

Customary Conflict Resolution Mechanisms in Ethiopia: A Case Study of the Raya community Sisay Mengistie Addisu¹

Customary conflict resolution mechanism is an important instrument in ensuring peace and security and thereby maintaining stability in the country in general and in the concerned community in particular. Further, it is accessible to members of a given society and helps to avoid the sentiment of revenge between the disputing parties and among their close relatives. Above all, customary tribunals reduce delay of justice, since "justice delayed is justice denied". However, customary conflict resolution mechanism has its own defects and sometimes contradicts with modern laws, constitutional principles and formal court litigation procedures. Though some customary systems of conflict resolution mechanism have been recognized by the FDRE constitution of 1995, in some cases they transgress the constitutionally guaranteed rights of citizens like that of the right to movement and presumption of innocence. In Raya-Rayuma, there are many but almost the same customary laws and traditional practices including the arrangement of customary tribunals. These bylaws and customary tribunals have also similar principles and follow the same procedures. They consist of common moral and cultural values. The Raya customary conflict resolution mechanisms mainly focus on settling disputes and redressing the victims of the conflict. They have a great role in governing the Raya society and helping them live in a peaceful and stable manner in their respective locality. Nevertheless there is a strong need of some adjustment to the constitutional principles, other relevant laws and court procedures so as to make them as a very important option for the Raya society. The objective of this piece is to examine the strengths and weaknesses of such customary practices, identify challenges they are facing and forward relevant solutions.

Key words: Zeweld, Traditional Tribunals, Elders, Revenge, Conciliation, Abogereb

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INTRODUCTION

Customary laws and traditional rules are important instruments which regulate societal relationship and often are reflections of existing realities of a country's socio-economic development, cultural and historical values, as well as political interactions. They also are social norms; which have relatively binding nature; as they are accepted normative standards by a particular society though the degree of acceptability and their binding nature differs from place to place, time to time and society to society. Moreover, they have their own varying characteristics in terms of development, acceptance and the position they occupy upon not only among peoples but also within the same society.

Because customary laws and traditional practices mainly come into existence spontaneously and in an unconscious manner through a social practice of long period of time. Because of this, they have no definite legislature unlike modern laws and constitutional principles². They rather develop from society's opinions, repeated actions of members of a society, socio-economic development, cultural and historical values as well as political orientations. According to Fuller:

Custom is not declared or enacted, but grows or develops, through time. The date when it first came into full effect can usually be only within broad limits. Though we may be able to describe in general the class of persons among whom the custom has come to prevail as a standard of conduct, it has no definite author; there is no person or defined human agency we can praise, or blame for its being good or bad.³

Hence customary law consists of customs accepted by members of a community as binding among themselves and its rules are created by the actual; visible critical behaviour of the group and, most importantly, by the internal aspect, which people consider the conduct or particular behaviour to be dictated by existing rules by notion of right and wrong, ought, must and should. In other words, customary laws and traditional rules are general convictions of law; as they correspond to what people generally do. People conform to customary law mainly because it derives from their norms but there are also consequences of failure.

Those who fail to obey the norms are considered as deviants and may face social stigmatization and even severe punishment. From the aforementioned conceptual explanation of customary laws one can understand that customary laws and traditional rules have very important functions in maintaining social

2 Modern laws come from intentional declaration of government agency and officials that have power or capacity to legislate laws and regulations.

3 L. Fuller, con (1976), *Anatomy of Law*, P. 44.

relationship and controlling the deviant behaviours of individuals and groups so as to make interactions among the people smooth. Ethiopia, in 1995, adopted a new constitution, which introduced federal political structure and recognized the existence of legal pluralism in the country. Exercise of customary laws and traditional rules by customary tribunals, as far they are consistent with the basic principles of the constitution; have also been recognized⁴.

The 1995 FDRE Constitution also established in the country a federal political system that served as a basis for power decentralization as well as for the full acceptance and implementation of customary practices that are not contrary to the constitutional principles of the country. To put it differently; everyone has the right to bring a matter before justice and obtain a decision or judgement by; a court of law or any other competent body bestowed with judicial power⁵. That means according to Article 34 (5) of FDRE Constitution of 1995, customary tribunals in Ethiopia have some kind of judicial authority to entertain individual and group cases since they interpret traditional rules in conformity with the principles of the same Constitution.

