorities, in the Amhara region, are primarily derived from religion and customs. While it has passed through lots of difficulties, the institution is still respected even at the highest political level. For instance, recently, Shimagles set up to mediate high-level political issues.²²²

Taking the above introductory note, this study has benefited and achieved the objective of the research, by collecting data from various sources (as presented in the below table 4), and a detailed discussion is made to understand the full picture of CDRMs in the region.

II. Primary Data Sources

Table.4 Profile of primary data sources from Amhara Regional State

Data Sources	# Of interviews
<i>Customary Institutions (Ye Amahara Hizib Ye Shimglina Mahber)</i>	12 persons/2 FGD
Bureau of Justice	2
Bureau of Peace & Security	6
Bureau of Culture and Tourism	2
Ethiopian Institution of Ombudsman, Bahir Dar Office	1
Ethiopian Human Rights Commission, Bahir Dar Office Head	1
Bahir Dar and Surrounding High-Court	2
Regional Supreme Sharia Court	2
Amhara Region Ye Selam enatoch/	5
Amhara Region Civic Associations Forum/none- State Actors Forum	3
Total	36

3. Drivers of Conflict

The nature of drivers of conflict in the Amhara regional state is not significantly or inherently different from other regions. The drivers of conflict in the region can be classified into two: internal and external conflicts. While internal conflict refers to conflicts that are limited within the boundary of the region, external conflicts are those that BVHY has nexus with neighboring regions of the Ethiopian federation.²²³ Internal conflicts are often triggered by the management and usage of communal land and water. In recent times, the conflicts are having religious dimensions, instances could be mentioned that some members of a certain sect claimed and fenced a plot of land, and that triggered conflict among the followers of those religious institutions.²²⁴ Lack of good governance and a gap in the management of

222 Christian Tadele, The role of elders in resolving political conflicts in the Amhara region (Facebook official page November, 2022) available at <https://www.facebook.com/photo/?fbid=685744616444533&set=a.464518928567104> last accessed on December 12, 2022.

223 Group discussion with Ye'Amara Hezib Mahiberat Forum, October 26, 2022. See also, Group Discussion with Ye'selam enatoch, October 26, 2022.

224 FGD with Peace and Security office of Amhara region, October 25, 2022.

weapons and social media are other factors for the lack of peace in the region.²²⁵ Research participants agree that customary practices like revenge/blood feuds and theft are also responsible for the escalation of conflict in the region.

These days conflicts are not solely individual. There is a growing tendency of interpreting individual disagreements from an ethnic and religious lens. The growing inflation and lack of employment are also causes of conflict in the region.²²⁶

Generally, the triggers of conflicts in the Amhara region have economic, social, and political dimensions. When there is conflict on one of these issues, there is a spillover of the potential to trigger conflict in the other issues.

Customary Institutions and Authorities

Nomenclature of the Institutions: Based on an FGD held with elders, the CIs and authorities have different naming. Although there is an inclination to use the same terminology ‘*Shimglina*’ for customary authorities of the region, there are specific names in different zones and communities of the region. As per the differences in their names, there are also differences in their level of organization. It is more organized in some areas than others.²²⁷

According to authorities in the Bureau of Culture and Tourism,²²⁸ while the basic roles and characterization of the ‘*Shimglina*’ are the same, different names²²⁹ are applied in different places.²³⁰ According to an assessment conducted by the Ethiopian Heritage Authority,²³¹ in north Wollo (Raya Kobo Area) the tradition is called ‘ze wold’, ‘sen ye seged’, ‘Kiflo’, and ‘Ze mered’ (ዘወልድ፡ሰንዖ ሰገድ; ክፍሎ፡ መዘርድ); in south Wollo area it is called ‘Aba gar’, (አበጋር), in the Oromo society of the region it’s called ‘erfo mereba’, ‘aba haga’, ‘aba gar’, and ‘seraa aba arma’ (ኡሩፎ መረባ አባሀጋ፤አባጋር፤ሴራአባአርማ), in the Awe society – ‘eig tigiw esta erk teert’ (እግትጊው እስታ ኦርክቴርት); in the Wag Humra society it is called ‘shimer neey/merk aba’ (ሽመርነይ/መርካባ), Gonder, Gojam and Shewa society use what is called ‘ewus/afer sata/awchachign’ እውስ(አፈርሳታ፤አውጭጫኝ).

In the region, according to discussions with the elders, there have been various efforts to form elders’ associations like “*Ye Amahara Hizib Ye Shimglina Bahaal Mahber*.”²³² This association has been there since Hamele (July) 2010 E.C. and legally established on Tikemt (October) 2011 E.C.²³³

In short, there are different nomenclatures of CIs and authorities in the Amhara Region. However, there is no significant difference between them.²³⁴

As per the research informant, there is also interest on the part of the government to organize the customary authorities.²³⁵ In other words, if the *Shimglina* system is not organized and supported, it would be difficult for CDRMs to shoulder greater responsibility and strengthen the culture in the region. In this regard, however, it was also suggested that the government should limit its support to facilitation not dictating terms in their conduct. In this case, it would not affect the legitimacy of the CIs and authorities.

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225 Interview with Ato Mengistu, Conflict Prevention and Resolution Directorate Director, Peace and Security Bureau, Amhara Region, October 25, 2022.

226 Interview with Judge Mustofa Seid, Sheria Court, Amhara Region October 26, 2022.

227 FGD with Amhara Regional State Peace and Security Office, October 25, 2022.

228 Interview with Mr. Tahir Mohammed, Head of Bureau of Culture and Tourism, October 24, 2022. See also, Interview with Mr. Derbew Tilahun, Cultural Values Development Expert, October 25, 2022.

229 Interview with Mr. Derbew Tilahun.

230 Amahara Culture and Tourism Bureau, unpublished source, 2022. ለሰላም ግንባታ ሚና ያላቸው የማኅበራዊ ሀብቶች መመዝገቢያ ቅጽ

231 Inventory of intangible cultural assets made by the Ethiopian Heritage Authority, 2008.

232 FGD with founders and members, of ‘*Ye Amahara Hizib Ye Shimaglana Mahber*’, October 26, 2022.

233 Initially this association was established with the name ‘Bahir dar and zoriyawa Ye’hager shemageliwoch mahber’. It was restricted to Bahir dar because of capacity limitation. Since its establishment it has been participated in different national conferences. Since genbot 12, 2012 E.C the association a regional association with its current name. the association has 12 founding members, 8 honor members. The General Assembly has 60 members. All Zones of the Region are now represented in the Association. FGD with Elders of Amhara Region, October 26, 2022.

234 FGD With Elders of the Amhara Region.

235 Interview with Mr. Tahir Mohammed.

Nomination of the Elders/leaders: Unlike other regions where the nomination of customary authorities is partially hereditary, the communities predominantly do nomination of Shimagles in the Amhara region. Most specifically, elders to settle conflicts are elected by the victims and wrongdoers or by those who represent the two sides.²³⁶ The criteria used to select Shimagles are mainly based on an ethical and good moral background of the elder, acceptance by the community, as well as trust by the victims and perpetrators or their representatives.²³⁷ While Shimagle selection follows similar principles, setting up certain elders for a one-time use may be different from place to place based on the nature of the issues to be resolved.

Alluded to the mentioned fact²³⁸, the selection and nomination of Shimagles should not be based only on age but should also consider the wisdom of the person in the face of the public. In cases of the ‘abagar’ in south Wollo, it follows a lineage system.

Structure of the CIs/Hierarchical Relationships: In the Amhara region, CDRMs have, neither ethical nor institutional nor hierarchical relationships with each other. In other words, there are no as such permanently selected Shimagles to deal with conflicts in the communities. Except in a few traditions, of north & south Wollo, elders are set up upon the request of the wrongdoer or his /her family or the victims to resolve conflicts.²³⁹

Currently, there is an attempt in the region to institutionalize²⁴⁰ the culture of ‘Shimglina’. Two elders/ ‘Shimagles’ has informed the study team that, they took part in the discussion to launch the ye hager Shimaglewoch forum²⁴¹ (National Elders Forum) in Adama in 2020. Following this discussion, the elders in the Amhara region also registered as ‘ye Amahra Hizib ye Shimglina Mahber’ in the region’. By now, the Shimglina Mahber has a legal personality by the regional justice bureau and has six founding members. As a next step, the ‘Mahber’ is planning to cascade the concept and open zonal and woreda offices across the regional state. As per the founders, who also participated in the FGD, the composition of membership will be drawn from all levels of society, who respected Shimagles from each locality, including youth who are known for their wisdom and women as well.²⁴²

To form a structured Shimglina system in the region, the Shimagles’ Council with 60 members and some honorable members like Bahir Dar University and Amhara Elites Association; a committee with 11 members was established. With these structures, the founders are planning the ‘Shimglina’ to reach down to kebele levels.²⁴³

Composition of Membership: The composition of Shimagles includes one senior man respected by the community. There are two advisors for the senior father elected by community members or the victim(s) and the perpetrator(s).²⁴⁴ The team also includes one person who is the village security chief locally known as “Ye Gobez Aleka” and observers locally known as “Ayowoch” where one is assigned per village. The number of Shimagles for one session is from 3-5 elders. The senior Shimagle orders to elect four additional Shimagles two from the victim’s and two from the perpetrator’s side where the victim and perpetrator accept all of them.

Type of cases CIs Handle (subject matter mandate): In practice, the CIs, and authorities in the region, handle all types of cases²⁴⁵- both civil and criminal matter that ranges from a simple misunderstanding of a family case to homicide and community disturbances/group conflicts. However, the courts²⁴⁶ and

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²³⁶ FGD with ‘Ye Amhara Hizb YeShimglina mahber’.

²³⁷ Interview with Haileyesus Azohibel, Bahir Dar and its Environs High Court President, October 25, 2022.

²³⁸ Interview with Ato Deribew Tilahun.

²³⁹ FGD with ‘Ye Amhara Hizb YeShimglina mahber’

²⁴⁰ Ye Amhara Hizb YeShimglina mahber’ has already been registered under the Bureau of Justice.

²⁴¹ ባህልና ቱሪዝም ሚኒስቴር የሀገር ሽማግሌዎች ፎረም መመስረቻ ሠነድ፣ ሚያዝያ 2011።

²⁴² FGD With Elders of the Amhara Region.

²⁴³ Interview with Ato Mengistu, Conflict Prevention and Resolution Directorate Director, Peace and Security Bureau, Amhara Region, October 25, 2022.

²⁴⁴ FGD with ‘Ye Amhara Hizb YeShimglina mahber’.

²⁴⁵ FGD with ‘Ye Amhara Hizb YeShimglina mahber’.

²⁴⁶ Interview with Haileyesus Ayezohbel, Bahir Dar and its surrounding HighCourt, President, October 25, 2022. Interview with the High-court Judge

the justice bureau²⁴⁷ do not accept the decisions and reconciliations made by elders to drop cases or close files of criminal matters. The elders also understand that, if the justice bureau holds the case as a serious public matter, they only request a maximum consideration²⁴⁸ of their reconciliation effort as a mitigation point. In other words, Shimagles are prohibited or not encouraged to oversee criminal cases. Stated differently, even if a criminal case is resolved through the involvement of Shimagles, the formal justice system takes the case and prosecutes the suspect. However, the resolution of the criminal case by the formal justice system would not bring sustainable peace. As cited by an informant, while a case is overseen and closed by the court, there is an instance where conflict is ongoing between a perpetrator who is serving his prison terms and the victim's family. This case shows that conflicts in the community need to involve the CIs and authorities for better healing and sustainable peace.²⁴⁹

Procedures of CIs' Conflict Resolution: During the incidence of conflicts, particularly in criminal matters, the wrongdoer or his kin, or family initiates, all reconciliation efforts by approaching the elders 'Shimagles' of their choice or elders who are known for their wisdom and mediation experience. In a few cases, the victims/families could approach the Shimagles for compensation or request action, if the case is a private one such as denial of loan/credit.

In terms of the 'Shimglina' process and reconciliation efforts; the below diagram shows the decision-making process, from initiation to final stage.



Diagram 7: Amhara Shimagles Conflict Resolution Process

²⁴⁷ Interview with Geremew Gebretsadiq, Amhara Regional State Bureau of Justice, Head, October 24, 2022

²⁴⁸ Interview with Geremew Gebretsadiq, October 24, 2022.

²⁴⁹ FGD with Elders of the Amhara Region. See also, Interview with Gashanew Dessie, Ethiopian Institution of the Ombudsman Bahir Dar Office Co-ordinator, October 25, 2022; Interview with Haileeyesus Ayezohbel.

Following the finalization of the reconciliation process by the ‘Shimagles’, the conflicting parties will take the paper to court to close the file. Usually, the case will be closed if it is a civil matter and used to reduce a sentence or released on a pardon if it is a criminal issue.

Remedy: As a remedy to the victim’s family, compensation is paid in the form of ‘gumaa’. Once the wrongdoer paid the ‘gumma’, the victim’s family confirms that they will not attempt revenge on the wrongdoer or his relatives. In terms of the amount of compensation, the wrongdoer makes compensation on the bases of previous decisions and payments made in a similar case. Stated differently, so far there is no fixed amount of payment paid to the victim’s family, hence elders advise the amount as per their knowledge and experience.

Rituals: After the conclusion of the Shimglina’/reconciliation efforts, the victim’s and perpetrator’s families bring food and eat together to symbolize the end of hostility. As a ritual exercise and establish a covenant to end hostility between the conflicting parties, and curse their motives, they cross a gun rubbed/covered with cloth. This signifies that if any of the parties break the oath, there is a belief that the declined person could lose his life in a gun.

Implementation of the Remedies (follow-up and enforcement mechanisms): Once the case is closed, the parties /their families take the follow-up and enforce the decision. Often, the decisions of the customary authorities are implemented, whether the person likes it or not. To describe this, there are sayings like “*Shimagle can give someone a child who is a child of somebody else’s.*” This shows that the parties will implement Shimagles’ decision, even though they have flaws in the decision.²⁵⁰

However, if the person refuses to act and perform as per the decision of the customary authorities, he or his family are cursed and believed that they will encounter bad luck. Furthermore, different social sanctions can be taken against the party that failed to respect the decision of the customary authorities. According to the focus group discussants of Shimagles in the Amhara Region, there are different social sanctions for those who do not abide by the decisions of the Shimagles. The sanctions include prohibitions of sharing fire, looking after cattle together, visiting while s/he feels sick, participating in burials, social gatherings, and others. There is also cursing those who have a relationship with a person who violates the decisions of Shimagles with an oath, “Let the person who has a relationship with a person violating decisions by Shimagle give birth to a black dog.”

3.1.4. Oromia Regional State

I. Profile

Oromia regional state is among the eleven members of the Ethiopian Federation. As per the 2012 E.C. report of the Oromia Planning Commission, with more than 39 million population,²⁵¹ and an area of 364,219 km²,²⁵² the region is the largest Regional State in Ethiopia. In the region, despite the presence of other traditional beliefs, Christianity and Islam account for the majority.²⁵³ Like other regions of the country, the Oromia region is not homogeneous. However, the Oromo ethnic group constitutes the significant majority. The Oromia region has many cultural and natural resources. One of the cultural resources is the Gada System, which is inscribed by UNESCO as an indigenous democratic socio-political system.²⁵⁴ Research informants indicated that the Gada system is everything for the Oromo community and, by default, argues that supposedly every Oromo belongs to the Gada institution.²⁵⁵ This system regulates the political, economic, social, and religious activities of the community including dealing with issues like conflict resolution.

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²⁵⁰ Interview with Gashanew Dessie.

²⁵¹ Facts about oromia regional state, available at <https://www.romiatourism.gov.et/> Last accessed December 6, 2022.

²⁵² Facts about oromia regional state, available at <https://www.romiatourism.gov.et/> Last accessed December 6, 2022.

²⁵³ Facts about oromia regional state, available at <https://www.romiatourism.gov.et/> Last accessed December 6, 2022.

²⁵⁴ According to the Oromia Cultural and Tourism Bereau, the region is endowed other natural resources such as the Yayo biosphere reserve forest UNESCO registered, Bale mountains national park, Dire Shiek Husien Shrine, tentatively enlisted in UNESCO, Sof Umar Cave, tentatively enlisted in UNESCO, the Pre-Historic Archeological & Paleontological Site of Melka Kunture, tentatively enlisted in UNESCO, and endemic mammals and birds. See, Facts about oromia regional state, available at <https://www.romiatourism.gov.et/> Last accessed December 6, 2022.

²⁵⁵ Interview with Obbo Lemma Beqqale, Gumbichu Woreda Court President November 20, 2022. It should be mentioned here that, despite recent positive moves, the Gada system has not been active in many parties of Oromia for long.

The focus of this study is cultural resources, most specifically, the CDRMs. Hence, data collected in the Oromia regional state is limited to TRDRs. In the process, the research informants' stressed the importance of the Gada system for the Oromia People.

II. Primary Data Sources

The data was collected using KII and FGD. In the process, relevant institutions and persons were selected and contacted.