Customary laws and rules as well as customary tribunals are responsible in handling cases in the given area and settling disputes using their own normative standards. These traditional dispute resolving mechanisms and customary tribunal decisions are basically implemented by elected or represented elderly people or religious leaders/fathers. Thus, every member of a given society is supposed to respect these customary conflict resolution mechanisms and decisions of traditional tribunals⁶. The people of Raya have their own developed customary rules and traditional practices that are important to resolve conflicts arising among individuals or groups. They also practice dispute resolution mechanisms distinct from other societies.

This fact initiated the writer to conduct research work on this more or less untouched area of customary conflict resolution mechanism and examine the customary practices of the Raya society. The work intends to subsequently recommend solutions to the problems identified in the area under discussion. In other words the main objective of this research paper is to investigate the impor

4 Article 34 (5) of FDRE Constitution clearly states that this constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws.

5 Ibid Article 37 (1)

6 Most elderly people and religious leaders of Raya whom I interviewed assert this notion.

tance and relevance of Rayas' customary laws and traditional practices in resolving conflicts.

To come up with relatively a visible picture of these customary conflict resolution mechanisms, the writer attempts to deal with the frequently observed types of conflicts in the area and among the neighbouring peoples. Because of this, the paper mainly focuses on some of the salient features of customary conflict resolution mechanisms and the participation of the local community of Raya society. Though the Raya customary conflict resolution mechanisms handle a number of cases through their customary tribunals related to conflict, the researcher limits himself only to homicide case as it is multi-dimensional and shows the efforts involved and the positive contributions of the tribunals. As Schermernhorn et, - al. clearly stated, "conflict appears in a social situation as any disagreement over issues of substance or emotional antagonism creates friction between individuals or groups."⁷ The presence of conflict be it social, individual or otherwise, is inevitable.

This fact also draws the writer's attention and titillates his curiosity to conduct study on it. The writer of this research paper mainly used qualitative research method based on primary and secondary data sources and employed interviews, focus group discussions and personal observations as important tools of data collection with the belief that they are essential instruments to handle this kind of study. This paper has different sections. The first is the introduction part; which comprises the background, sources and the nature of customary rules.

This section is devoted to discussing the historical background of the people of Raya and analyzing customary conflict resolution mechanisms exercised in their community. Section Two deals with the nature and extent of customary resolution mechanisms in Raya while Section Three presents a brief analysis by comparing the Raya customary resolution mechanisms with state laws and formal court proceedings of the country. Finally, Section Four forwards conclusion and relevant recommendations to be taken into considerations.

1. Conflict Resolution Mechanisms in Raya-Rayuma

The name *Raya-Rayuma* refers to both the former Rayana Qobo and Rayana Azebo Awurajas and is also a strong expression of the unity of the people of Raya. This section tries to briefly survey the historical background of the Raya community in general and their; conflict resolution mechanisms including the notion of their customary tribunals in particular. As expressed in the introductory remarks, the main purpose of this paper is to examine the Raya customary conflict resolution mechanisms and their strengths and weaknesses and identify existing challenges. Accordingly, this section is devoted mainly to the historical

7 Schermernhorn, J.R., Jr., James G.H and Richard N.S (1997:396), *Organizational Behaviour*, 6th ed. New York: John Wiley & Sons Inc.

background of the people of Raya and the process of customary conflict resolution mechanisms practiced by customary tribunals in the whole *Raya-Rayuma*.

1.1 Historical Background of the People of Raya

As indicated above, the name *Raya-Rayuma* is a combination of both the former *Rayana Qobo* and *Rayana Azebo Awurajas* and the people of *Raya*⁸. Recently the name *Raya-Rayuma* also represents both southern *Tigray* and northeast part of Amhara National Regional States. That means when we say *Raya-Rayuma* we are referring to the areas situated in both in *Tigray* and Amhara National Regional States. In other words, the present day *Raya-Rayuma* covers the areas that were previously controlled by the people of *Doba* and *Qeda* who were mainly part and parcel of *Raya Oromo* and *Tigray* people respectively. Most of the *Raya Oromo* have been assimilated by both the Amhara and the *Tigray* nationalities although there still are some *Oromo* people in the area.

According to Mered Wolde Aregay "In the more fertile plains of *Azebo*, immediately to the south of *Wejerat* lived the pastoralist *Doba*... The *Doba* spread in to the plains of the nearby provinces of *Angot* and *Qeda* ... Immediately to the east of *Bugena* and South of *Azebo* plains was *Qeda*, comprising the mountains of *Zobul* and the surrounding low land areas."⁹ Mered further mentions that the lowlands of *Raya-Rayuma* were inhabited by the *Doba* and other pastoralists related to them-*Angot*, relatively the largest of these provinces, began somewhere near to *Alamata* river.¹⁰

Therefore, one can assume that the *Doba* people lived in the present day *Raya-Rayuma* particularly; in the then *Rayana Azebo Awuraja*. Nevertheless the people of the whole *Qeda* lived in the former *Rayana Qobo Awuraja*. Before *Beede Mariam* came to power the area was not effectively administered by the central governments of Ethiopia. However, during *Beede Mariam* (r.1468-1478) the government showed a strong interest to occupy this area and led an expedition against these people and converted the *Dobas* who were partly Muslims but more pagans, to Christianity.¹¹

When King *Beede Mariam* conducted this expedition he used two well-

8 The name *Awuraja* means an administrative area less than province greater than district and it comprises at least two or more two *woredas* (districts).

9 Mered Wolde Argay, *Political Geography of Ethiopia at the Beginning of 16thc.* IV congress international distue Ethiopic (Roma: Academic Kazionale Dei lincci, 1974, P.60-61

10 Ibid

11 J. Spencer Trimingham, *Islam in Ethiopia*, (London: Frant case and Co. Ltd, 1965 P.81

known regiments named *Jan Qantefa* and *Jan Amora*. Making Mount Zobel¹² their base, these regiments looted and destroyed the whole of Doba people. After acknowledging the king's power, the people of *Doba* were converted to Christianity. The King then gave them cattle in return for their conversion and their loyalty to his administration. He also stationed strong regiments around Mount Zobel in order to maintain effective control over the area¹³.

Moreover, King Lebne Dengil (r.1508-1540) during the war with Ahmed Gragn founded a temporary sanctuary in this area particularly around Mount Zobel¹⁴. According to tradition, the emperor raised cattle during his stay in the locality. Because of this, the place was given a new name by the Raya people living in the locality and was called *Atse Beret*¹⁵. Later the king fled to Tigray after he, along with Fitawrari Tushu of Afar, made an unsuccessful attempt to fight against the expansion of Ahmad Gragn¹⁶. Using this golden opportunity, Ahmad Gragn controlled Yeju Awuraja as well as the people of Doba and camped on the Mount Zobel. This situation enabled the Oromo migrants to occupy not only the area where people of Doba lived but also the whole region as they were moving towards the north-eastern part of Ethiopia¹⁷. The Oromo were divided into two main groups known as Barayntuma and Borana. Both had also sub groups of their own¹⁸.

Traditional beliefs collected by C. Conti Rosini revealed that the most famous Oromo groups considered as leaders of the native Oromo came from Hawash, the initial place of Oromo migrants¹⁹. Trimmingham clearly stated that tribes [the Oromo] travelling up the Hawash ascended into the *Danakil* depres

12 Ibid

13 J. Perruchon, *les chroniques de Zaria Jacob et de Baeda Mariam* (Paris; n.p* 1983) P.143-148

14 The correct name of Ahmad Gragn is Ahmad Ibn Ibrahim Aligaz.

15 Fekadu Begna (1990), *Land and the peasantry in North Wollo: 1941-1974 Yeju and Rayana Qobo Awrajas*, M.A. Thesis A.A.U. P.8

16 C. Conti Rosini, "Galla Raia" *Revista degli studi orientali* (1940) Vol. XVIII, P.59

17 Fekadu Begna, P. 10

18 Bahrey, *History of the Galla* some Records of Ethiopia 1593-1646 eds trs Beckingham and Huntingford (London: the Hakluyt society, 1954) P.112

19 Ibid

sion... and those by the *Ala* and *Golina* are the *Raya*²⁰. As the Oromo migrants were mainly traditionalists, they retained some of their own ethnic and cultural values which express their peculiar identity although they were surrounded by highland Christian Amharas and Tigreans and also low-land Muslim *Afars*²¹.