Table 5:- Profile of primary data sources from Oromia Regional State

Data Sources	Number of interviews
Customary Institutions (Customary Court elders)	5/ 1 FGD ²⁵⁶
Bureau of Justice	3
Bureau of Peace and Security	5
Bureau of Culture and Tourism	0
Ethiopian Institution of the Ombudsman, Oromia Office	1
Ethiopian Human Rights Commission, Oromia Office/Jimma	1
Woreda Customary Court	1
Regional Supreme Court	1
Total	17

III. Drivers of Conflict

Concerning the nature of triggers of conflict in the Oromia regional state, there is no significant difference from the other members of the Ethiopian federation. The first factor relates to resources like land and water. The competition for land is about grazing and farmland as well as a land grab. The water is for their animals. Secondly, the research participants indicated that boundary issues are among the key drivers of conflict in Oromia, especially with its neighboring regions. Furthermore, unhealthy political competitions are within the list of factors that induce conflict in the region. To be specific, there are armed groups in the region that oppose the government in power and are, at least arguably, causing conflict in the region. Finally, it is worth mentioning that conflict in the Oromia region may also include a lack of good governance and the smuggling of illegal goods.²⁵⁷

V. Customary Institutions and Authorities

The biggest customary authority and socio-political institution in the Oromia region is the Gada system. In addition, in the region, there is a Sinqqe institution that focuses on the issues of women specifically and is composed of Oromo women who identify themselves as Hadha Sinqques.²⁵⁸ Being Gada the parent system in the region, the different parts of the region have their conflict resolution mechanisms with a local naming. For example, the dispute resolution systems in the region include various levels. However, in substance, these local systems have no difference. They all are within the Gada system.²⁵⁹

To institutionalize the CIs in the Oromia region, the *Caffee* has ratified a substantively forward-looking law that has blended the Gada institution as well as the formal justice sector model. Based on such intervention, the region has proclaimed and recognized customary courts under Proclamation Number 240/2021. Further, for the sake of ease of implementation, regulation No. 10/2021 has also been proclaimed in the same year. According to the Proclamation "Customary Court" means a court established or social institution recognized following the provisions of this proclamation to adjudicate disputes based on customary laws.²⁶⁰ This same law also defines what customary law means. Accordingly, it

²⁵⁶ Interview with Obbo Assefa Beqqala, Gumbichu Woreda Customary Court, Judge November 20, 2022. See also, Interview with Obbo Tadesse Gezahagn, Gumbichu Woreda Customary Court, Judge November 20, 2022; Interview with W/ro Birque Gutemma Gumbichu Woreda Customary Court, Judge November 20, 2022; Interview with Obbo Dribba Beqellaa Gumbichu Woreda Customary Court, Judge, November 20, 2022

²⁵⁷ Interview with Tamen Sahlu, Conflict Prevention and Resolution Director, Wogderes Beza, Discussion and Conference Training Expert, November 16, 2022 and Gezu Gemechu Clubs and University Forums Coordinator; Oromia Region, November 16, 2022.

²⁵⁸ Interview with Hadha Sinqqe Astedu Tolla, Hadha Sinqqe of Tullema, November 26, 2022.

²⁵⁹ Discussion with the elders in the Gumbichu Woreda informed the research team on the overall peace architecture of the Gada procedure.

²⁶⁰ Proclamation No. 240/2021, Article 2(7).

specifically refers to the customary law of the Oromo People and is found in the specific locality where the customary court is situated and that is not incompatible with the constitution, public morality, and natural justice.²⁶¹

Nomenclature of the Institutions and Elders: As an institution, the Gada system is divided by age and grade. The system is designed based on 8 years gap. Accordingly, the following table shows the structure of the Gada system in general and how it is named in Shoa, Borena, and Gujji.

Table 6: Gada system grading as per the age group and expected role in each grade

Age Group	Shoa	Borena	Gujji	Expected Role from the age group
1 – 8 years	Ittimakoo	Debbelle	Debbelle	Childhood
8 – 16 Years	Debbelle	Gemme	Qere	Involve in keeping animals/feed cattle etc
16 - 24 Years	Follee	Quussa	Quussa	Serves as Police/keeps the communities' peace
24 – 32 Years	Quondalla	Rabba	Rabba	Acts as a ready soldier, and starts taking training on administrative matters
32 – 40 Years	Dorri	Dorri	Dorri	Involve in administrative matters, and continue serving as a soldier
40 – 48 Years	Gada	Gada	Gada	Full stage to lead

Source: Interview with Abba Caffee Caalaa Sooritiin

As evidenced by the above table, there are slight differences in nomenclature. For example, while the first age group (1-8 years) is called Ittimakoo in Shoa, it is called Debbelle in Borena and Gujji. In Shoa, Debbelle refers to the second age group which is from 8-16 years. However, in Borena and Gujji, this age group is called Gemme and Qere, respectively. The third age group is called Follee in Shoa, and Quussa in both Borena and Gujji. Lastly, the fourth age group, from 24 – 32 Years, is called Quondalla in Shoa, and Rabba in both Borena and Gujji. Despite the difference in naming, there is no substantive difference. For instance, there is no difference in the role of members of each age group.

According to an interview held with *Abba Caffee Caalaa Sooritiin*, the customary dispute system in Oromia is called the Gada conflict resolution system. In this institution, the elders are found in society. Stated differently, there are community elders who settle conflicts in the day-to-day activity of the Oromo people. The elders are called, depending on the locality, under the names of elders within the Jarsuumam system or in general the Gada system’.

Source of power of Customary Authorities/Elders: In the Gada system, the election of clan leaders has its criteria and process. In the process, the person’s different factors including acceptability in the community, ethical and moral background, and the person’s ability in different social activities exert influence in the election of the clan leaders and elders. In conformity with this, the Oromia Region Customary Courts establishment Proclamation, Proclamation No. 240/2021, under Article 9 provides a long list of criteria for the selection of elders of the Customary Court. The provision reads,

Article 9: Criteria for Selection of Elders of Customary Court

1. A person must fulfill the following criteria to be selected as an elder of a Customary Court:
 - a. He is between 40 and 72 years old;
 - b. He who is familiar with and has respect for the customary law and social norms of the place where the Customary Court operates;
 - c. He has social acceptance, competence, and experience in rendering traditional justice;
 - d. He is fluent in Afan Oromo;
 - e. He who is a resident of the locality;
 - f. He who is willing to serve as a Customary Court elder;
 - g. He is economically independent in the community where he resides;
 - h. He is not a government or any other organ employee;

.....

²⁶¹ Proclamation No. 240/2021, Article 2(13).

- i. He who is not a member of any political party;
 - j. He does not have mental or physical impairment capable of hindering him from performing his duties;
 - k. He is not convicted of a serious crime, or he is reinstated in case he had been previously convicted of such a crime.
2. Without prejudice to sub-article 1 of this Article, additional criteria for the selection of elders of the customary court may be provided in regulation and directive to be issued.

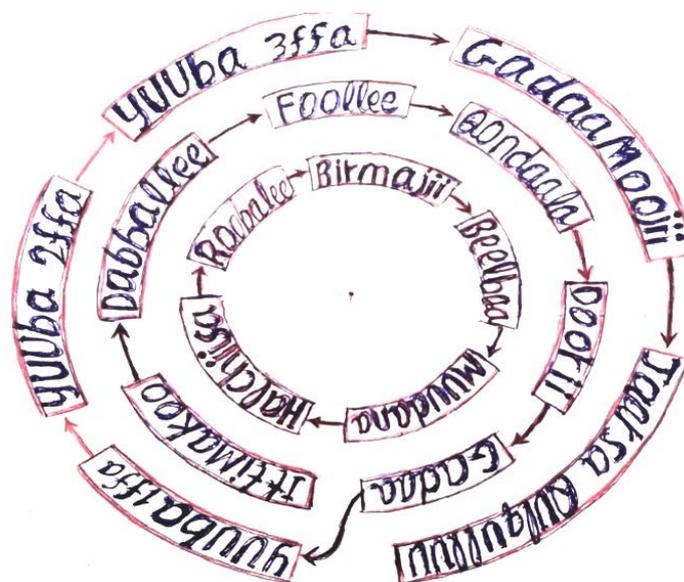


Diagram 8: Gada system

Source: Duudhaalu Sirna Gadaa Tuulamaa,

Composition and Structure of the Customary Institutions: In the eldership mandate of the traditional Oromo society, elders are composed of the given locality based on various measures. However, it is accepted as the norm that such a composition does not include women. Within the Gada system, there are five key entities: the Legislative body, the Executive, the Executing officers(Judiciary), the Oversight, and Advisory Organ.²⁶²

Unlike the traditional elders' committee or group in most Kebelles, the law stipulated that the CC could at least reach 5 persons, including the chairperson. Accordingly, in both First and Appellate courts, five elders and at least one female judge should be composed. As part of the selection procedure, while nominating the elders, the selection committee shall ensure the inclusion²⁶³ of 'Abbaa Gadaa', 'Hadha 'siqqee', clan administrators, community elders, and 'Hayyuu'²⁶⁴. Further, the law offers the flexibility of selection if the customary law of the locality has a custom that exists to hold such an election, then the community could do the election. In terms of staying in office, the Term of the Office of the Elders of the Customary Court would be 8 years, like the service year of Abba Gada²⁶⁵ in the Gada system.²⁶⁶

Traditionally, the Gada system has its distinct structure and relationship among the different categories. As per the diagram, the full cycle of the Gada system reaches ten cycles starting from the initial (first phase of 1- 8 years of age) up to the last (8 years of age) i.e., the Gadaa Mojjii – which qualifies the elder as 'clean elder'/Jaarsa Qulqulluu. Of the ten categories of leadership in the Gada cycle, the 'Gada membership'/ the sixth Category acts as the leader of the 'Oromo Gada system'. After the Gada category, members become (advisors/coaches of the Abba Gada and its members) called in the order of *yuuba 1ffa*, *yuuba 2ffa*, *yuuba 3ffa*, and graduate at *Gadaa Mojjii*.

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²⁶² Interview with Abba Caffee, Caalaa Sooritiin, December 2, 2022.
²⁶³ Proclamation No. 240/2021, Article 11 (1-9).
²⁶⁴ 'Hayyuu' is a person having indepth knowledge and understanding about the traditional institutions and Gada system.
²⁶⁵ FGD with Elders. See also, Interview with Abba Caffee Challa Soori, December 1, 2022.
²⁶⁶ Proclamation 240/2021, Article 13(1).

The diagram, in its inner circle, also shows the five *miseensa* or parties of the Gada system. Before assuming power each class went through a series of grades before it can function in authority. In the Gada system, the leadership changes on a rotational basis every eight years. Hence, in the Gada system, power will be reassumed every 40 years. Moreover, as indicated by the research participants, to assume power there is no competition.

On the other hand, according to the customary courts' establishment proclamation of the Oromia region, customary courts are structured at two levels: First Instance Customary Court, which may be constituted in all Kebeles, and the Appellate Customary Court, which could be constituted at all district levels and towns as may be necessary.²⁶⁷

Type of cases CIs Handle (subject matter mandate): The Gada system has the highest regard in the Oromo people. The system is very accepted and has lived for a long time. It has been resolving different forms of disagreement – civil and criminal natures- in the community. Even today, those who participated in the data collection have acknowledged the capacity and influences of elders in resolving and preventing conflicts.²⁶⁸ To be specific, in some parts of the Region, particularly of the Guji, Borena, Shoa, and Arsi areas; compared to other areas people are using CIs to resolve conflicts from simple crimes like insults to the highest crime, homicides. Hence, practically, the CDRMs in the Oromia regime do entertain both criminal and civil cases. However, it was mentioned that the settlement of criminal cases by the CDRMs does not guarantee that the person to not be prosecuted before the formal justice system. Irrespective of the fact that the case of the person is being handled or has already been resolved using the formal system, the case would also be entertained by the traditional system.

The customary courts' proclamation of the Oromia regional state provides the first instance of customary courts' jurisdiction to be on matters such as "Family and civil matters; Petty offenses and crimes punishable upon complaint; and other matters as may be authorized by other laws."²⁶⁹ Moreover, the proclamation also provides that in criminal matters that are instituted by the public prosecutor, which are neither petty nor upon complaint, the Customary Court has the power to reconcile parties having a stake in the dispute, determining 'Gumaa' and effecting it, determining compensation to be paid, and ensuring the payment of costs.²⁷⁰

Finally, it is worth mentioning that the Gada system leaders – the Gada Council - have been participating in different peacebuilding activities including attempts to resolve conflicts between the Oromia regional state and OLA.²⁷¹

The Procedures of Conducting the Conflict Resolution Mechanisms: Once a conflict is broke out, any person from the village, a family member of the victim, or the wrongdoer himself can bring the matter to the attention of the elders.²⁷²

At this juncture, it is important to note that the naming of the CDRMs may be different in different parts of the region. However, the dispute settlement process substantially follows the above procedure. For example, if we take Shoa as an example, they follow the following procedure to resolve a certain conflict, which may be raised because of murder.

- ▶ After the commission of the wrong (death, for example), a group of different groups (specifically, two independent elders, a girl, a decorated Horse, 'Keeleecha/traditional material) go to the area of the horse of the victim to beg the victim's family making a sound called 'Egzio'; which mean 'may God pardon us'. This is made for nine weeks but only each Friday. In the ninth week, the elders from the victim's side come to those who are begging and untie the horse, and request them to go back home. The elders from the victims' side remove the bridle from the horse and let the crowd go to their homes.

267 Proclamation 240/2021, Article 7.

268 Key Informant from Truth and Reconciliation Commission in Somali Regional State.

269 Proclamation 240/2021, Article 8(1).

270 Proclamation 240/2021, Article 8(4).

271 Addis Standard, Breakthrough as government, OLF-SG agree on immediate ceasefire, encampment of rebel army in 20 days, January 24, 2019 available at <https://addisstandard.com/news-breakthrough-as-government-olf-sg-agree-on-immediate-ceasefire-encampment-of-rebel-army-in-20-days/> , last accessed January 17, 2023. For further discussion on the role of Gada system in peace building, see, Moti Mosisa Gutema, Democratization through Indigenization: The Role of Gadaa System in Reducing Political Conflicts, 2 Abyssinia Journal of Business and Social Sciences, 2017, 30-37.

272 FGD with Oromia Shimagles Group, Gimbichu Woreda, East Shewa Zone, Oromia Region, November 20, 2022.

- ▶ The next stage is establishing the elders' committee. This committee will have the power to settle the case. These elders are composed of totally four elders, two elders from the victim's side, and two elders from the wrongdoers' side.
- ▶ The third stage is the hearing of the case and assessment of the damage sustained by the victim. The damage could be direct or indirect. For example, the wrong maybe death. However, the deceased family could sustain financial problems because of the death. The compensation for the first case is determined by cultural law. However, concerning the second, the monetary damage suffered by the victim, it is he who told the elders, and the wrongdoer cannot argue otherwise. In the present day, 10,000 ETB is paid to the victim's relatives' various kinds of losses, and 2,000 ETB as feud money. This Guma money is shared among the victims' families. The Guma money is divided between the victim's family to indicate their preparedness and willingness to settle the case. Once they accept the Guma money, irrespective of its amount(it could even be in cents), they are prohibited from taking an act of revenge. At this stage, it is not necessary for the presence of the Abba Gada. The process is carried out by the local elders.

In the above process, different rituals will be carried out to bring a sustainable reconciliation between the wrongdoer and the victims' relatives as well as the society.

- ▶ The first ritual following the payment of the Guuma is the slaughtering of a Sheep. The slaughtering is done on a nearby field or near a river. Then the wrongdoer and the victim's brother(if the victim has no brother or any other relative) shake hands. Thereafter, both families go to the house of the wrongdoer. Here, an Ox will be slaughtered, and then the victim's brother will eat the liver of the Ox from the hands of the wrongdoer. Moreover, the wrongdoer dressed the victim in what is locally called 'Gabi/ traditional cloth/'. These acts symbolize that the two families are not enemies anymore, and there would be no retribution act. At this stage, the presence of the Abba Gada is required for the sake of the Oath. The Abba Gada needs to be independent. Then after, the two families go to the victim's house and a sheep will be slaughtered. Then, they will eat together. Finally, the two families take an Oath to not be enemies and reconcile.

Customary Institutions have effective investigation techniques, especially seeking the truth and perpetrators as they use making oaths in front of sacred items by the society such as "chacho", keeleecha, spear, horse, and others. There is the belief that telling lies in front of these items exposes liars and their clans to curses that destroy their clan lineage for many generations.

Like the customary conflict resolution mechanism, the customary courts do also follow the Procedure of Giving Judgement.²⁷³ It shall exert efforts to settle the dispute before it by compromise agreement of the disputing parties. And the 'Gaaddisa'²⁷⁴ shall dismiss the case after recording the agreement where the parties to the dispute reach an agreement. Finally, if an agreement is reached, it shall be considered as the decision given by Customary Court and will be executed accordingly.

Remedy: The CIs in the region have enjoyed a wider range of authority in terms of providing judgment – remedy to the victim. While the customary authorities used to deliver judgment, there might be some hesitation to extend the fullest kinds of community practices.

However, these days, due to the law in Oromia, customary courts could order and give various types of judgment²⁷⁵ including explicitly listed ones and any other judgment acceptable under customary laws of the place at which the Customary Court carries out its function²⁷⁶. The listed types of judgment include Advising and giving admonition to the person at fault; Compensation, returning property, deciding the value or amount of the property, upholding any request concerning damage to economic rights; awarding 'Gumaa'; making the person sued to do or refrain from doing a specific act; Costs; Compulsory labor; and Fine.

Rituals: The conflict resolution process by the Gada system starts with the elders' prayer. Similarly, after the final decisions and the reconciliation process, there is prayer as part of the ritual ceremony. As per discussants and informants, at the beginning of the resolution stages, the perpetrators, and their family/kin might not be eating together with the victim's family. But finally, they will eat in one dish and drink in one cup.

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²⁷³ Proclamation No. 240/2021, Article 31.

²⁷⁴ The Gaddissa refers to place where customary courts discharge their official duty, Article 2 (2).

²⁷⁵ Proclamation No. 240/2021, Article 32 (1) (a-h).

²⁷⁶ Proclamation No. 240/2021, Article 32 (1)(h).

Other rituals like slaughtering ‘heifer’ in the perpetrator’s home and eating an oxen organ/liver are amongst the rituals. Similarly, the victim’s family slaughters a sheep and does the same ritual to symbolize the end of their revenge and wash their hands in the blood of the Sheep.

In the Shewa area, a person who committed homicide wears a chain on his hand as a sign that he has committed homicide and he begs/collects money from his clan members to pay for compensation.

At the final stage of the reconciliation process, there is a ritual that involves the slaughtering of an old cow as a wish and promise by a perpetrator not to kill anybody for the rest of his life. If the ritual involves slaughtering a lamb, it signifies that the victim and the perpetrator promise and wish not to recall the sadness and sorrow experienced before for the rest of their lives.²⁷⁷

A key informant, one of the former Gada members, explained that there are successive rituals to resolve conflicts and sustain peace between victims and perpetrators and the communities at large. These rituals are also healing processes to avoid hatred and further escalation of conflicts between victim and perpetrator, their relatives, and even the communities they are living with²⁷⁸.

Follow-up and enforcement Mechanisms: Like several other Ethiopian CDRMs, once the final verdict is given by the elders, it is a must for the wrongdoer to implement the decision. If the wrongdoer failed or declined to implement the decision, then there are measures to be taken – which could be started by cursing. It will be further sanctioned by the elders and the person could even be socially sanctioned and outcasted by all Oromo groups in their localities.

3.2. Contribution of the CIs in the National Dialogue process and reconciliation efforts in general

The research participants were asked whether the CIs are capable and in the right forum to contribute to the national dialogue process and reconciliation efforts. The significant majority of the research participants in the sampled regions responded positively. Although it is very few, specifically from the Amhara Regional State, it was suggested that CIs’ contribution is minimal. The argument is that most of the problems in the country are political and elite centered. Accordingly, these problems cannot be solved using CIs and authorities.²⁷⁹ According to this informant, customary authorities should be mainly mere stakeholders or concerned citizens so that the process would be inclusive.²⁸⁰ According to this informant, the CIs and authorities should not be active in the articulation of the agendas of national dialogue. It was argued that “it took the elites of the region[Amhara] more than 20 years to what is going on in the region. The elders at the grassroots level may not be aware of the systematic action taken against their interest.” He argues, however, that CIs and authorities can play a good role in the implementation stage of the recommendation of the dialogue.

CIs’ Contribution to a national dialogue process

According to the data collected from the sampled regional states, various direct and indirect contributions can be made by CIs to the national dialogue and other reconciliation efforts. According to the elders from the Somali regional state who participated in the data collection, the elders do provide an early warning for communities concerning potential conflicts. This warning is done in the different gatherings they get together. Accordingly, they play their part in the prevention of conflict in the community. This is in line with the end goal of be it a national dialogue or a reconciliation process – bringing sustainable peace. They also mentioned that they are active in conflict mediation and have settled many practical conflicts in the Somali region. Specifically, during discussions and interviews held in the Somali region, it was indicated that working in collaboration with other regional and Civil Society actors, elders of the region have played a vital role in resolving the conflict between Somali and Oromia Regions that broke out three years ago.²⁸¹ Generally, as mentioned by the research participants from the SNNPR, elders can also play roles in the promotion of peace in the area.

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²⁷⁷ Interview with Tamen Sahlu.

²⁷⁸ Interview with Abba Caaffee Callaa Sorri.

²⁷⁹ Interview with Mr. Tahir Mohammed. See also, Interview with Alebachew Birhanu, Ethiopian Human

²⁸⁰ Interview with Mr. Tahir Mohammed.

²⁸¹ Interview with Abdulreshid Abdulahi, Peace and Security Office, Planning and Policy Advisor, October 17, 2022. See also, FGD with clan leaders.

Research participants, in the Somali region, mentioned that CIs are appropriate places for the development of agendas and the selection of participants for the consultations. An informant from Oromia Regional State said that if the current dialogue commission is to be effective, CIs and elders should be considered for playing their role within the society, in discussing issues/crafting agendas, creating awareness within the community, and selecting participants to deal with other regional state elders.²⁸²

According to the Executive Director of Partnerships for Relief and Development Organization, a local NGO in the Somali Region, CIs are one of the key institutions in the region which play roles when tribal or individual conflicts occur and there is the need to do advocacy to introduce new ideas in the region. With these roles, CIs can also be used to reach out to the public in the region to achieve the goals set by ENDC. Similarly, the data from the research participants of the SNNPR indicated that CIs could involve in the dialogue process by creating awareness in their respective communities, bringing issues of communities to the attention of the ENDC, employing their respective methods of handling and resolving conflicts, identifying causes of conflict, and recommending possible solutions including border conflicts.²⁸³

The CIs in the Somali region can also play roles in the Ethiopian National Dialogue process through the facilitation of consultative meetings to understand the mission, vision, and objectives of the Commission; agenda setting; doing promotion and advocacy to enhance acceptance of the Commission and testimony collection among others.

Customary Institutions and authorities are effective in the sense that they are cost-effective, speedy, know the problems from the beginning, and can bring sustainable solutions.²⁸⁴ The CIs can be used by even providing different information and evidence if need be.²⁸⁵ Reconciliation will hold water when the truth is revealed. The customary authorities know more about the cause of conflicts. Therefore, CIs and authorities can play a good role by helping the commission in the discovery of the truth behind conflicts.²⁸⁶

One of the important contributions CIs can play to a national dialogue and reconciliation process is serving as a forum.²⁸⁷ Customary authorities have long years of experience or wisdom in solving conflicts. The dialogue and the possible reconciliation process could be benefited from this wisdom of the customary authorities.²⁸⁸ However, to effectively benefited from their wisdom they need to be supported. Most of them are not literate. Hence, they may not be able to record the process they went through and make a comprehensive report. Hence, other experts should support them in the process.²⁸⁹

Customary authorities can contribute as agents in maintaining peace and stability at the grassroots level. Shimagles could serve the commission to get the real concerns and issues of communities. They can bring the grassroots feeling to the forefront.²⁹⁰ They can also serve as vehicles to advocate for reconciliation and lasting peace among the communities using their acceptance by the community members.²⁹¹

It is true that for the commission to be successful it shall reach the grassroots level. Customary Institutions and authorities are very close to society. Hence, the dialogue commission can use them to be close to society.²⁹²

Shimagles also play roles in ENDC by using their wisdom to facilitate dialogues, providing advisory services, addressing their communities directly, and convincing their community members to agree to the missions, vision, and objectives of the ENDC, creating a smooth implementation process for activities of the Commission.²⁹³

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²⁸² Interview with Abba Caffee Calla Sorri.

²⁸³ Interview with Begashaw Eshetu, Ethiopian Human Rights Commission, Awassa Office Head, November 4, 2022.

²⁸⁴ FGD with Peace and Security office of Amhara region. See also, interview with Gashanew Dessie

²⁸⁵ FGD with Elders of the Amhara region.

²⁸⁶ Gashanew Dessie, Ethiopian Institutions of the Ombudsman Bahir Dar Office Coordinator

²⁸⁷ Interview with Geremew G/Tsadiq, The Amhara National Regional State Bureau of Justice Head, October 24, 2022.

²⁸⁸ Interview with Geremew G/Tsadiq.

²⁸⁹ Interview with Geremew G/Tsadiq.

²⁹⁰ Interview with Mr. Haileyesus Ayzohbel.

²⁹¹ Interview with Haileyesus Azohibel.

²⁹² FGD with Peace and Security office of Amhara region.

²⁹³ Interview with Mr. Techane Merga, Oromia Supreme Court Research and Partnership Coordinator, October 14, 2022

Contribution to reconciliation efforts

Elders who participated in an FGD that was held in the Somali region reiterated that if the reconciliation process aims to bring social justice, CIs are the appropriate means because they know the victims in person so that they can address their needs appropriately. The discussions should also not be at an elite level only. One of the elders in this FGD said that before any discussions about national symbols such as the flag of the country, it is necessary to look for those individuals who are personally hurt by the system.

The elders from Gamo suggested that elders could be ideally good for reconciliation and social healing. They say that elders can support the dialogue commission by resolving conflicts starting from the woreda to national levels, identification of problems, and forwarding ideas that could facilitate reconciliation, among others.

Participation of stakeholders

Research participants from the Somali regional state mentioned that females are not represented in the traditional elders' councils/Guurtis nor the lower-level elders' collection. Similarly, women are not allowed to present their cases before the elders' committee in person rather they are permitted to be represented by men's relatives. If any woman sustains damage, the male member of the family would represent her rather than directly participate in the process. Her male family member can act on her behalf.²⁹⁴ The research participants also pointed out that the customary dispute resolution mechanisms are less inclusive when it comes to youth members of communities. The youth have no representation in the process.²⁹⁵

In the SNNPR regional state, specifically the Gamo customary conflict resolution process, the role of women is limited. Their involvement as members of the hierarchy is missing.²⁹⁶ They cannot be an elder in resolving a dispute. However, the elders informed the study team that the women can participate in the sessions, Dubbusha. While doing so, they can play a pivotal role in unraveling the truth behind the conflict or the wrong committed. The women can influence the Dubbusha process/proceeding. If the women think that the truth is not coming out clearly or injustice is about to be committed by the elders, presumably unknowingly, the women are allowed (in fact, this is the practice) to make a noise to object or stop the process or the elders' verdict²⁹⁷. If the women make the noise or sound, the elders would reconsider the process or the verdict they rendered. Or, they may stop the process and reconvene on another day. The women would also attend the process and make sure that their concern is addressed by making a sound called *Eleleta*. Sometimes, they even make a kind of demonstration by going around the village or town.

The social reality in the Amhara Region is not different. It is a male-dominated society. Customary Institutions and authorities are no exception. The informal institution is also male-dominated. Meaning, it is not inclusive of women.²⁹⁸ Similarly, the youth have not been given the required attention in the process of resolution of a dispute. Similar to women, the process has not been inclusive from the youth's perspective.²⁹⁹ The youth, on their part, have awareness problems about customary institutions and authorities in general.³⁰⁰

Moving to Oromia, the CIs have a strong stance on involving elders. Due to the belief that experience and age³⁰¹ contribute to the maturity & sound judgment of elders, the youth group is given little space in the face of these CIs. However, their role is reflected in the growth category of the Gada system.

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²⁹⁴ Interview with Salen Umer, Faafan Zone High Court Judge, October 18, 2022.

²⁹⁵ Interview with Kemal Abdulnasir. See also, Interview with Kedir Mohammed.

²⁹⁶ Interview with Kassahun Filifilu Karso, Corporate Affairs Deputy Attorney General, SNNPR, November 3, 2022.

²⁹⁷ FGD with Gamo Shimagles.

²⁹⁸ FGD with Peace and Security office of Amhara region. See also, Interview with Mr. Haileyesus Ayzohbel; Interview with Alebachew Birhanu, and Group discussion with Ye'Amara Hezib Mahiberat Forum.

²⁹⁹ FGD with Peace and Security office of Amhara region. See also, Group discussion with Ye'Amara Hezib Mahiberat Forum.

³⁰⁰ Group discussion with Ye'Amara Hezib Mahiberat Forum

³⁰¹ Discussion with elders confirmed the need to identify elders based on experience and age. That is why, elders site the Customary Court established an age limit of 40 – 72 years as a qualified age for election to the Customary Courts.



Challenges

Some research participants in the Somali regional state submitted that there are situations when the government used customary authorities to disseminate its narration.³⁰²

As much as customary Institutions are acceptable, there is an awareness gap on the part of customary authorities. Hence, it was suggested by research participants that empowerment work should be done.³⁰³

The other problem that CIs are facing is political interference. The research participants warned that Shimagles should be those who are elected and respected by the community but not those elders who have political intentions. The elders, at all levels, should maintain their distance from politics or third-party interference, to avoid the negative perception of the public against the customary system. A critical suggestion is provided by key informants the ‘Shimagles’ not to be co-opted by the state.³⁰⁴

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³⁰² Interview with Abdulnasir Bereket.

³⁰³ Interview with Salen Umer. See also, Interview with Abdulnasir Bereket.

³⁰⁴ Interview with Gashanew Dessie.

CHAPTER FOUR – DATA ANALYSIS

In this chapter, the study analyses the collected data along with the consulted literature concerning CDRMs in general and their contextual contribution to the national dialogue and reconciliation efforts at the national and regional levels.

Hence, based on data presented in the previous chapters, analysis of customary Institutions' general characteristics and values/principles, current status in line with their link with the formal justice system, and most importantly contribution to the national dialogue and reconciliation efforts. To set the context, this chapter's discussion is preceded by a brief discussion on triggers of conflict in the sampled study sites.

4.1. Drivers of Conflict

An assessment conducted in the sampled regions has shown that most of the key root causes of conflict, more or less, are similar. The data show that the identified conflicts can be categorized into five groups based on their nature. These are competition for resources, boundary-related issues, mismanagement of the quest for ethnic identity, extremism (manifested in terms of ethnic, religious, and power grip,) and lack of good governance (as reflected in diagram 8).

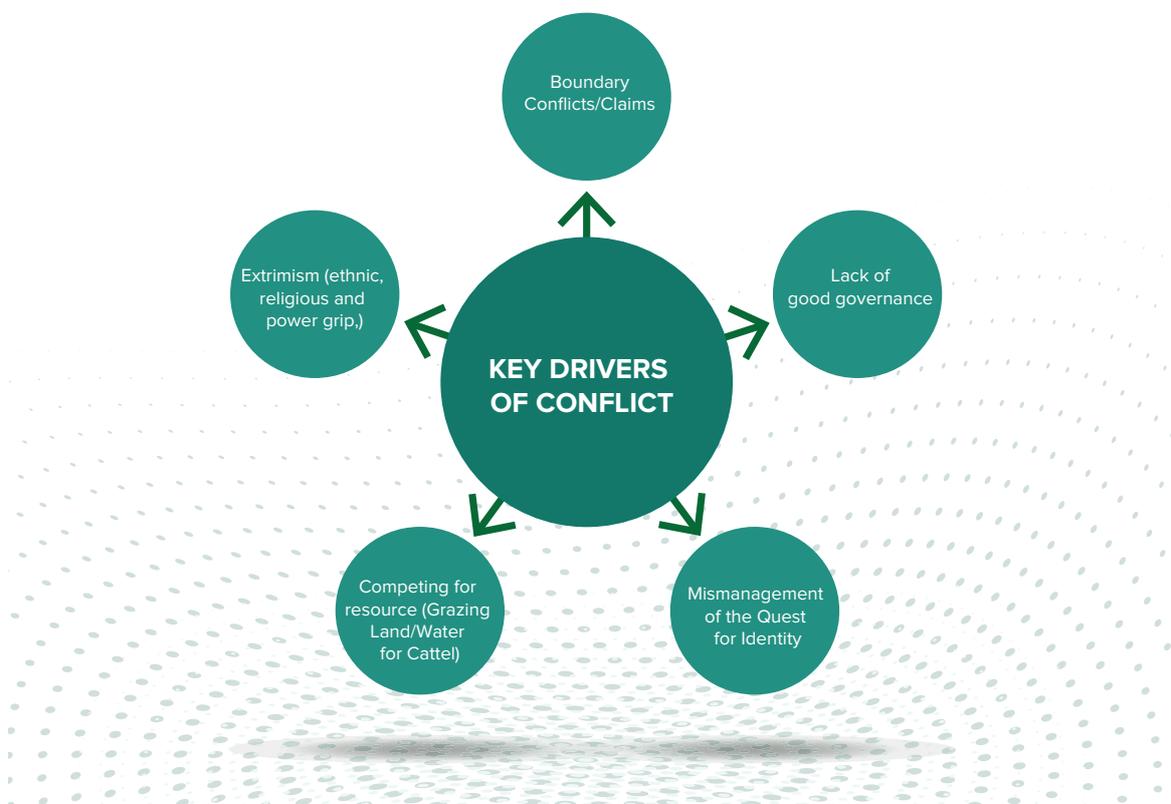


Diagram 9: Conflict drivers

The CIs have been resolving conflicts, inter alia, triggered by the mentioned drivers. For instance, the CIs in Sidama and SNNPR resolved conflicts related to boundary disputes by setting up a joint committee of elders. Similarly, there were occasions where the CIs resolved conflicts triggered by resources and boundary disputes between Oromia and Somali peoples.

4.2. A Brief Analysis of Customary Institutions

4.2.1. Common values and principles

From the data collected, there are some common values and principles that have been observed across the CDRMs. To begin with, the first common value is mending social relationships.