However, their original cultural way of life became assimilated with that of the neighbouring people of the area and through time they lost most of their traditional self-governing systems. According to Getachew Meressa they adopted ways of life of the neighbouring people, mainly that of the Tigreans and the Amharas. Because of this continuous assimilation, the Oromo of *Raya* lost their culture and ethnic cohesiveness and their language became replaced by either Tigrigna or Amharic²². As I clearly indicated earlier, the people of *Doba* and *Qeda* believe that they were partly Oromo and partly Tigreans.

Traditionally, the Oromo people use their popular republican political system otherwise known as the *Gada* system. The *Raya* Oromo have maintained this tradition although it is not as strong as it was before. They have also administered their own affairs through the leadership of elders whose number is not fixed as such. The most elderly people of every societal group in the area had the right to participate in the affairs of the whole community.²³ A future community leader is elected from within the specific societal group on the basis of the following attributes:

old age with superior wisdom or judgment, outstanding intelligence, reputation and responsibility acquired while leading successful raids, having much wealth in the form of cattle and plot of land that highly influences the extended kinship. One had to fulfil at least one or all of the attributes to be elected as a member of the leadership of his community²⁴.

These elected elderly and wise community leaders were/are responsible for administering justice and resolving conflicts as well as performing other administrative and political affairs of the *Raya* society. Because of this, the *Raya* Oromo had followed this traditional system of self-administration until they were fully assimilated by the neighbouring Amhara and Tigray people. The whole organization of the *Gada* system of *Raya* Oromo was called *Gada Mere*

²⁰ J.Spencer Trimmingham, P.193

²¹ R. Franchetti, Nella Danacalia Ethiopia; Spedizid one Italiana, 1928-1929 (Milano: A modadori, 1935) P.336-7

²² Getachew Meresa, P.13

²³ R.Franchetti, P.340

²⁴ *Ibd*, P.337.

wa.²⁵ It composed of committee members elected by the people who come from the same ethnic/national group and live in the same area. In the following sub-sections, we are going to discuss conflict and its management, and the Raya conflict resolution mechanisms.

1.2 Conflict and its Management

A conflict is the divergence of interests between individuals or social groups. In any society one can find incompatible interests; which may cause conflict between its members and neighboring people. A conflict can be managed and resolved through various mechanisms involving negotiation, dialogue and serious discussion between or among the conflicting parties with the involvement of third party. These mechanisms may be provided in a constitution, other regular laws, regulations, rules and customary norms or traditional practices of a given society. Resolving conflicts through peaceful and amicable manner, which is at the centre of rule of law, is a very important instrument for maintenance of peace, order and security in a given country.

Because of this, application of rule of law becomes a mandatory prerequisite for proper management of conflict resolution mechanisms. With the expansion of urbanization, technological advancement and modern economic transaction, customary laws and traditional practices have nowadays been replaced by state laws and regular court proceedings. However, they have their own irreplaceable role in peacefully and amicably resolving conflicts whether such conflicts arise among individuals or different social groups.

As stated above, there are various approaches by which conflicts can be managed and resolved using customary laws and traditional practices. These approaches can be formal or informal and legal traditions or customary practices. Before going to a thorough discussion of customary conflict resolution mechanisms of the people of Raya, it is worth deliberating on the works of some scholars related to the subject matter. According to Hanson conflict is managed; when it no longer interferes with the ongoing activity of parties involved. Greehalgh, he further stated that conflict management is the process of resolving cognitive barriers to agreement²⁶. In resolving conflicts, there are several techniques, which can be categorized into various related groups. Though the naming of such techniques is different from writer to writer, their content is almost the same and their function is quite similar. To mention some of them, avoidance, accommodation, domination, compromise and collaboration are approaches to

²⁵ Gada Merewa means a kind of committee i.e. a collection of wise men responsible for resolving disputes and administering the Raya community.

²⁶ Hanson, E.M (1996). *Educational Administration and Organizational Behaviour*, 4th ed. Boston: Allyn and Bacon. P. 260.

be taken as appropriate techniques of conflict management or conflict resolution²⁷. Tomas, in Newton and Tarrant, states that the styles of conflict resolution mechanisms are competition, collaboration, avoidance, accommodation and compromise.²⁸

To Donnelly the strategies are avoidance, domination, problem solving, bargaining and persuasion²⁹. To Owens giving solutions to conflicts comes under five orientations: comprise; competitive (domination), sharing (compromise), avoidant (neglect), accommodative (appeasement) and collaborative (integration)³⁰. However, Schermerhorn et; al. summarized the different types of approaches of conflict resolution mechanisms into three: lose-lose conflict resolution, win-lose conflict resolution and win-win conflict resolution. In other words, they categorize such techniques of conflict resolution mechanisms into three based on their final result and conditions the conflicting parties may achieve in the conflict management process.

1.3 The Notion and Development of Customary Tribunals in Raya-Rayuma

1.3.1 The Notion of Customary Tribunals

Before falling under complete control of the regime of Emperor Haile Slassie I, the Raya community had their own administrative, social and justice system³¹. Kinship was, of course, an important bond in Raya Society though it was not the only means to protect and administer oneself. A person's security and that of his close relatives was highly dependent on the strength of his family members and his own personal capacity. If a member of one's kin was killed or seriously injured by someone else, the relatives would take revenge against the offender or at least receive compensation from the perpetrator himself or from his close relatives³².

However, it was more honourable to take revenge against such perpetrator than accept compensation either from him or his close relatives. Because of

27 Hanson, e.t al (1996). p.271

28 Newton, C, and Tony T. (1992). *Managing change in schools*, London: 11 New Fetter lane. p.105.

29 Donnelly, J.H. James and John (1992). *Fundamentals of Management*, 8th ed. Boston: Home wood, IL. p. 372.

30 Owens, R.G (1987). *Organizational Behaviour in Education*, 3rded. New Jersey: Prentice - Hall, Inc. p.260.

31 Mengesha Rete (2003), p 14.

32 *Ibid.*

this, until recent times blood feuds were/are common in the area under discussion. Thus, personal violence among individuals was frequent as all free men of Raya were armed and they were also expected to protect as well as to fight against the enemies but for their kin or to avenge injuries³³. Moreover, it was normal campaigning against their neighbouring people, particularly against the Afar pastoralists. This campaign against the Afar aimed to appropriate what they needed from the nomadic people of Afar, and the Afars, on the other hand, campaigned against the Raya either to protect themselves in advance or to appropriate something they needed from the people of Raya³⁴. Consequently, the Raya were formidable and terrifying opponent of the pastoralist community of Afar. Nevertheless, the Raya were later disarmed by the Haile Slassie regime as its control went more serious on them.

As a result, internal conflicts among individuals and inter-ethnic conflicts in the form of organized attacks against the people of Afar began to reduce and became only sporadic. Despite the fact that the Raya naturally have aggressive behaviour, they are also an egalitarian people who exercise cooperation and brotherhood. They respect others as long as their interests are not disturbed³⁵. The Raya also had/have their own framework of conflict resolution mechanisms whether the dispute is internal or external. They also have their own administration and justice system designed to govern the Raya society and handle disputes arising among their own members and between themselves and the neighbouring people of Afar or Enderta of Tigray.

This was done in a regular way through customary laws and traditional tribunals. Their custom has had its constitutional principle- elaborated and simplified customary laws and traditional rules³⁶; to solve both internal and external disputes. In order to settle such conflicts, the responsibility lay on the elderly people and clergy men. As mentioned earlier, elders were either elected or simply represented by members of the society in each locality of *Raya-Rayuma*.

The eligibility to be elected as representative elder was mainly inheritable and belonged to primogeniture. If there was no primogeniture in the same family, it would be given to the last son provided it was believed he had the capacity to handle such cases. If no males were there in the family, the husband of a daughter would succeed irrespective of his belongingness to the line of descendants or consanguinal relationship. Sometimes wise men who had no blood