I. Mending social relationship

Unlike the formal justice system, in the case of CDRMs, there is no loser and winner relationship. At the end of the reconciliation process, both parties to the conflict develop a sense of win-win mentality, whereby it avoids further conflict in the sense of retribution. Moreover, the process helps the victim to forgive the wrongdoer and keep their relationship alive. This is true even when the formal justice system intervenes and punishes the perpetrator. In other words, even if the person is prosecuted and punished in the formal justice system it is still required for the dispute to be settled using CDRMs. So that there will be sustainable peace in the community. To this end, in some regions, an affinal relationship is established between the victim and wrongdoer. And the broken relationship between the wrongdoer and the community was restored. This shows that the CDRMs can serve as complementary to the formal justice sector. Stated differently, arguably, formal justice cannot by and in itself bring sustainable peace to the community. For instance, as stated by an informant in the Amhara region, a perpetrator was sentenced but initially, there was no CDRMs involvement and the families of the conflicting parties remained in hostility, and at least 10 persons were killed from both sides. But it was finally, the CDRMs that amended their relationship and reconcile the families.³⁰⁵

II. Unraveling the truth

As the saying goes, ‘There is nothing hidden from the public eye’, CDRMs are in the best position to disclose the truth. This is so because the elders are very much close to the community and often, they have firsthand information about incidences. Unlike the formal justice system, there is no ability to get adequate evidence to resolve the case. More importantly, the parties to the conflict don’t dare to give a false accusation and testimony to the elders due to reasons like social sanctions specifically curses. For example, in the case of unidentified or hidden offenses in Gamo society, they unearthed the wrongdoing by letting the community members pass through elders sitting on two sides by taking an oath.

The other possible reason why CDRMs are easily able to discover the truth is because of the involvement of religious fathers as an elder. This discourages the parties to the conflict and witnesses from providing false statements because it is considered a sin. For example, in the Gurage culture, the suspected wrongdoer takes an oath saying that “if I am not telling the truth, let my race perish, from the face of the earth or if I am not telling the truth, let my race not live on earth”.

III. Openness and participatory

In the case of CDRMs, there is no camera hearing. The public is allowed to attend in the process. This increases the credibility of the work of CDRMs. The public is not mere attendants. In some cultures, they are even allowed to voice their concern. For example, the Gamo CDRMs, are open to be attended by the members of the community including grown-ups, possible guests, youth, and women. Interestingly, women are allowed to air out their opinion in the process by making the common sound called “eleleta”, or murmur. If such an act is demonstrated by these groups, the customary judge would stop and reconsider the process.

IV. Confidentiality and flexibility:

One of the values of CDRMs is their wisdom to keep the secrets of the disputing parties, especially in case of family matters. This does not mean that the elders are not abide by confidentiality when they settle criminal matters. When they communicate the agreement of the disputants, for various reasons, to the formal justice system, they do not write it in detail. This has been confirmed by all research participant elders in all regions.

V. Volunteerism

Customary dispute resolution mechanisms are always performed voluntarily to serve the community without any formal payment system. Looking at even the customary court judges of the Oromia regional

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³⁰⁵ Such incidence also happened in various parts of the regions in different ways.

state which is established by Proclamation 240/2021, the judges are serving their terms without any remuneration.

VI. Simplicity

In the CDRMs, unlike the formal justice system, there are no codified laws that govern the process. That means the customary judges are not required to follow a stringent process. The elders are free to be flexible and adopt simple procedures as long as it helps to discover the truth and resolute conflicts. In the same fashion, the procedure is easy for the disputants to present their issues.

4.2.2. Characterization of Elders/Shimagles

The various ethnic groups of the country have their own local CIs with their nomenclature and source of power to their leader. As evidenced by the data collected there are two main sources of power: hereditary and nomination. In the latter case, besides other factors, the trust of the community is decisive. This has been, for example, evidenced by the appointment of the 'Aduulas' in the Gada system. When the source of power is hereditary, the upcoming leader is not known in advance. While these are the sources of power to the CIs leadership, concerning the elders who adjudicate conflicts, there is no significant difference throughout the country. In simple terms, the appointment of these elders is contingent on their records of ethical and moral background in society.

I. Inclusivity

Almost in all CDRMs, the collected data revealed that males are dominant in the process. It is safe to submit that women and youth are the least involved. For example, in the Somali dispute resolution system, even if women are party to the conflict, neither they bring the case to the elders, nor attend the process. They are rather represented by the nearest male kin and the same is true in the case of Oromia.

II. Actors, Codification

Customary dispute resolution institutions in Ethiopia, involve various actors. In addition to the elders, and the disputing parties, the public at large, the families, and even potential guests are involved in the process.

While the CDRMs system existed for a long, almost all don't be governed by written laws including in leading and participating the involved actors. Only in a few CDRMs codification is the norm. Evidence could be mentioned from the Somali Isaha clan, where they have a well-developed bylaw and the same is true of the Guraghe Qitcha'.

The codification helps the CDRMs to have a framework that can stand the test of time and develop gradually. In addition, the codification could minimize unnecessary variations in the application and interpretation of customary law within the same community. Moreover, it boosts their accessibility to the public. This codification could be done through various means considering the context of CIs to easily learn and transfer to generations, eg. through audio-visual recording.

III. Mandate analysis

The mandate of the CDRMs in all regions is not about resolving only individual cases. Whether the law/policy gives space or not, they all are exercising criminal matters. It is evident from the collected data and discussions with the elders and high-level court officials that there is a tendency for the elders to deal with all cases even though the law doesn't explicitly give them jurisdiction. The court officials as well as the justice office are of the view that, if conflicts are meant to be resolved genuinely and reconciliation be meaningful, the involvement of the CDRMs should be recognized.

Even if the power is recognized by the federal constitution, up until now, only the Oromia regional state enacted a law, proclamation 240/2021, on customary courts. This proclamation provides, arguably, ample space to the CC and recognized their critical complementary role in the justice sector.

IV. Process/Procedure

Unlike the procedure code in the modern justice sector, there is not such a stringent kind of process or procedure in the CDRMs. Nonetheless, the system has developed its way of approaching conflicts and employing strategies to deal with conflicts of simple household matters to complicated societal/clan-based conflicts. The procedures employed in civil as well as criminal matters follow at times a similar other times a different approach.

In almost all CDRMs, the basic process to deal with conflict resolution follows at least six steps. The first step is to start the motion by the perpetrator/relatives, and sometimes by the victim – eg. in the

Somali case. Sometimes, in case of violent conflict, there is interference by the elders or concerned members of the society seeking status quo and halting the expansion of the conflict to other members of the family or relatives or clans. The second step is assessing and investigating the suffered loss; if the perpetrator is known, or investigating the identity of the perpetrator, if not known. The third step is to call for the disputing parties and conduct a hearing. The fourth step is the decision-making process. The fifth step is reconciliation and concluding the mediation. The sixth step is the follow-up of the implementation and enforcement of the decision. Across all the steps, the CDRMs do conduct rituals.

V. Enforcement of Judgment

In all the CDRMs processes, the parties /their families take the follow-up and enforcement Mechanisms. Often, the decisions of the customary authorities would be implemented as per the guide by customary elders. Stated differently, this shows that Shimagles' decisions are respected even though they have flaws in the decision.³⁰⁶ As the Amharic saying goes, "Elders would give you a child who is not yours".

Enforcement of decisions is usually attached with curses, social sanctions, and even follow-up and execution by the government itself. In case of a curse for instance, in all regional states, the person/group/clan who refuses to perform as per the decision of the customary authorities, he or his family is expected to encounter bad luck that extends even to generations, for example could be the 'Gomiye'. On the other hand, social sanctions measures are taken against the party that failed to respect the decision of the customary authorities. In the case of Somali, to the extent of pushing the 'deviant' from the clan and making the person 'clan less'.

Currently, the elders in the Oromia region are under the CC arrangement and could demand even the formal court system to execute their decisions.

4.2.3. Link with the formal justice institutions

Historically, Customary Institutions existed long before the formal justice system has come into existence. Stated differently, "Customary Conflict Resolution Mechanisms are deeply rooted in the cultural practices of communities and are more popular than the formal justice system."³⁰⁷ CIs had been used extensively by different stakeholders and positive attitudes developed toward using these mechanisms as tools for conflict resolution. Currently, however, the research reveals that due to various factors, CDRMs have been ignored by the Ethiopian legal framework, especially in criminal matters.

There are debates about the why of selecting one from the other. As per the literature and the collected data, the modern justice system does not permit the CIs to engage in criminal justice matter due to the conception of the weak deterrence effect of the CIs approach towards dealing with the case only through compensation and reconciliation; secondly, the CIs are using the non-standard method of providing judgment against cases; thirdly, CIs are not knowledgeable about human rights standards and inclusivity/equality principles during the process of adjudication.

On the other hand, though CIs do not have the formal channel of communicating formal justice, there is a belief that CIs are, cost-effective, accessible to society, time-saving and flexible resolution/execution processes, and feel they are the heart of their societal needs and demands; feel very strong for having a huge social base or legitimacy,³⁰⁸ keep the societal positive relationship, has capacity and opportunity to control a societal conflict before its occurrence.³⁰⁹

Undeniably, as the research reveals, in all the study regions, CIs do play their part in conflict resolution. The interplay, however, exhibits heavy variations from the highest influence of the Somali CIs in the formal justice, to the minimal influence in Amhara and SNNP regional states. As is observed in the Oromia region, however, the relationship between the formal and the customary becomes defined under Proclamation 240/2021, which has a predictable relationship and defined jurisdiction to the extent that

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³⁰⁶ Interview with Gashanew Dessie.

³⁰⁷ Resources Center for Sustainable Change (RCSC) (2021). The study of Traditional Peace-making Practices in Gamo, Konso, Gedeo Zones , Funded by European Union Civil Society and the Study Carried out by : AFSEL Consulting Services.

³⁰⁸ Interview with Abdurished Abdulahi. See also, Interview with Abdulahi Usman, Executive Director, Partnership for Relief and Development Organization, date.

³⁰⁹ Interview made with Experts in the Bureau of Peace & Security, Mr. Getaahun Mengistu, Director for Peace Building, Mr. Melaku Kassa, Senior Expert for Peace Building, Mr. Tesema Ashenafi, Peace Building and Research Expert, Mr. Wogene Getachew, Director, for Religious Affairs Directorate, 2 Nov. 2022; at Hawassa Town.

the decision and judgment delivered by the CC would also be executed by the formal court. However, still there are functions of customary elders through the previous cultural practices of handling cases because the CC has limited jurisdiction over criminal matters.

Even though the symbiosis between formal justice and the informal/CIs displays, uneven application among the sampled regions, there is a strong belief both in literature and confirmed by the research, prosecution of criminals by the formal justice system alone would not bring sustainable peace to the community; the formal justice could not carry the burden alone. As confirmed by the formal justice informants, they are of the view that the CIs should be given some jurisdiction to complement the formal justice system.

So far, formal justice is working cooperatively with the CIs, particularly in consulting and adjudication of civil and family matters. But when it comes to criminal cases (except upon complaint matters), there are various relationships observed in the regions. In some regions, petty crimes are closely managed by the CIs, before and even after the formal justice is on follow-up. In regions like Amhara, Oromia, and SNNPR, CIs conciliation and conflict resolution are used only for mitigation purposes (during sentence determination).

Given their indispensable role, of CIs, in many aspects of societal conflict resolutions, it is expected they exist parallel with the formal justice system. In other words, the formal justice system should indeed function parallelly along with the Customary system because the challenges that Ethiopia faces cannot fully be controlled using only the formal justice system or the customary system. All in all, there is a need to provide space for CIs and establish a better linkage between formal justice and the CIs. Nonetheless, the question remains how the two-system interplay and maintain the delicate balance in conflict resolution efforts.

4.3. Evolution of Customary Institutions: from latency to apparent

The evolution of CIs and authorities means to show their existence in historical times to current status/legitimacy and the new development.

I. Existing Reality (Perception) towards, CIs

As it is well known, CDRMs are earning their legitimacy from the public and the state. If the perception and trust of society are eroded towards the CIs, then the institutions will be in question. According to the data collected, CIs are viewed differently in different regions. There are mixed views against the CIs and authorities. Most of the research participants believe that CIs are critical in terms of supporting the formal justice institution and trust that they have an indispensable role in creating positive social cohesion and attitude. However, they are of the view that the institutions are, sometimes, led by 'elders' of a highly contesting nature for being perceived as 'co-opted' by third parties.

As per the informants, some of the characteristic features of an elder, which include qualities of impartiality, high moral standard, and ethical and exemplary personality are missing from the CIs authorities. That is why, although there are authorities who are serving the CIs to a certain standard there are also elders who are being manipulated by politicians. Undeniably, the data has shown that government offices at all levels do intervene in the CDRMs and manipulate the elders to abuse their power. Instances were mentioned that during the previous regime, Abdi Mohamoud Omar, of the Somali region, governmentally co-opted elders were repeatedly established but the society had been keen to keep its tradition by refusing the 'government-made elders' by newly setting-up elders within their clans.

This attempt is not only of the past nor only in one region, but all research participants in the regions unanimously agree that there are 'government elders' who would speak as the 'mouthpiece of government' rather than the society's interest. Hence, this shows that, although the degree varies, there is a suspicion that third parties could manipulate the CIs.

Very recently, stories are coming out as allegations from both sides of the government and the public reveal that elders are trying to resolve issues of political nature. But, as most elders proved in the discussion, they are of the view that all conflicts and misunderstandings as well as armed conflicts deserve the attention of the CDRMs. Even key informants from both governments as well as CSO participants strongly expressed their view to the extent that Ethiopian elders, would have been much

more their choice than elders from other countries to deal with the peace talk between the TPLF and the Ethiopian government.³¹⁰ In a more divergent way, there are incidents where customary authorities were attacked by forces, for the reason that couldn't be justified, in this study³¹¹. For instance, the killings of the Karrayyu Abba Gada could be taken as an example.

On the side of the government, there seems an expressed commitment to advancing the culture of peace through establishing a 'peace committee', 'ye selam enatoch/mothers of peace, an attempt to establish national elders' association and the move towards resolving conflicts through the culture of Shimgillina (eg. government with TPLF). However, there is no similar understanding concerning this commitment of the government.

While undertaking this study, this research has an opportunity to examine two sources of its interest: a letter³¹² and a press release³¹³ by the Amhara Shimgillina committees and OLF, respectively. In the case of the Amhara, the Shimagilles are of the view that government officials are not respectful of the 'shimgillina culture'.³¹⁴ In contrast with the Amhara experience, OLF is alleging the 'customary elders' are weaponized by the government. One can observe that there is a contested legitimacy in the case of OLF, and undoubtedly, the same is true of the Amhara side. From the very ideals of the CDRMs, it is not the institution that is in question, rather it is the 'elders legitimacy' in question. The bottom line is that CIs are at the heart of societal interest, the question remains who is playing (the elder) in the institution? In other words, the general conclusion with regards to the legitimacy issue relies mainly on whether the elders are 'politically co-opted'³¹⁵ and becoming self-centered than guardians of the interest of the community. This criterion will remain strong than any other variable of analysis. On the other hand, youth seem to disconnect from the indigenous institutions due to various factors, possibly including their lower involvement in the process of the CIs. As claimed by participants specifically elders, in Somali and Amhara, the youth considers CIs as outdated/old-fashioned which often is a result of a lack of awareness.

II. Institutionalization

Given the historical inconveniences and unfavorable environment against the CIs in the country, all research participants are of the view that indigenous knowledge and institutions should flourish to support contemporary problems of their society and the nation.

Along the same line, the study has found out that, currently there is a strong desire by the CIs for a more institutionalized approach. To put it in a nutshell, for example, the Somali CIs have organized themselves and are drafting a law for establishing a council of elders called 'Guurti'. This council is expected to be the second house of the regional state. This aspiration, as per the elders, comes out of the desire to maintain the culture and traditions of Somali society.

In the case of Oromia, in 2021, customary courts have been formally established by law. This action is also stated in the proclamation that it is the duty of the government "to support the growth and enrichment of cultures". In the Amhara region, some elders who are often regarded as elders in the region, have registered the eldership institution as '*Ye Amahra hizb ye shimgillina mahiber*'. The move to registration, as per the elders has been initiated due to the need to expand the practice and revive the cultural trust in the CIs. In the SNNPR, specifically, the Guraghe people established the Guraghe elders' cultural shengo' in February 2022. There is also an initiative to establish a joint shengo among Qebenna, Mareqo, and Guraghe.

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310 Interview with Ato Hailemeskel, Ministry of Peace (MoP) October 12, 2022; Interview with Pastor Daniel, President Justice for ALL Prison Fellowship (JF PFS) November 10, 2022.

311 Reason for the attack by any informal or formal group against these leaders of CIs should be studied for any remedial action in future.

312 Christian Tadele, The role of elders in resolving political conflicts in the Amhara region (Facebook official page November, 2022) available at <https://www.facebook.com/photo/?fbid=685744616444533&set=a.464518928567104>

313 OLF, Ethiopia has once again Closed the Door on Peaceful Reasolution in Oromia (OLF – OLA Press Release November 29, 2022), available at last accessed on

314 One may submit that the government is not cooperative to this specific effort because the members of the Shimgillina committees are political figures.

315 Interview with Chubaro Chondoro, Peace and Security Bureau informants, the elders themselves are with the view that the TIs are currently deteriorating in terms of acceptance and trust by the public. See also, Interview with Kassahun Fulfil Karso; Interview with Mulisa Korcha, Wolkite and its Surrounding High Court President, SNNPR, November 7, 2022, and Kassa Merihe, Wolkite and its Surrounding High Court Judge, SNNPR, November 7, 2022.