33 Ibid

34 Informants, Ato Kebede Mihrete and Ato Tadese Hailu, 26-08-96 EC,

35 Mengesha Rete (2003), p-15 and Informant Ato Kasaw Asefe, 27-08-96 EC.

36 Mengesha Rete, (2003), p-16, and Informants, Ato Kebede Mihrete and Ato Tadese Hailu.

ties with that specific family became part of it.³⁷

The size of such customary council, the number of its members and other relevant bylaws were ratified and approved by the whole Raya community regardless of the requirements stated above³⁸. However, after the *Dergue* came to power in 1974, unlike the previous days, ability and wisdom to handle conflicts became a measurement to elect the members of the council. Because of this, any person, except the females, could be elected to such customary councils as long as he fulfilled the necessary requirements. Moreover, in some cases middle aged and young people who were wise and naturally talented to handle conflicts properly were elected to serve as members of such customary tribunals. According to Raya:

Elderliness or primogeniture in a family is not the sole requirement to be an arbitrator or a community leader. Being a hero only does not on its own endow one with great respect. The talent to solve complicated problems of the society and adequate knowledge of the area used in the management of such problems is strictly required.

In fact the Amharic version is more powerful and stronger than the English translation to express the true feelings of the people of Raya about the requirements for election of elders to the customary tribunals. The Amharic version is given below at least for readers who understand the language.

በራያ ማህበረሰብ ዘንድ በሽማግሌነት ወይም በማህበረሰብ መሪነት አሊያም በአስታራቂነት ለመመረጥ በዕድሜ ገፍቶ መገኘት ወይም ሽቦት ማብቀል አሊያም የአንድ ቤተሰብ የዘርሀርግ ተጋሪ መሆን ብቻ በቂ አይደለም። የጀግንነት ተግባር ፈጽሞ መገኘት ብቻውን ያን ያህል ሊያስከብር አይችልም። ይልቁንም የማህበረሰቡን ሁለንተናዊ ችግሮች በዘላቂነት ለማስወገድ በጥንቃቄ ውሉን (ቅጠርውን) ፈልጎ በማግኘት ጎብትቡን የሚፈታ ህሊናው ቀልጣፋ ከጀግንነቱም ከፍርድ አዋቂነቱም ሁለገብ ችሎታ ያለው መሆን ያሻል።

Moreover, some traditional oral rules were changed to written forms by those newly arranged councils³⁹. For instance *Mezard*⁴⁰ reduced the traditional bylaws into written form in the 1970s and after about thirteen years, *Zeweld*⁴¹ also the customary oral bylaws to a written form right after the Ethiopian Peo

37 Informants, Ato Kebede Mihrete and Ato Tadese Hailu.

38 Ibid

39 Ibid

40 Mezard is a customary tribunal responsible for resolving disputes arising in the society.

41 Zeweld is another customary tribunal in Raya and has its own first instance and appellate jurisdiction in the area under discussion.

ples' Revolutionary Democratic Front (EPRDF) came to power.⁴² The process of changing the customary rules into written form was relatively democratic and participatory.

Members of such councils had thoroughly examined existing customary practices, traditional bylaws and customary rules: identified harmful and useful practices; and introduced new ideas so as to strengthen the customary laws and traditional practices. They also increased the amount of compensation payable to the victim as it was very little when seen against current socio-economic situations⁴³. Finally, the draft document was taken to the general assembly for final approval.

Then the assembly discussed the draft document thoroughly, item by item, and finally approved it. Members of the assembly; organized for consulting representatives of the whole community and approving the draft bylaws were elected through direct participation of the Raya in their respective localities⁴⁴. The approved bylaws were also taken to the people for further confirmation and awareness creation on the newly added ideas such as increase in amount of compensation payable to the victim of conflict. *

1.3.2 Institutional Development of Raya Customary Tribunals

In *Raya-Rayuma*, *Zeweld*, *Mezard* and *Abogereb* are the most popular customary tribunals that have their own local and judicial jurisdictions. *Mezard* is used in the heart of Raya and serves both the Amharic and Tigrigna speaking people living along the border of Raya-Qobo and Raya-Alemata *Woredas* (Districts). *Zeweld* and *Mezard* were practiced among chiefs of the *chawa* regiments of *Beede Mariam* (r. 1468 –1478) and his father *Zerayakob* (r. 1434-1468). However, there are also other forms of customary tribunals in the whole *Raya-Rayuma*. For instance *Gebre Medhin* and *Tedla* are known in the northern part of Raya and are operational mainly among the Raya speaking Tigrigna and Oromo language.

Other examples include *Zeweld*, *Keflo* and *Senyegad* known in the southern part of Raya and used exclusively by the people of *Raya-Qobo* who speak Amharic language. The narration in the Chronicle of *Beede Mariam* is backed by a strong traditional belief that those forefathers had come from Gondar, particularly from Jan Amora area⁴⁵. Moreover, oral tradition in *Raya-Rayuma* clearly states that *Keflo*, *Sineyesege*, *Zeweld* and *Mezard* were brothers – in - law be

42 Tadesse Hailu Leader of *Mezard*.

43 Informants, Ato Kebede Mihrete, Ato Tadesse Hailu, and Ato Berhe Gedamu leaders of *Zeweld*, *Mezard* and *Abogereb* respectively.

44 Ibid

45 Louis Haber (trans/ The Chronicle of Baede Mariam/ 1468-1478 in Ethiopian.

lieved to have come from Jan Amora of Gondar. The eldest of all was Zeweld followed by Keflo, Senyesegead and Mezard. Because of this, Zeweld had the supreme power compared to others and he became appellate customary tribunal based on his age status; and, according to tradition, this hierarchy continued until mid 1970s⁴⁶.

On the other hand, in 1899, Tedla, the son of *Dajzmach Gebre Wahid of Tigray*, became a dominant figure in Raya-Azebo of Charcher District after assimilating himself with the native people of Raya. From 1899 on, he removed the name of the former customary councils of elders known as *Abogereb*. Despite his negative action against the traditional institution of *Abogereb*, however, he got more acceptances by the people of Raya⁴⁷. The supreme council of the Raya who speak Tigrigna and Oromo language was/is called *Abogereb* (Father of the river) and conceptually; refers to a body of persons directly elected by the Rayan in order to solve serious community problems which could not be easily resolved by the local customary tribunals⁴⁸. However, due to the 1942 uprising in Raya and the surrounding neighbour of Tigray, known as the “First *Weyane* Movement”, the government of Emperor Haile Selassie dismantled the Tedla and the *Abogereb* taking them as part of the movement and organized opposition parties. Later on, however, the *Dergue* allowed the people of Raya to exercise their customary conflict resolution mechanisms⁴⁹. The recognition was superficial though and did not continue for long.

According to the Raya the *Dergue* regime did not give any attention to their customary rules and traditional tribunals. Instead, it strengthened its own organizational structure in the area so as to seriously control them⁵⁰. Even though these customary conflict resolution mechanisms along with their institutional set ups were endangered, they were not totally dissolved since they had strong support from the community. Of course, focus group discussants and interviewees asserted that local administrative institutions, particularly the police officers, militia commanders, officials in the administration and security officers sometimes extended material and financial support when their role in resolving conflicts seemed necessary, i.e. when the conflict seemed out of local govern

46 Informants, Ato Kebe Mihrete, Tadesse Hailu and Ato Teferi Abbrha

47 Mengesha Rete (2003), P.20 and Informants, Ato Milashu Ambaw and Ato Asefa Gitew.

48 Ibid

49 Informants, Ato Tadesse Gessesse and Ato Berhe Gedamu.

50 Ibid

ment's control⁵¹.

1.4 Jurisdiction of Raya Customary Tribunals

The Raya customary conflict resolution mechanisms have played a significant role in resolving disputes that arise between groups and among individuals of the Raya community and maintaining peace and order in the area under discussion. *Raya-Rayuma*, as indicated above, has more than six customary tribunals; which have their own material and local jurisdiction. Rivers are important indicators in demarcating the local jurisdiction of such customary tribunals⁵². These traditional institutions also work in collaboration with the administrative agencies particularly with the police, public prosecution offices, public courts and local administrations although a contradiction would sometimes arise between them and blemish their healthy relationship.

For instance, if members of such customary council desire the government institutions holistic support in conflict resolution whatever type, officials from various administrative agencies help them although this is temporary and dependent on the good will of the heads of such particular administrative agencies. However, after the dispute is peacefully resolved through *erq* (conciliation), elders, regardless of gravity of the offence, demand immediate release the offender, if already under police custody, and termination of prosecution.