It should be noted that, in the institutionalization process, the government's role should be limited to roles such as facilitation, easing the process, providing the necessary infrastructure without pre-condition, and creating an enabling environment through placing legal framework and policy direction.

III. Challenges

The study has identified that like any other institution, the CDRMs have challenges that hamper or tempt their effective operation as trusted, credible, and capable institutions in the face of the public and beyond. Some of these challenges are inherent due to their creation and some are artificially embedded. The list may not necessarily be exhaustive, but the study has confirmed the below are some of the key challenges to CIs, in general:-

- ▶ lack of clarity in the legal framework on CIs - which has created a disparity in the application of CIs in handling criminal matters in different regions,
- ▶ CIs are perceived as being co-opted by third parties for gains other than the public interest,
- ▶ the awareness gap of the mostly youth towards the CIs;
- ▶ the Customary Institutions are not adequately organized; in terms of handling cases in oral tradition than a codified procedure; lack of infrastructure/facilities to operate,
- ▶ CIs cannot also resolve complex issues as crimes committed have become more and more complex because of the technologies used and other factors.

4.4. Customary Institutions Relevance to National Dialogue and Reconciliation: the National and Regional Level Efforts

The literature in the previous chapter showed that a national dialogue and reconciliation in general should not be alien to Customary Institutions. As the end beneficiaries of the process are the public, it should not disregard CIs' involvement in the process. It is important to make the public feel that justice has been served. The Ethiopian national dialogue commission establishment proclamation expressly provides that "using national customary knowledge and values" is one of the principles that directed the National Dialogue and the general works of the Commission.³¹⁶ To this end, the participation of customary justice systems is pivotal.

In this study, the data collected signified that except for very few research participants who have a minor reservation about the relevance of CIs and authorities in the national dialogue process and reconciliation efforts, it is uncontestedly suggested by all the research participants that CIs and authorities are relevant to the national dialogue process and reconciliation efforts. Hence, the importance of the use of customary justice in the national dialogue and reconciliation process has been an agreed point in the Ethiopian context. This is so because of the high regard that the Ethiopian community has for CIs and elders.

Coming back to the exceptional voice that was aired concerning the importance of using CIs and authorities in the national dialogue process and then reconciliation efforts, it was argued that their contribution is minimal. The argument made was that most of the problems in the country are political and elite centered. Accordingly, these problems cannot be solved by the involvement of CIs and authorities. For the proponent of this argument, specifically one informant from Amhara Regional State, the participation of the CIs and authorities should not be seen exceptionally but should be treated like any other stakeholders to the extent of participation so that the process would be inclusive. This line of argument is based on the premise that the customary authorities may not be capable enough (lack the expertise) to articulate the different socio-political problems of the country. As a result, the discussion should be decided at the elite level rather than go to the extent of the grassroots level. Stated differently, for them, the agendas should be identified at the elite level discussions rather than adopting a strict bottom-up approach. For this group, the relevance of the CIs and authorities comes into the picture during the implementation of the agreement of the elites, in other words, the last stage of a national dialogue process or even reconciliation efforts. However, this line of argument didn't get buy-in from the highest percentage of the research participants in all the sampled regions.

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³¹⁶ Proclamation No. 1265 /2021, Article 3(1)(k).

Despite the above minor differences on the stage when the CIs and authorities become relevant in a national dialogue process and reconciliation efforts but when they are in use, there is unanimity that it should be very carefully. It was pointed out that a mere romanticization of CIs may sometimes not bring the necessary result. Hence, it can be submitted the CIs and authorities alone cannot be a magic bullet. It has its own strong and weak sides. The question remains: What are the specific roles that customary institutions of conflict resolution play in the national dialogue and reconciliation process?

The role of CIs and authorities' relevance to the national dialogue process and reconciliation efforts, besides others, can be evaluated given their respective values/principles, characteristics, and other attributes discussed in the previous section. Something that cannot be escaped without mentioning is the role of the CIs in the peacebuilding process is fundamental. For instance, in the recently launched forum of the National Peace Council³¹⁷, by the Ministry of Peace, one of the key thematic intervention areas is 'community-level work to make people realize the value of peace and national peace-building work'. This is through a sustained dialogue culture.

4.5. Possible Roles of Customary Institutions and Authorities in the National Dialogue Process

As discussed in this report, in the case of the Ethiopian National Dialogue Commission, the national dialogue process has five phases. However, the researchers adopted the most commonly known three stages of National dialogue processes for the analysis of the roles the CIs could play:

I. Preparation stage

As the name indicates, this stage is meant to be an early phase in the dialogue process. Given its wider scope, the discussions should not be limited to the elite level. If there is any plan on the part of the ENDC at local level discussions, we think it should have, the CIs are the [heart of] best actors to organize and facilitate such early consultations for the sake of discussions on the methodology of the Commission's selection criteria for participants, agenda setting and clustering the discussion level. As the people have trust in the CIs, the commission can have a successful consultation. Hence, the CIs can play the role of facilitating early-stage consultative meetings that would help the public understand the mission, vision, and objectives of the Commission.

For a national dialogue commission to be successful, as discussed above, it needs to employ a participatory and all-inclusive agenda selection process. As much as the agendas should be those that have national concerns, they should also be those that truly represent the true feeling of the people. In this case, the people would give legitimacy to the process and feel ownership of the process. It is at this juncture that the role of CDRMs comes in. As per the research participants, CDRMs can take part in the designing or shaping of the demands of the community both at woreda, zonal, regional, and national levels, as well. This is compatible with the duties and responsibility of the Commission which is provided under its establishment proclamation.

The proclamation, as discussed before, provides that “ the Commission has the duty and responsibility to] identify differences among different political and opinion leaders and also between societies on national issues through studies, public discussions or other appropriate modalities.”³¹⁸ Hence, the Commission can use the CIs to discharge this responsibility. For example, according to the Somali elders who participated in an FGD and an interview held with one Shimagle, it was mentioned that there is an ongoing effort to single out and develop the Somali agendas that would be presented to the national dialogue process. Though the legitimacy of the process could be questioned, the potential role of the CIs and authorities would ease the work of the national dialogue commission, if applied in a way the Commission is planning to implement. For example, it was reported that the ENDC has a plan to establish a working system by December 2022, compile an agenda in January and February, complete the drafting of consultation agendas from February to March 2023, and hold national consultations in March 2023.³¹⁹ This shows that the ENDC has a very tight schedule. The participation of the CDRMs in

317 Ethiopian News agency, <https://www.ena.et/en/?p=40598> accessed on 22/11/2022.

318 Proclamation No. 1265 /2021, Article 9(3). The same conclusion can also be drawn based on Article 9(13) of the same proclamation.

319 Fana Broadcasting Corporation S.C. (FBC), Commission to Begin National Dialogue in Coming March, (November 30, 2022), available at <https://www.fanabc.com/english/commission-to-begin-national-dialogue-in-coming-march/> Last accessed December 8, 2022.

the identification of the agendas would help the commission a lot in easing the burden.

Similar to the identification of agendas, Customary Institutions, and authorities can also play a positive role in the identification of the participants. According to Professor Mesfen Araya, the Chief Commissioner of the Commission, the ENDC plans to use an equal implementation system in terms of the identification of participants and agenda collection system in the consultation process in four areas of focus, which are regional, city administrations, federal, and diaspora.³²⁰ It is expected that this identification of the agendas for a national dialogue and participants in the consultation does require a thorough discussion with different sections of society at different levels. In this regard, as mentioned by some of the research participants, CIs are convenient forums.³²¹ This is because the CIs and their authorities are close to the community they serve. On top of the mentioned roles of the CIs, they also have similar values and principles that could be aligned with the principles of the commission which is the openness and participatory values of CIs to this phase of dialogue process.

For example, as indicated by the Somali elders during an FGD, any person who sustained damage for any reason has been going to the clan leaders. The elders know not only the victim and the damage he sustained; but often, they also know the causes of why such harm has been suffered by the person. Certainly, for the national dialogue and then the reconciliation process to bear fruit, the concerns of the victims have to be aired out appropriately. It means since the participants' number is limited in the process, it is important to identify participants who know the truth, at least in relative terms. Customary authorities know who the victims and perpetrators are and the causes of the conflict. Hence, their participation in this process would increase the chance of the success of the national dialogue process and reconciliation purpose.

II. Process (actual dialogue) Phase

At this phase, where the actual dialogue process is happening the customary authorities, maybe together with others, can lead consultations that could be held at any level. For example, the Ethiopian national dialogue proclamation defines "Panelist" as "a person appointed by the Council of Commissions to lead National Dialogue forums held at the Federal and Regional level."³²² Likewise, the Proclamation while providing duties and responsibilities of the Commission, provides "[the commission] shall cause dialogues to be chaired by commissioners or facilitators to be appointed by the Council of Commission, it ensures that the person who is appointed as facilitators meet the qualifications for Commissioner as provides under Article 13 of this Proclamation as much as possible."³²³ Arguably, the criteria provided for the appointment of the Commissioners can be fulfilled by the customary authorities. Hence, the Council of Commissioners can use this opportunity and appoint them to be a panelist together with other experts.³²⁴

In the process of national dialogue, the CIs authorities can have a double-hat status. They may contribute to the process in two capacities. To be specific, they may participate as a stakeholder by representing the different customary communities, or they may also contribute to the process as a mediator. It is not unimaginable to imagine the occurrence of stalemates in the process of various consultations. The deadlock may be the result of the elite's plot in the process. In this case, the customary authorities

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³²⁰ Fana Broadcasting Corporation S.C. (November 30, 2022).

³²¹ Interview with Abdureshid Abdulahi.

³²² Proclamation No. 1265 /2021, Article 2 (5). The close reading of the proclamation shows panelists and facilitators in the English version are used interchangeably. For example, although the proclamation defines panelists in its definitional provision, it uses only a facilitator in the body.

³²³ The National Dialogue Establishment proclamation, Article 9(7).

³²⁴ The following are Criteria provides for the Appointment of Commissioners. Specifically, Article 13 of the Proclamation provides 13. Criteria for the Appointment of Commissioners Anyone who shall be appointed as a Commissioner shall fulfil the following requirements:

1. Ethiopian National;
2. Committed to serve all religions, Nations, Nationalities and Peoples of Ethiopia equally;
3. Not a member of any political party;
4. Capable to make a significant contribution to national consensus;
5. Have a good character and personality;
6. Trust worthy by the public;
7. Not convicted for charges of committing any serious crime;
8. Shall have a competence to discharge the activities of the commission;
9. Willing to devote his full time for the activities of the Commission.

could be part of a ‘committee of the wise’ to use their influence to break the deadlock and narrow down differences. This has been the case in Cls’ usual effort of preventing conflicts. For example, the ONLF in Somali, the 6th national election, and Somali, OLF in Oromia. Customary Institutions and authorities also played a meaningful role when there was a serious conflict in the region on August 4, 2018. Moreover, when groups/parties like ONLF which was once labeled as a terrorist come home with their arms to the region, the customary authorities smoothed the transition and make it successful.³²⁵ According to clan leaders who participated in FGD, in the region, there were also signs of disagreement following the 6th National Election. However, the customary authorities managed to settle it amicably. This happened because elders were involved in warning both the government and opposition candidates that if the process resulted in violence in the region, they vowed to denounce their support and would influence the public to deny any support to all groups.

III. Implementation stage

The Implementation phase of a national dialogue is the final stage where the dialogue process is about to be implemented and take a certain shape. At this stage, the recommendations that come out of the dialogue are expected to be translated into action through the commitment of various stakeholders. The Cls, due to their wider acceptance in the public domain, as seen in the strong enforcement mechanisms of their decisions, the community could serve as insurance for the enforcement of Cls’ orders and decisions. Due to the need to cascade the agreed points and communicate to the wider public, Cls could help to engage in awareness creation to the general public and seek support for its implementation.

In addition to the above contributions that Cls can play in each phase of the National dialogue process, the following possible indirect contributions of the Cls in the national dialogue process should not be left unmentioned.

- ▶ Naturally, the visibility and accessibility of the ENDC at the local level increase its chances of success. Awareness about the existence of a Commission on national dialogue and what it does is the first step in the right direction. Moreover, it is well-settled that the national dialogue should be both participatory and inclusive. It means that the Commission does require a mechanism to reach the grassroots level. To this end, therefore, the Commission can use the Cls. Stated differently, the Cls are the right route to bring the Commission closer to the community. In the same fashion, the Cls can be important means for mobilization and sensitization of the works of the national dialogue to the public. In other words, when there are new issues, it is not uncommon to conduct some advocacy work to introduce those new ideas/issues to the public. Accordingly, the Dialogue Commission including the different reconciliation efforts can use the Cls to reach out to the public and to be able to achieve their goals. It is the involvement of the Cls that would bring the national dialogue process closer to the people.
- ▶ As the customary authorities are, in principle, very trusted and respected in their community, it would be very easy for the Commission to carry out its dialogue facilitation role in the community via customary authorities. In this sense, it is also easy to get the cooperation of the community for the attainment of the objective of ENDC and reconciliation efforts.
- ▶ The issue of legitimacy is one of the areas where Cls can play a role. As an institution, Cls have legitimacy in the eye of the community. There is not often second-guessing of the orders and decisions of these Cls.
- ▶ Moreover, as a result of their legitimacy, the community serves as insurance for the enforcement of Cls’ orders and decisions. The national dialogue commission and the would-be different reconciliation efforts can use this legitimacy of Cls so that they can have a kind of at least a derivative legitimacy in their activity and then enforcement of their decisions. In a nutshell, for the national dialogue and reconciliation process to be successful, it needs to be trusted by the public. It was stated by the research participants that there is still trust and legitimacy in Cls. Hence, if the national dialogue and reconciliation at the later stage use Cls and authorities, it could be benefited from Cls’ positive attributes of public trust and legitimacy towards them.
- ▶ According to sources, the budget of the ENDC is 3.4 billion ETB.³²⁶ Of this budget, the ENDC hopes to raise much of it from the public coffer and a much smaller slice from development

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³²⁵ FGD with clan leaders.

³²⁶ Fortune, National Dialogue! What National Dialogue, (August 14 , 2022), available at <https://addisfortune.news/national-dialogue-what-national-dialogue/> Last accessed December 9, 2022.

partners.³²⁷ This is not an easy task. Accordingly, it is natural to assume that the Commission should use every cost-minimizing means without compromising the quality of its work. In the study, it is confirmed that in dispute resolution CIs are cost-effective. The process takes a relatively shorter time. Hence, the contribution of the CIs and authorities in the national dialogue process can also be seen from this perspective. It is known that one of the inherent values and principles of the CIs is that they do their activities as part of their social obligation, i.e., voluntarily without cost or low cost.

In general, the CIs are potentially a useful existing structure where the national dialogue could use them at different phases of the dialogue process, as outlined above.

4.6. Possible Role of Customary Institutions and Authorities in National and Regional Level Reconciliation Efforts

Reconciliation in a transitional justice process is not a result of a single mechanism. It is rather a product of multiple transitional mechanisms such as prosecution, truth commissions, amnesty, institutional reform, and compensation as well as apology, acknowledgment, and memorialization. These mechanisms are amongst those included in the AU Transitional Justice Policy. Each of these mechanisms has its process. For example, the prosecution is guided by a formal written law/procedure and the main actors are the victims and other judicial sector institutions. Moreover, naturally, this mechanism is retributive in the sense that it focuses on punishing the criminal. However, truth commissions are restorative and need the active participation of the wrongdoer and the victims. In this case, there are ranges of activities such as statement taking, selection of cases, proceedings/hearings, characterization of cases, writing of the report, and implementation of the recommendations. Since post-2018, Ethiopia employed various mechanisms to reckon with the past. The government employed prosecution, pardon, amnesty, and institutional reforms as well as a reconciliation commission.

At this juncture, it is not apposite to leave unmentioned that the Ministry of Justice of Ethiopia has developed a draft Policy Options for Transitional Justice. This policy offers prosecution, truth-seeking, amnesty, reparation, and institutional reform as policy alternatives.³²⁸ This draft policy options for TJ have devoted a brief section to the “customary justice system” and expressly acknowledged the important role they can play in transitional justice processes.³²⁹

Although the possible contribution of CIs and Authorities is very limited in prosecution (be a witness when they are summoned), they can play an important role when the other mechanisms are employed. These possible contributions of CIs and their authorities are described herein as follows.

First, the success of a reconciliation effort is the discovery of truth. The nature of truth to be discovered may be a point of discussion, as truth could be personal or narrative truth, factual or forensic (microscopic truth), social or dialogue truth, or healing or restorative truth.³³⁰ For the reconciliation to be meaningful, the truth about what has happened, against whom it has happened, why it happened, who was affected, and who caused the wrong should be unearthed. This is where the CDRMs appear to unravel the truth as it is one of their value.

Irrespective of the nature of truth, the role of CDRMs in unraveling the truth is undeniable. The research participants in all sampled regions argued that CDRMs are ideal for discerning the truth about various conflicts. Hence, they are aware of the truth behind the conflicts, and they have a tested experience of finding the truth. Hence, the possibly will-be-born reconciliatory organ can use them in this regard.³³¹ The customary authorities can tell what has happened by using the different rituals they employ. Therefore, CIs and authorities can play a good role by helping the Commission in the discovery of truth.

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³²⁷ Fortune (August 14 , 2022).

³²⁸ See, Ethiopia: Policy Options for Transitional Justice, Draft for Stakeholder Consultations January 2023, 9-24.

³²⁹ Ethiopia: Policy Options for Transitional Justice, Draft for Stakeholder Consultations January 2023, 29.

³³⁰ Truth And Reconciliation Commission of South Africa Report as cited in Audrey R. Chapman and Patrick Ball, ‘The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala’ (2001) 23(1) *Human Rights Quarterly*, 1-43, 10.

³³¹ Interview with Abdulnasir Bereket.

Second, for a meaningful reconciliation to happen, the victim should be given the central stage in the process. The individual pain of the victims should be looked into, as much as possible, in various possible ways. As much as it is necessary to focus on representative matters,³³² it is necessary to ensure social justice by taking individual victims' concerns. The victims should have the chance to speak about what has happened to them. As CIs are closer to the community and more intertwined with the day-to-day life of the community, they are in a better position to ascertain the needs of the victims. With this, AUTIP provides that '[t]he truth, justice and reconciliation element of the AUTJP involves the provision of public processes for probing societies with legacies of violent conflicts and systemic or gross violations of human and peoples' rights. It is implemented through TJ and reconciliation commissions, which are legal bodies established to examine and address violations and abuses. They also serve to establish a full historical record of such violations, including the various experiences of different groups such as women, children, and youth, the identity of the victims and perpetrators, as well as the role of various State and non-State institutions, and to provide for measures of reconciliation and healing.'³³³

Concerning what the transitional justice commission can do, though not mandatory, the AU Transitional Justice Policy states,

“TJ commissions may also name individuals and institutions that are perpetrators, accomplices, accessories, or facilitators of human rights violations, to hold them accountable. In addition, TJ commissions should outline institutional responsibility for crimes and make recommendations to reform institutions, laws, policies, and practices that enabled abuses to occur”.³³⁴

In the study, it was mentioned that to have successful reconciliation, prioritization is indispensable. Discussing national issues like Flags may sometimes be inappropriate with someone who has suffered from some personal injury. Hence, as the CIs may know these people, it is necessary to have their participation so that it would be possible to address their needs properly. This role of CIs can be more effective, especially at local and regional levels. For example, the commission established by the Somali Regional State, the Commission for Investigation of Violence and Reconciliation and Reparation of Victims in the Somali region, can be benefited much from the CIs of the region. As the CIs of the different clans of the region is more or less similar and have legitimacy across different clans. The CIs of the region have one highest organ, Council called Guriti. Hence, the CIs of the region can be a good forum to effectively participate the victims in the reconciliation process.

Third, it is important to note that reconciliation is both a process and a goal.³³⁵ Moreover, it can be understood both in thin and thick conceptions. The thin understanding of reconciliation is about bringing a peaceful co-existence. It does not include existence based on trust and cooperation. The requisite element here is a state of non-violence, whereby, for example, groups live together despite a lack of trust.³³⁶ The latter- a peaceful existence based on trust and cooperation is a thick conception of reconciliation. This conception places significant emphasis on friendliness and forgiveness. Consequently, it is more difficult to achieve through macro-level, top-down approaches to post-conflict.³³⁷ Generally, reconciliation is about building or rebuilding relationships damaged by violence and coercion, not only among people and groups in society but also between people/citizens and the state.³³⁸

Hence, for transitional justice to achieve either of the conceptions of reconciliation, the CIs can play a pivotal role. CIs have the value of reconstructing a broken social relationship. As confirmed by the data collected from the sampled regions, unlike the formal justice system, CIs and authorities are acclaimed for creating a win-win situation after a conflict. This helps to bring sustainable peace to the community. It means that using this value of theirs, the CIs are effective in mending the broken social relationship, between the wrongdoer and the victim in particular, and the wrongdoer and the community in general.

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³³² This is to mean that in hearing process, it is often not feasible to examine all cases. What is often done is conduct a hearing on selected cases.

³³³ The AU Transitional Justice Policy, 2019, 10.

³³⁴ The AU Transitional Justice Policy, 2019, 10.

³³⁵ Enrique Sánchez and Sylvia Rognvik, *Building Just Societies: Reconciliation in Transitional Settings* (Workshop Report, 5-6 June 2012), 2.

³³⁶ Matthew Richmond, *To What Extent is Reconciliation an Appropriate Term in Post-Conflict Societies?*, (2014), available at <https://www.e-ir.info/pdf/53726> Last accessed on December 8, 2022.

³³⁷ Matthew Richmond(2014).

³³⁸ Enrique Sánchez and Sylvia Rognvik (2012), 6.

Hence, the involvement of the CIs in reconciliation efforts would help to ensure lasting peace and co-existence in the community than conflicts resolved through formal systems as the community has relatively deep trust in the CIs. And disputants are reconciled by the elders and support restoration and healing of the relationship, unlike formal justice.

Fourth, the use of CIs in the Ethiopian community is not a new introduction. It has been in use long before the introduction of the formal justice system. It means that they are deeply entrenched in Ethiopian society (mostly in the rural part) and have developed a lot of wisdom in resolving differences. Stated differently, they have gained a lot of knowledge, experience, and wisdom in the area of conflict prevention and addressing differences. For example, Yonas Adaye, Commissioner of the ENDC, said that “in African philosophy and context we don’t have huge books but we have age-old wisdom’ i.e., indigenous based knowledge on African grown-up knowledge.”³³⁹ This justifies that knowledge sharing should not be one way. There should be room for the customary authorities to share their experience on dispute resolution with the experts of the reconciliation efforts and national dialogue process. Hence, basing on such long years of experience in dispute resolution would help the reconciliation efforts. The dialogue and the possible reconciliation process could be benefited from this wisdom of the customary authorities.

Fifth, for the reconciliation process to be successful, as indicated above, the truth has to come out clearly. To this end, it is necessary to accept the testimony of different groups as to the events or violations that have happened. In this regard, as confirmed by the data collected, the CIs authorities can play a significant role by giving their testimonies about what has happened, why it has happened, against whom it has happened, and by whom it has happened. They can provide different [ample] information and evidence if need be.

Sixth, the other area where CIs can play a role is in the implementation of the recommendation of reconciliatory organs. The reconciliatory organs often provide implementable recommendations. For the effective and meaningful implementation of the recommendations, it is necessary to have the active participation of CIs and authorities. This is so because CIs are very effective in addressing individual pains. The data also suggested that CIs could be engaged as vehicles to disseminate and implement dialogue outcomes that come at the level they represent. In addition, this would help the other objective of TJ in general which is “never again”.

Finally, it is important to mention that the use of CIs in the reconciliation efforts will have the effect of reducing the workload of the formal justice system.

Before winding up this section discussion, it is necessary to take the necessary precaution for the use of CDRMs not to be counterproductive. In simple terms, CIs are local. Their legitimacy is not universal. Hence, when the CIs are used at a higher level than the local area, the people who are not from the locality of the CIs may consider it as an imposition. This was one of the challenges that the application *Mato Oput* tradition faced in Uganda. Since the conflict (LRA’s activities) went beyond the border of Uganda, human rights abuses have crossed borders. Hence, the appropriateness of the applicability of one ethnic group’s CDRMs was a point of contestation.³⁴⁰ Hence, there is a probability for a similar challenge to be raised if a certain ethnic group’s CDRMs are going to be applied at a national level in disregard of the others. This is also the conclusion that the draft Policy Options for Transitional Justice developed by the Ministry of Justice of Ethiopia suggests. this policy is curies about customary justice systems as they could raise concerns related to women’s participation, adherence to human rights, and political and other forms of independence.³⁴¹ Specifically in the Ethiopian context, the draft policy states

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³³⁹ Yonas Adaye, Commissioner of the ENDC, [appeared as panelist in a webinar] Part 1 Webinar- Priorities for implementing Ethiopia’s national dialogue - 11/5/2022 (Chatham house) available at <https://www.youtube.com/watch?v=6Yh1wxT8xqw> last accessed 12/12/22.

³⁴⁰ Nomathamsanqa Masiko-Mpaka (2020), 6.

³⁴¹ Ethiopia: Policy Options for Transitional Justice, Draft for Stakeholder Consultations January 2023, 29.

“In Ethiopia’s unique setting, the extremely diverse ethnic and religious composition of its communities implies that it will prove extremely difficult to find a customary justice system that can be implemented nationally. Therefore, while their involvement is crucial and this must be recognized, their engagement should be predicated on proper assessment and identification of roles in customized contexts. This is achieved by recognizing their status and establishing pertinent subject matters and geographic areas which require their involvement. The pursuit of such a model eases the burden that formal transitional justice institutions shoulder; it also helps to ensure the effectiveness of the transitional justice process by contributing to sustainable peace, reconciliation, and amnesty.”³⁴²

4.7. Participation of Stakeholders in national and regional reconciliation efforts

Following a turbulent political situation, countries may go through a transitional justice process. This is also expected in Ethiopia. The ENDC is developing national agendas on which consultation will be held. It is not naive to expect the Commission to urge the country to go through a transitional justice process. This expectation is close to reality when it is seen because Ethiopia is developing a transitional justice policy.

As discussed previously, reconciliation is one of the end goals of a transitional justice process. For the reconciliation to be successful, the whole process should be participatory. Meaningful participation is a cornerstone of reconciliation in particular, and transitional justice in general. The various stakeholders should actively participate in the process of transitional justice. If the often-marginalized groups are not included meaningfully in the whole process, the transitional justice process will not be representative or legitimate.

Any consultation and participation process must consider the well-being and dignity of the victims.³⁴³ To this end, groups should not be excluded based on either institutional, cultural, or practical barriers.³⁴⁴ In simple terms, besides other factors, the success of reconciliation efforts depends on the inclusion of different stakeholders in the process. The notion of transitional justice itself demands inclusion as it is not a like-minded people’s game.

Concerning the question of meaningful participation, according to various literature, answering three questions is very essential, especially from the perspective of transitional justice. These questions are who, how, and when.

Who should participate: In a reconciliation process, no one should be excluded. The population/community should have the right to take part in the process. The community here encompasses its different segments including women, youth, professional associations, and civil societies. The threshold is that there should be no one left behind. As direct representation is not practicable, the participation would be via representatives. Anna and Stephen submit such public participation would be considered meaningless if the people who directly participate are not sufficiently representative of the local population.³⁴⁵

Undoubtedly, there is no one straight modality to seek true representatives of the population. For example, women could be represented by associations that work on different rights of women. The same is also true concerning children’s or other professional associations. Hence, civil societies could be representatives of a certain section of the population. The representation in the sense of the question of who should participate in the transitional justice process, in general, should be construed broadly. It may be necessary to focus on the sections of society that were particularly affected by the conflict or gross human rights violations.³⁴⁶ It may be necessary to give special attention to this part of the country. In the same fashion, as atrocities could have different impacts on different parts of the country, representation should also be seen from regional viewpoints.³⁴⁷

342 Ethiopia: Policy Options for Transitional Justice, Draft for Stakeholder Consultations January 2023, 29.

343 SOAS, Transitional Justice Processes in Sudan, (Policy Briefing, 2020), 3.

344 SOAS (2020), 3.

345 Anna Triponel and Stephen Pearson, ‘What Do You Think Should Happen? Public Participation in Transitional Justice’ (2010) 22 *Pace International Law Review*, 103-144, 133.

346 Anna Triponel and Stephen Pearson (2010), 134.

347 Anna Triponel and Stephen Pearson (2010), 135.

Moreover, the issue of participation is not about only the victims. It is also necessary to have the opinion of the perpetrators/wrongdoers about how to best achieve justice and reconciliation.³⁴⁸ This would increase the legitimacy of the process and its outcome. In addition, representation can be a manifestation of or a means of ensuring customary ownership of the process.

When a wrong, a gross human rights violation in the context of transitional justice is committed, albeit, in different degrees, the community is the victim. Moreover, the amicable relationship between the individual offenders and the community as well as with the state has been broken or disturbed. Hence, the need for the participation of the public in the reconciliation process is not ambivalent. In this context, the public is broad and includes the victim, women, youth, children, and professional associations.

In the context of CIs, the issue of participation is complicated. This is so because, in principle, societies in Ethiopia are patriarchal. Accordingly, it is plausible that customary dispute-resolution mechanisms are also male-dominated. Not only this but women are also considered unfortunate and weak by most of the customary laws and practices.³⁴⁹ The notion of equality between men and women is not a governing principle in customary laws and practices. Stated differently, customary laws and practices are, at least arguably, discriminatory. In most of the customary laws, women are not allowed to fully participate in the dispute resolution process. The rules governing the customary dispute resolution mechanisms are more favorable for men than women. The data collected from all sampled regions also indicated that women are not represented in CDRMs. For example, in Somali culture, women are not allowed to present their cases before the elders in person rather they are represented by men relatives.³⁵⁰ Women are not also allowed to be elders either.³⁵¹ Similarly, research participants also mentioned that when conflicts are settled using customary Customary Institutions, sometimes, the woman from the perpetrators' side is given as a wife to the victim's family to symbolize the replacement of the deceased. The belief is that this helps to create kinship between the two families and prevent further conflicts.³⁵² In addition, in the calculation of the compensation, the value of a woman's and a man's victims are not equal. The compensation paid to men is greater than to women. Furthermore, in the case of rape and other abduction, there is the tendency that elders negatively influence women not to take their cases to formal courts and this may be an obstacle to ensuring human rights for women. These facts are not different in the other sampled regions. The exclusion of women is also a problem in the SNNPR (Gamo and Gurage), Amhara, and Oromia regional states' CDRMs.

Undoubtedly, there are some improvements in accommodating the interest of women in recent developments in CIs. For example, in the Somali regional state, women are members of the law drafting committee that aims to establish an elders' council at the regional level. Moreover, the deputy chair of the Somali Regional State Commission for Investigation of Violence and Reconciliation and Reparation Compensation of Victims in the Somali region is also a woman. In addition, the commission has one more woman as a member. It is worth mentioning that the wives of clan leaders also serve as advisors and influence the resolution process indirectly.

Likewise in the Gamo customary conflict resolution process, women cannot be an elder in resolving a dispute but are permitted to participate in the sessions, dubbusha. While doing so, they can play a pivotal role in unraveling the truth behind the conflict or the wrong committed. Meaning, the women do have a relative influence on the Dubbusha process/proceeding.³⁵³ In the Amhara regional state Shimglina culture, too, women are getting relative attention. For instance, one of the founders (vice chair of the board) of 'Ye Amhara hizib ye shimglina mahiber' is a woman. Similarly, a platform established as 'ye selam enatoch', an association working on peacebuilding, is composed of women.

Finally, it is worthy to mention the role being played by the Hadhe Sinqee in the Oromo culture. However, it is worth noting that meaningful women's participation in transitional justice "does not only involve women being present, it also means that: women have unimpeded opportunities to articulate and contribute their expertise; their concerns are heard; and their inputs are taken on board, in that women's

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³⁴⁸ Anna Triponel and Stephen Pearson (2010), 134.

³⁴⁹ Ayalew Getachew Assefa, *Customary Laws In Ethiopia: A Need For Better Recognition? A Women's Rights Perspective*, (Danish Institute For Human Rights (DIHR) December 2012), 10.

³⁵⁰ Interview with Salen Umer.

³⁵¹ Interview with Salen Umer.

³⁵² FGD with clan leaders.

³⁵³ FGD with Gamo Shimagles.

‘gendered’ perspectives and experiences have a material influence on the shaping of transitional justice processes, mechanisms, and outcomes, which are recognized to benefit the whole of society”.³⁵⁴ Hence, it is safe to conclude that women are not duly represented in CDRMs. There is also a similar complaint concerning the ENDC.³⁵⁵ This is, therefore, the adoption of CIs in the reconciliation process should be cognizant of the above facts, and rectifying measures should be employed.

Moving to the inclusion of youth, the data collected from the sampled regional states unanimously indicated that the CDRMs are less inclusive. The youth do not have the necessary representation in the CIs. For example, in the Oromo culture, youth participation is limited to the age grade of the Gada system; meaning, the youth would not function as an elder. A similar limitation is also observed in the other sampled regions too.

The other groups that need to meaningfully participate in the reconciliation process are political groups and civil societies. For the reconciliation process to be successful, all groups – armed and non-armed – should be engaged. The incumbent also needs to take confidence-building measures. Moreover, civil societies can participate in the process in different ways. Civil societies can represent different sections of the public. For example, the organization may work on women’s rights or children’s rights, and youth’s rights. Moreover, civil society can convey the views of customs on the ground, and do advocacy works.

How to participate: After knowing who should participate in the reconciliation process, the next logical question is the question of how; how the identified people should participate in the process. Stated differently, it is about the method of participation. According to Anna and Stephen, the following are some of the methods through which the public can meaningfully participate in the process:³⁵⁶

- ▶ Holding consultations: one means of participating the public in the process is holding a transparent public consultation. This consultation should also be public.
- ▶ Awareness creation: awareness creation programs help to expand the reach of the reconciliation efforts. When the public makes an informed decision, transitional justice mechanisms will not be viewed as having been imposed from above. This would increase the effectiveness reconciliation process.
- ▶ Feedback Mechanisms: the other means to participate the concerned stakeholders in the reconciliation process is by way of obtaining feedback from them. It may be possible to get the feedback of, for example, victims or wrongdoers via a survey, group discussions, workshops, and through soliciting written submissions. For the participation, however, to be meaningful, the stakeholders should be given the necessary time to provide feedback. Similarly, those in charge of collecting this input should be given adequate time to analyze and incorporate the results.
- ▶ Public Funding: it is submitted that engaging the public to assist in the funding of the reconciliation process could increase the sense of ownership among the public, rather than a system imposed from the outside.

When to participate: Regarding the timing of when the stakeholders should participate in the reconciliation process, the direct answer is it should be in the whole process. It is argued that an early and comprehensive public outreach helps the state to achieve its objective of creating a successful transitional justice system that is inclusive of all perspectives of the conflict and accepted by the population at large.³⁵⁷ Engaging the public at the early planning stage has a multitude of pros, according to Anna and Stephen.³⁵⁸ First, accepting the feedback at the initial stage succors the state to establish a transitional justice system that better responds to customary needs. Second, taking the perspective of the actors involved in the conflict helps the state to forge a just system. The third justification is that if the stakeholders do participate starting from the creation of the system, they will be willing to provide the necessary support to it. By the same token, if the public is not consulted properly from the outset, they would deny the necessary legitimacy to the transitional justice process.

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³⁵⁴ UN Women and UNDP, *Women’s Meaningful Participation in Transitional Justice: Advancing Gender Equality and Building Sustainable Peace* (2022), 23.

³⁵⁵ Endegen Ashenafi & Elizabeth Ashamu Deng, *Ethiopia’s National Dialogue Commission: Where are the Women?*, (African Argument, MARCH 8, 2022), available at <https://africanarguments.org/2022/03/ethiopias-national-dialogue-commission-where-are-the-women/>. Last accessed December 10, 2022.

³⁵⁶ Anna Triponel and Stephen Pearson (2010), 136-138.

³⁵⁷ Anna Triponel and Stephen Pearson (2010), 142.

³⁵⁸ Anna Triponel and Stephen Pearson (2010), 131-132.

Finally, it is worth bearing in mind that participation at all times in the reconciliation process is sensitive. Specifically, denying the victims participation in the transitional justice mechanisms may be considered as the second victimization. As much as justice should be expeditious, it should be considerate of the feedback of the concerned stakeholders. In addition to the time aspect, literature also shows what issue the public should be consulted about. Accordingly, the public could be asked, for example, about the appropriate mechanisms to be employed and to give input on the law that establishes the mechanism.³⁵⁹

4.8. Possible Challenges against Customary Institutions and Authorities in their contribution to National Dialogue and Reconciliation

As demonstrated in the previous section discussion of this report, there are ample positive attributes of the CIs. However, it is also necessary to take note of the fact that CIs and their authorities are not free of weakness. Hence, making the necessary precautions and taking the appropriate corrective measure as much as possible would maximize the contribution of TDRMs to the success of the national dialogue process and reconciliation efforts.

Hence, the following are some of the defies that may arise in the use of TDRMs in the national dialogue process and reconciliation efforts both at national and regional levels.

I. Awareness problems/ [Capacity issues]

To effectively serve the national dialogue process and the reconciliation efforts, it is necessary for the different stakeholders, especially those who may arguably play a greater role, to understand the notions. Accordingly, to effectively use TIs in the national dialogue process and reconciliation efforts, the study confirmed that it is necessary to make leaders of the institutions more acquainted with the notions. Hence, it is advisable to have consultations with the traditional institutions' authorities about the notion and activities of dialogue and reconciliation. This would help to bring the traditional authorities on board and make a more informed involvement in the process. Furthermore, as most customary authorities are not literate, they may not be able to record/document the process they went through and be able to prepare a comprehensive report. Hence, other experts [appointed by the NDC] should support them.

II. Emerging Corrupt practices and partiality

The data collected from all the sampled regions signifies that there is a threat of corrupt practice in some TIs activities. According to the data collected, the plight of corruption, or seeking undue advantage is not limited to the formal justice system. Although the problem is not well entrenched yet, there are some indicators, according to the research participants from the sampled regions. Hence, care should be taken to shield TIs and authorities from the effect of corruption. Similarly, there seems a lava of partiality based on ethnic, racial, religious, or other differences. This practice of nepotism could harm not only the dialogue or reconciliation efforts of the nation but also the bedrock of the TDRMs system in the country.

III. Political Influence or Interference

One of the strong sides of TIs and authorities is their independence from external interests. One such interest is political interference in the process of dispute resolution by TIs and authorities or the use of TIs by others as a means to achieve their interest. As indicated in the data presentation chapter, the data collected from the research participants indicated that TIs are not [immune] from political interference. Most specifically, according to the research participants, the elders are politically co-opted, or at least they are perceived by the majority of the public as they are being co-opted by political parties/ including the government. There is an allegation that TIs' authorities are being used by the government to disseminate its' narration. Hence, the research participants warned that for the Commission to be successful in using the TIs and its authorities it should look for those elders who are considered by the community as such. Hence, it should not follow the usual trend of handpicking elders but let society decide who should be an elder on their behalf. In other words, the research participants advised that the Commission should judiciously select the elders who will engage with it and hence distance itself

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³⁵⁹ Anna Triponel and Stephen Pearson (2010), 132.

from those elders who are politically co-opted elders. Unless proper space is given to the elders to choose the communities trusted elders, the trust may not easily be gotten. Hence, the discussants' view that the current hand picks traditional elders may not be an acceptable way of engaging elders.

The other interesting point that the data collected showed is the direction of the influence. The influence is not always from the government against the TIs authorities. The data collected from the Somali Regional State shows that the majority of the influence is otherwise. It means that the TIs are very strong that they can even dictate various decisions for the government.

Other interference comes from different elite groups. The research participants mentioned that sometimes the TIs are facing interference from elites. The elites sometimes want the TIS and its authorities to push their version of the truth so that try to use them (TIS and its authorities) to promote their own personal and party interests. [As a result, CIs should be as free as possible from any influence from different actors.] better to use in the recommendation

IV. Non-inclusive

As indicated in the data presentation chapter, although there are encouraging developments like the inclusion of women in customary courts of Oromia, TDRMs are not inclusive, [as such]. The dispute resolution process as much as it is restorative, is not accommodating of women. The process is highly dominated by men. Similarly, the youth are excluded from the whole process. This would develop a sense of being unrepresented in the eye of the youths. Therefore, when the TIs are used in the process of national dialogue and reconciliation efforts, it is important to be creative and give space for the women and youths of the community at least indirectly.

V. The human rights Standards challenge

Despite the various positive attributives of TIs in dispute resolution, the process is often criticized from human rights standards perspectives. It is often said that there is no protection for the witnesses who participated in the process. Moreover, the suspected wrongdoer has no professional legal representation in the process. Finally, while employing CIs care should be taken so that they should not be a means to escape responsibility for the big fish.

VI. Psychosocial Support

Though there are various rituals in the CIs process to treat victims, it is not enough to satisfy the needed psycho-social support when there are gross human rights violations wherein there could be many victims and perpetrators.

CHAPTER FIVE – CONCLUSIONS AND RECOMMENDATIONS

The main objective of this policy-oriented study was to analyze CIs in general and their contributions to the national dialogue process and reconciliation efforts in Ethiopia. Accordingly, this chapter presents the conclusion and recommendations of the study as follows.

5.1. Conclusion

The study reveals that, despite the existence of various types of CDRMs in different parts of the Country, they do have some common values and principles that include, mending a social relationship, unraveling the truth, openness and participatory, confidentiality and flexibility, volunteerism, simplicity.

In addition to the above values, generally speaking, CIs have their strong sides. First, they are applauded for being efficient. To be specific, compared to the formal justice system, they render justice in a relatively shorter time and at minimal cost. Second, as they are inherently embedded within the community, CIs are accessible. Third, the procedure they follow while resolving conflicts is simple, flexible, participatory, and victim-centered. Fourth, the outcome of CIs repairs the broken social relationship and brings a win-win situation, wherein both sides of the conflict live in a peaceful, trusted, and cooperative coexistence. Lastly, since they have legitimacy in the eyes of the community, the decisions of CIs hardly face enforcement problems. This is so because; the community serves as a guarantee for the enforcement of their decision. As the study reveals, no disputing party dares to deviate from executing the judgment delivered by CIs. Stated differently, it is safe to conclude that, elders' decisions are respected even if encountered flaws in the decision.

On the other hand, CIs are not free from defies. First, the study unravels that CIs are susceptible to interference by various interest groups. Second, most of the CIs settle disputes based on un-codified traditions. However, against this alleged drawback, the research has outlined and seen consistent application, of CIs, through defined steps of how conflicts are handled, and disputing parties start the motion up to delivering verdicts and executing/enforcement of their judgments. Third, CIs are criticized for not being inclusive in the sense that some segments of the community like women, and youth are not seriously considered in the process. Briefly, CIs are highly dominated by males. Forth, the environment wherein the CIs are operating is not static. In this dynamic environment, the sources of conflict are becoming very intricate. Hence, they require up-to-date technics and substantive knowledge to resolve the conflict, which often the CIs authorities lack. Finally, the procedures they follow and sometimes the remedy they provide are often challenged as contrary to accepted human rights standards. Some challenges are hampering the CIs' operation; namely, lack of clarity in the legal framework toward their operation, the perception that third parties co-opted the CIs, lack of awareness mostly on the part of the youth towards the CIs; and lack of adequate infrastructure.

With regards to the substantive mandates of the CIs, practically they do resolve all kinds of conflict, including criminal matters. However, their approach towards criminal matters exhibited differences amongst the sampled regional states. For example, whereas Somali regional states, do entertain all kinds of criminal matters without almost no restriction, in other sampled regional states, their jurisdiction is limited to petty crimes, upon compliant crimes. Concerning other crimes, CIs resolve cases complementary to the formal justice system to halt retribution and bring sustainable peace.

In terms of the CIs symbiosis with the formal justice system, the study has revealed that there is variation among regions. The most outlier case is the CIs in the Somali region, where one can conclude that CIs have a strong influence, if not supremacy, on the formal justice system, to the extent of handling criminal cases, demand for withdrawal of cases, and release of prisoners. On the other hand, in the other sampled regions, the CIs' request for more space on criminal matters has been declined by the formal justice system owing to the latter's stringent interpretation of the law.

Although variations concerning the link between the formal justice system and the CIs are exhibited, the study has concluded that there is a strong desire by the formal justice institutions for the CIs to play a complementary role. This is because the society has trust in these CIs to resolve its cases and this premise is also endorsed by actors of the formal justice institutions, in addition to their belief that the formal justice would ease its burden.

The study unraveled that currently there is a strong desire by the CIs for a more institutionalized approach. To put it in a nutshell, for example, the Somali CIs have organized themselves and are drafting a law for establishing a council of elders called 'Guurti'. This council is expected to be the second house of the regional state. In the case of Oromia, in 2021, customary courts have been formally established by law. In the Amhara region, some elders who are often regarded as elders in the region, have registered eldership institutions as 'Ye Amahra hizib ye shimgillina mahiber'. In the SNNPR, specifically, the Guraghe people established the Guraghe people cultural shengo' in February 2022. There is also an initiative to establish a joint shengo among Qebenna, Mareqo, and Guraghe.

With regards to drivers of conflict in the study areas, the research has concluded that the key causes of conflict are categorized into five, based on their nature. These are competition for scarce resources, border conflicts/claims, the quest for ethnic identity, extremism (ethnic, tribal supremacy, religious and power grip,) and lack of good governance.

This research ascertained that CIs are capable to make meaningful contributions to the national dialogue process and reconciliation effort at all levels; most importantly at a local level. Customary Institutions, in addition to being a stakeholder in the process, could provide the following illustrative contributions to the dialogue and reconciliation process, *mutatis mutandis*:-

This research ascertained that TIs are capable to make meaningful contributions to the national dialogue process and reconciliation effort at all levels: during the preparatory phase, the process (actual discussion) phase, and the implementation phase. Customary Institutions, in addition to being a stakeholder in the process, could provide the following illustrative contributions to the dialogue and reconciliation process.

I. In the case of the dialogue process:

During the preparatory phase of the dialogue process, the CIs could be used for mobilization and sensitization of the works of the national dialogue to the public, they could also jointly organize and facilitate community consultations, and together with selected facilitators, they could design or shape the demands of the community, participate in identifying agendas, and also identify participants.

In the process (actual dialogue) phase, the CIs could help as observers/preside to the extent that they could intervene to express their expectations during heated debate or they could be part of the team working during deadlock; they could be treated as being participants, they could ideally be conveners so to jointly organize and facilitate community consultations.

During the **implementation phase of a national dialogue process**- ideally, the CIs are situated in facilitating the implementation of the commission's recommendations and brokering the agreed points to be easily implemented within their communities.

II. In the case of the reconciliation process:

In the case of the initial phase of reconciliation - identifying the victims, and perpetrators and in identifying the causes of the conflict, CIs are best situated. Furthermore, CIs can participate in the hearing process for the disclosure of the truth.

One of the key steps in the case reconciliation process is the recognition of the suffering of the victim. In this process, CIs could help the victims, to accept the recognition accorded to the individual/ community and also forgive the perpetrators for their wrongdoings. This support could be provided jointly with the assistance of psychosocial support experts. This will ultimately help to bring meaningful and sustainable peace by mending social relationships.

5.2. Recommendation

Based on the above conclusions, this policy-oriented study, therefore, comes up with the following recommendations, which are disaggregated, if not mutually exclusive to each entity:-

I. For Traditional Institutions/CDRMs:

- ▶ The customary authorities and the community should guard the CDRMs against being used by various interest groups. In addition to the commitment expected from customary authorities to protect their sacred tradition, there should be community incentives like recognition for elders by community members and other actors, etc. without compromising the elders' trust in the community. Moreover, the recognition should not be to the extent of going against the voluntary nature of the CDRMs.
- ▶ Contextualization of the operation of the CDRMs: CDRMs do not operate in a vacuum. The circumstance where the CIs operate is not like old age. The modern world has different actors and the causes of conflict are various. There are, for example, technology-born conflicts and conflicts that involve very intricate socio-legal issues. Hence, in these cases, the CIs should invite experts on various issues. It should be mentioned that this is one of the good practices of elders from the Somali regional state.
- ▶ Through the support of CSOs/academia, CDRMs should enhance inclusivity, especially in involving women and youth. As observed in all CIs and the CDRMs process, women have been historically and culturally, sometimes for religious reasons, disadvantaged and not eligible for the CIs leadership. For the CIs to remain more relevant, and up to the current dynamics, there should be a gradual involvement of women and youth. Given the defects of inclusivity or the limited space given to the greater segments of the population (i.e., women and the youth), which is also the problem of the formal system; these groups may not seriously consider, reciprocally, the importance of the CIs, if the current trend continues.
- ▶ Strengthen their institutionalization process without compromising their inherent values; This institutionalization could be through the provision of facilities that enhance their performance in the conflict resolution process and other activities. These could be providing permanent land/space for elders to do their work, equipment to record and document resolution process and other inputs; most importantly creating an enabling policy direction and legal environment.
- ▶ Finally, CIs should scrutinize their principles and jurisprudence/their legal philosophy to marry with the modern conception of laws/i.e., to make consideration to human rights issues, serious crimes, and others. This, however, doesn't mean a change in their status. In this regard, CI leaders could request relevant actors to provide them with capacity-building training on human rights issues, documentation skills, the use of new media, basic computer skills, and other communication technologies.

II. For Government entities

i. Ministry of Peace, Ethiopian Heritage Authority, and Regional Bureaus of Culture and Tourism

- ▶ Protecting the CIs from perceived manipulation: - The existence and strength of the CIs are mainly contingent on their legitimacy in the eyes of the public. It is important; therefore, for them not to be portrayed as instruments of different interest groups including the government. Hence, while engaging in peace-building activities and protecting cultural values, the Ministry of Peace and regional Bureaus of Culture and Tourism should take maximum caution to not send a message of manipulation of the institution for a political end goal. To this end, government offices should play only a facilitation role and should allow CIs to exercise their role. Accordingly, there could be a bylaw that can govern the relationship of the government and non-governmental institutions with the CIs.
- ▶ The Ministry of Peace and Bureaus of Culture and Tourism, primarily the latter, should seriously engage in the preservation of CDRMs. As disclosed in this study, almost none of the research sites give enough attention to the recording of the CDRMs owing to various factors including financial constraints. Hence, as the proverb "spoken words fly away, written words remain" goes, these concerned offices should conduct scientific studies and record the different values of the CIs so that the generation to come would be benefited from them. Stated differently, the Ministry and Bureaus should establish a comprehensive database of CIs of both the institutions and the contacts involved both at national and regional levels; as this would improve access to CIs to work with them.

ii. Ministry of Justice/Bureaus of Justice

- ▶ MoJ should capacitate the CDRMs through the provision of training on the concept of human rights standards in the process of dispute resolution.
- ▶ The Ministry should openly recognize the contributions of CIs and provide due consideration for CIs intervention in the reconciliation of disputing parties during criminal matters to complement the modern justice system.

iii. The House of Federation (HoF)

- ▶ It is the highest organ of government to make decisions on some key root causes of conflicts by taking prompt action, for instance, on the quest for identity. In this respect, HoF should formally recognize the CIs potential contribution to the peaceful negotiation of issues related to boundaries and others that fall under its jurisdiction.
- ▶ Moreover, the role of CIs in criminal matters is a gray area in the Ethiopian constitutional system. Hence, the House can give a binding interpretation on this point. This would clarify the confusion in the operation of CIs concerning criminal matters and bring consistency.

III. For the Ethiopian National Dialogue Commission

- ▶ Allow meaningful participation of the CIs and usage of the same at all stages – in the preparatory phase, during consultations of parameters selection for agenda setting, when crafting selection criteria for participants, and during the actual dialogue sessions as conveners, (even serve as observers), and during the implementation stage, CIs could be engaged to disseminate the agreed recommendations to the public.
- ▶ The Commission should be cautious of the fact that there is a perception in the community that elders are politically ‘co-opted’. Hence, serious scrutiny mechanisms should be in place in selecting elders from their localities, for example, CIs representatives/authorities. This can be done if the elders are selected by the communities without any interference and this is confirmed by the observer on the side of ENDC.
- ▶ Clearly define its relationship with the CIs. – this could be defined in the agreement to be adopted in consultation. However, if the Commission can be able to develop a handbook to guide its processes then such concepts could be added.

IV. Other Actors such as CSOs, Community Support Groups, Academia

i. Academia

- ▶ Keep supporting CIs through different means such as learning/understanding their growth, researching and documenting their foundational principles, values, working procedures, etc.

ii. Community Groups/CSOs/Partner Institutions

- ▶ Advocating the role that CIs can play in the face of the current scenario of the nation.
- ▶ Advocating the institutions and values embedded in the CIs for societal gains and social cohesion to safeguard undue influence of third parties against them and increase their credibility/acceptance by the community.
- ▶ Organize awareness raising and provision of training to the elders in selected themes to make them relevant to the current context.
- ▶ Devise ways that the society could strategize ways to better use the TIs in their indigenous wisdom and knowledge.
- ▶ Support government ministry/bureau of tourism & culture to keep database and contact info of all CIs in each region for knowledge management and learning.

Ideally, the implementation of all recommendations depends on the mandates of the respective institutions that could allow them to act responsibly. However, it is also necessary to get the positive attitude and commitment of the heads of respective institutions to support the cause.

Above all, it would be the Ministry of Culture/regional bureau of Justice that should follow up and broker the implementation of the recommendations.

ANNEXES

List of Interviewee and FGD Participants

A. SOMALI REGIONAL STATE

a. PROFILE OF DISCUSSANTS FOR KIIs and FGD

Sr. No.	Name	Organization, Position
1	Garad Kulmiye Garad	Somali Elders/ Gurtii ChairPerson
2	Suldan Sk. Aden Isurail	Somali Elders/ Gurtii, Member
3	Ugas/Wali Mahmud Arab	Somali Elders/ Gurtii, Member
4	Suldan Nasir	Somali Elders/ Gurtii, Member
5	Suldan Abdulahi	Somali Elders/ Gurtii, Member
6	Ugaas Abdi Risaq	Somali Elders/ Gurtii, Member
7	Sheke Abdulahi	Somali Elders/ Gurtii, Member
8	Garad Jemal	Somali Elders/ Gurtii, Member
9	Hamud Ffile	Somali Elders/ Gurtii, Member
10	Ibrahim Barkadle	Somali Elders/ Gurtii, Member
11	Suldan Fawsi	Somali Elders/ Gurtii, Member
12	Suldan Ali Borrow	Somali Elders/ Gurtii, Member
13	Aden abdi	Conciliation Resources, Executive Director
14	Mr. Abdulaziz Ahmed	Somali High Court, President
15	Selan Oumer,	Somali High Court, Judge
16	Dr. Muhammad Hassen Quassim	the Somali Regional State Commission for Investigation of Violence and Reconciliation and Reparation Compensation of Victims in the Somali region
17	Mr. Abdirahman Abdulahi	the Somali Regional State Commission for Investigation of Violence and Reconciliation and Reparation Compensation of Victims in the Somali region
18	Mrs. Fozia Abdulkadir	the Somali Regional State Commission for Investigation of Violence and Reconciliation and Reparation Compensation of Victims in the Somali region
19	Abdi-Wali Shek Ahmed	Judge, Sheria Supreme Court,
20	Mrs. Amel Ahmed,	Bureau of Culture and Tourism, Culture Development, Process Owner
21	Mr. Nuru	Bureau of Culture and Tourism, Culture Development, Team Leader

22	Dr. Abdurashi Abdulahi	Bureau of Peace and security, Planning and Policy Adviser/director
23	Mr. Kemal Abdulnasir	Bureau of Peace and security, Conflict Prevention Team Leader,
24	Mr. Mohammed Tahir	Bureau of Justice, Deputy Head
25	MR. ABDULNASIR BEREKET,	Ethiopian Human Rights Commission, JIJIGA OFFICE, HEAD
26	MR. SALAHDIN IBRAHIM,	Ethiopian Human Rights Commission, JIJIGA OFFICE, SENIOR HR OFFICER,
27	DR. Ephrah Ahmed	Public Service Rendering Grievance and Submittal, Inquiry & Determination Commission, Head
28	Mr. Seido Yisaq	Public Service Rendering Grievance and Submittal, Inquiry & Determination Commission, Deputy Head
29	Mr. Abdulahi Ousman	Partnership for Relief and Development Organization, Executive Director

B. SNNPR

b. PROFILE OF DISCUSSANTS FOR KILs and FGD

Sr. No.	Name	Organization, Position	Address (Tel)	Place & Date data collected
1	Mr. Kussia Bekele	Resources Center for Sustainable Change(RCSC), Executive Director	Awassa	Nov.4, 2022
2	Mr. Destaw Asmare	Resources Center for Sustainable Change(RCSC), Project Coordinator	Awassa	Nov.4, 2022
3	Mr. Begashaw Eshetu	EHRC –Awassa office	Awassa, Tel: 0913739638	Nov.4, 2022
4	Mr. Temesgen Gebremedhin	Gurage Zone Culture and Tourism Office, Directorate Director	Wolkite, Tel: 0911532703	Nov.7, 2022
5	Mr. Berhanu Hailemichael	Gurage Zone Member of Shimagles	Wolkite, Tel: 0910069620	Nov.7, 2022
6	Mr. Amin Jemal	Gurage Zone Member of Shimagles	Wolkite, Tel: 0912861202	Nov.7, 2022
7	Mr. Damo Belete	Gurage Zone Shimagles Secretary	Wolkite, Tel: 0913239652	Nov.7, 2022
8	Mr. Azmache Habte	Gurage Zone Shimagles Vice President	Wolkite, Tel: 0913458570	Nov.7, 2022
9	Mr. Destaw..	CSO representative/ Awassa		>>
10		World Vision		>>
16	Mr. Chubaro Chondoro	Gamo zone High Court, President	0912184631	Arbaaminch 1, Nov. 2022

17		Chief Judge (Wanna Quadi), Sheria Supreme Court,	
18		Judge (Quadi), Sheria Supreme Court,	
19		Bureau of Justice, Head	
22	Mr. Mengistu	Zonal Peace and security,	Arbaminch, Nov.1, 2022
23	Mr. Getahun Mengistu	Bureau of Peace and security,	Hawassa, Nov.2, 2022
24	Mr. Melaaku Kassa	Bureau of Peace and security,	>>
25	Mr. Tegne	Bureau of Peace and security,	>>
26	Mr. Tesema	Bureau of Peace and security,	>>

C. AMHARA

c. PROFILE OF DISCUSSANTS FOR KIIs and FGD

Sr. No.	Name	Organization, Position	Address (Tel)	Place & Date data collected
1	Liqe Hiruyan Bekay Mekonnen	Ye Amhara Hizib Ye Shimglena Mahiber/ Chair Person	0911891202	Bahirdar, 24 Oct. 2022
2	Mr. Yismaw Limenh	Ye Amhara Hizib Ye Shimglena Mahiber, Member	0918766007	Bahirdar, 24 Oct. 2022
3	Mr. Alemu Tiruneh	Ye Amhara Hizib Ye Shimglena Mahiber, Member	0918765223	Bahirdar, 24 Oct. 2022
4	Mr. Yirga Ijigu	Ye Amhara Hizib Ye Shimglena Mahiber, Member	0918717093	Bahirdar, 24 Oct. 2022
5	Sheck Kedir Yasin	Ye Amhara Hizib Ye Shimglena Mahiber/, Member	0918766483	Bahirdar, 24 Oct. 2022
6	Wro Seewareg Gadamu	Ye Amhara Hizib Ye Shimglena Mahiber/, Member	0918005508	Bahirdar, 24 Oct. 2022
7	Wro. Shashe Kassahun	Ye selam enatoch/	0918	Bahirdar, 26 Oct. 2022
8	Wro. Yehizib-tila Kassa	Ye selam enatoch/	0918215515	>>
9	Wro. Genete Tadesse	Ye selam enatoch/	0918704998	>>
10	Wro. Abeba Kahali	Ye selam enatoch/	0918716487	>>
11	Wro. Birhan Hulgize Desta	Ye selam enatoch/	0918769548	>>

12	Mr. Masresha Kassa	Amahara Region Civic Associations Forum/none- State Actors Forum	0918016272	Bahirdar, 26 Oct. 2022
13	Mr. Alemayehu	Amahara Region Civic Associations Forum/none- State Actors Forum		>>
14	Mr. Tsegaye Admasu	Amahara Region Civic Associations Forum/none- State Actors Forum		>>
15	Mr. Haileyesus Ayizohbel	Amhara High Court, President	0918769174	Bahirdar, 25 Oct. 2022
16	Wr/o Chekolech Ijigu	Amhara High Court, Judge	0918726097	Bahirdar, 28 Oct. 2022
17	Haji Mustafa Seid	Chief Judge (Wanna Quadi), Sheria Supreme Court,	0918787868	Bahirdar, 26 Oct. 2022
18	Sheck Oumer Muhammed	Judge (Quadi), Sheria Supreme Court,	0912934624	>>
19	Mr. Geremew G/ Tsadik	Bureau of Justice, Head	0911144707	Bahirdar, 24 Oct. 2022
20	Mr. Tahir Mohammed	Bureau of Culture and Tourism, Culture Development, Head	0966987769	Bahirdar, 24 Oct. 2022
21	Mr.Derbew Tilahun	Bureau of Culture and Tourism, Culture Development, Process Owner	0918779371	Bahirdar, 25 & 28 Oct. 2022
22	Mr. Mengistu	Bureau of Peace and Security,		Bahirdar, 25 Oct. 2022
23	Mr. Belachew	Bureau of Peace and Security,		>>
24	Mr. Aschalew	Bureau of Peace and Security,		>>
25	Mr. Gezahagn	Bureau of Peace and Security,		>>
26	Mr. Misganaw	Bureau of Peace and Security,		>>
27	Mr. Wasie Admasu	Bureau of Peace and Security,		>>
28	Mr. Gashanew Simeneh	Ethiopian Institutions of Ombudsman, Bahir Dar Office, Head	0918782639	Bahirdar, 25 Oct. 2022
29	Mr. Alebachew Birhanu	Ethiopian Human Rights Commission, Bahir Dar Office, Head	0918761048	Bahirdar, 26 Oct. 2022

D. OROMIA

d. PROFILE OF DISCUSSANTS FOR KIIs and FGD

Sr. No.	Name	Organization, Position
1	Hadha Sinqque Atsede Tolla Ebaa	Tullema Secretariat, Hadha Sinqque
2	Abba Caffee Caalla Tolossa Ebaa	Retired Gada member, currently yuuba/Hayyuu)
3	Wogderes Beza	Discussions, Conference Training Expert, Peace and Security Office, Oromia Region

4	Gezu Geremew	Clubs and University Forums Coordinator, Oromia Region
5	Temam Sahlu	Conflict Prevention and Resolution Director
6	Enat Yifru	Peace and Security Director, Oromia Region
7	Lemma Bekele	Gimbichu Woreda Shimagles, Chair, Oromia Region
8	Assefa Bekele	Gimbichu Woreda Shimagles, Secretary, Oromia Region
9	Tadesse Gezahegn	Gimbichu Woreda Shimagles, member, Oromia Region
10	Birke Gutema(Female)	Gimbichu Woreda Shimagles, member, Oromia Region
11	Diriba Bekele	Gimbichu Woreda Shimagles, member, Oromia Region
12	Tilahun Dereje	Criminal Justice Directorate Director, Oromia Region
13	Mr. Lemma Beqqala	Gumbichu Woreda Court, President
14	Obbo Techan Mekuria	Oromia Supreme Court, Research and Partnership Directorate Director
15	Obbo Assefa Beqqala	Gumbichu Woreda Customary Court, Judge
16	Obbo Tadesse Gezahagn	Gumbichu Woreda Customary Court, Judge
17	W/ro Birque Gutemma	Gumbichu Woreda Customary Court, Judge
18	Obbo Dribba Beqellaa	Gumbichu Woreda Customary Court, Judge
19	Mrs. Enat Yifru	Bureau of Peace and Security
20	???	Bureau of Peace and Security
21	Mr. Ibbsa Chemedda	Bureau of Justice, Head Research Directorate
22	MR. Tilahun Dereje	Bureau of Justice, Director for Special Crime Office
23	MR. Hussien Defeo	Bureau of Justice, Coordinator in Attorney Office

Data Collection Tools

A. KEY INFORMANT INTERVIEW GUIDING QUESTIONS

For Government Offices

1. What are the root causes of conflict in this region?
2. How do you explain the status of the peace situation of the community and institutions functioning in the region?
3. What type of conflicts do customary conflict resolutions handle?
4. How do you describe the relationships between and among actors in the region in terms of peaceful coexistence? (Perceived trust; Effectiveness)
5. Could you explain your aspirations for the people to exercise peaceful coexistence in the region?
6. What customary conflict resolution institutions are available in your region? Who are the actors? What are the procedures they use to resolve conflicts? Do you have the contacts of these customary dispute resolution mechanisms?
7. How do you think these customary/customary conflict resolution institutions play roles in national dialogues and reconciliation to build national consensus?
8. What is the government's attitude towards CIs, in terms of respect and trust?
9. What are the shortcomings of customary/customary conflict resolution institutions? How can these shortcomings be improved?
10. How do you describe the relationship between the state and customary dispute resolution mechanism?

For Indigenous Conflict Resolution Institutions

1. Who are the actors in your institution?
2. Who recognizes Customary Customary Institutions in the customary? (the state/formal system, the communities alone, or both?)
3. What are the roles of actors?
4. What are the types of conflicts the institution handle?
5. Could you explain the process that you use to resolve conflicts? (from initiation to conclusion through rituals)
6. How can you contribute to national dialogues to build consensus at community, regional, and national levels? At what stage do you think your institution should engage?
7. What are the challenges you face in the process?
8. What remedies do you suggest to solve challenges you face in the process of resolving conflicts?
9. What do you think are the shortcomings of resolving conflicts through customary Customary Institutions?
10. What are the perceptions and acceptance of communities, government, and other stakeholders towards indigenous conflict resolution institutions?
11. How do customary conflict resolution mechanisms engage men, women, and the youth in the process of conflict resolution and peacebuilding in your customary?
12. How legitimate are your institutions by the community and government entities?
13. What are the mandates of your dispute resolution mechanism
14. what are the protection mechanisms available for the victims and witnesses
15. how do you check the enforcement of the decision of your institution
16. what kind of support do you expect from other institutions like the government (ENDC)
17. what are the remedies provided for the victims
18. what are the measures you take when you face complicated issues like gross human rights violations(many victims and many perpetrators)
19. Is there interference from the government in your work? If any, how would you address it?
20. What measure would you take if one of the parties in the process is not happy with the outcome?
21. Are there conditions to be fulfilled first to participate in the customary dispute resolution process? What are these conditions?

FOR ENDC and MOP

1. How do you think customary conflict resolution mechanisms should be engaged in regional and national dialogues and consensus-building efforts?
2. What are the merits and demerits of engaging these institutions in conflict resolution and peacebuilding efforts?
3. How do organize dialogues at national and regional levels?
4. What are the main actors in the dialogue process?
5. How will these actors be selected?
6. How do you think the relationship between the customary dispute resolution mechanisms and the formal justice system including the ENDC be governed?
7. Do you think that customary dispute resolution mechanisms are capable enough to participate in the national dialogue and reconciliation process? Why/why not?

FOR CSOs, Political Party Reps. and International Institutions

1. What mandate and partnership do you have with CIs?
2. What potential support do you provide to CIs to strengthen as well as help them to engage with the national dialogue and reconciliation process?

B. FGD GUIDING QUESTIONS

1. Names of each conflict resolution institution
2. Representative/s addresses
3. Actors in the institutions and their roles
4. The power structure in each institution
5. Type of Conflicts institutions handle
6. How many cases do CIs handle on average every year

- 
7. What are the key drivers of conflict in these areas
 8. Processes and the procedure the institutions use to resolve conflicts, and enforce decisions/
 9. Acceptance by the community, government, and other actors
 10. How could the institution contribute to planned regional and national dialogues in the country?
Any previous experience in setting agenda, holding community conferencing, evidence collection, Rituals of reconciliation, ensuring inclusivity, etc
 11. Would there be a way that CIs to work jointly with the formal system, in terms of creating space for dialogue and reconciliation?
 12. How are Customary Customary Institutions recognized in the customary by the state/formal system? Or by the communities alone or both?
 13. What challenges the institution faces and how they resolve them?

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