As a result, the Raya give due attention to and have high regard for the customary institutions; as they are loyal to the whole society and maintain the society's peace and security better than do the government administrative institutions. Because of this and other societal values, the Raya at large obey the decision of such customary tribunals⁵³. This respect and obedience is reflected in the following statement instance. When a conflict arises between groups or individuals, anyone found around, including the disputants, say, "Please, leave him/me in the name of *Zeweld* or *Mezard*" instead of invoking the formal state laws and the incumbent government institutions.

51 Informants, Ato Tadese Gessesse, Ato Kebede Mirete, and Ato Tadese Hailu.

52 Kiflo, Seneyeseged, Zewold, Mezard, Gebre Medhin and Tedla are the main ones. Kiflo has a local jurisdiction in the area between the Ala and the Golina Rivers, and Seneyeseged in the area between the Golina and the Hormat Rivers. Although it has an appellate jurisdiction over the others, Zewold is responsible for the locality between the Hormat and the Gobu Rivers. Mezard has a local jurisdiction between the Gobu and the Aroscha Rivers; Gebre Medhin, on the other hand, governs the area between the Gobu River and the Alamata Town including the Town itself. Tedla has also a jurisdiction over the area from north-east of Alamata Town including the whole of Charchar Woreda.

53 Informants, Ato Teferi Abirha, Ato Kasaw Asefe, and Degu Kebede /Head of Qobo Militia Office.

The jurisdiction of these customary tribunals is basically based on the consent of the conflicting parties; it is not mandatory to all members of the Raya community be judged by them. Usually the perpetrator or his close relatives request the village elders or religious leaders to mediate in the conflict that arose between him and the other party. Then the village elders together with religious leaders immediately start the conciliation process. At the end, if the disputants do not agree on the decision made by the village elders, the latter would refer the case to the customary tribunals to decide on the amount of compensation⁵⁴. Therefore, these customary tribunals mainly entertain individual cases as of appellate Jurisdiction.

Most important is that, the first attempt to resolve conflicts is made by village elders and religious leaders. Furthermore, they entertain issues of collective or group disputes such as a conflict, arising between the Raya and the neighbouring Afar. In the event of collective conflict, the customary institutions along with elders from the Afar community can directly involve and try to settle the conflict without waiting for the institution of the village elders. Group dispute, especially between the Raya and the Afar is more serious than conflict at an individual level and has a devastating effect unless the elders intervene immediately and handle the case.²⁸

2. The Nature and Extent of Conflict Resolution Mechanisms

A conflict may occur between individuals or groups but it has its own resolving mechanism depending on the nature and extent of the dispute. The mechanism which can be instrumental in resolving conflicts can be either formal or informal and legal or traditional in its nature. This section mainly deals with both the nature of individual and group conflicts and their customary handling mechanisms.

2.1 *The Nature of Individual Conflict and its Handling Mechanisms*

A murder in *Raya-Rayuma* is a very sensitive matter and it gives rise to an increased sense of revenge between relatives of both disputant parties. Someone who takes revenge, (Dem Melash) is considered as a 'hero' and is respected whereas one who fails to do so is seen as cowardly and is dishonoured by members of the society. Such a belief results in a deep rooted sentiment of retaliation between the conflicting parties unless genuine *erq* (conciliation) begins through traditional conflict resolution mechanisms. As a result there could incur a great loss (human and material) on both conflicting parties. Further, there would prevail an unstable condition in the Raya society in general and in the local community living close to the disputant parties in particular.

According to Raya, any person; who commits murder either negligently,

54 Ibid

accidentally or intentionally including revenging an enemy, surrenders himself to the church or mosque premises based on his faith or disappears from the locality. However, usually he/she opts sneaking into premises of church or mosque and immediately communicates the case to the priests and/or *sheiks*. If the murderer surrenders himself to those religious institutions or elders, relatives of the deceased will not attempt to kill him while s/he is in such refuge.

But if s/he chooses to live in the locality or to join her/his relatives, ignoring the consequence, the relatives of a victim will hunt her/him, or if they fail to find her/him, they will make possible attempts to kill close relatives⁵⁵. According to Raya tradition, the relatives of the victim of homicide or other grave offences have two options, either taking revenge (killing the offender or a member from her/his close relatives) or accepting compensation from the murderer and his family members. Nevertheless as mentioned above, elders and religious leaders usually begin the conciliation process immediately after the murderer takes refuge in religious institutions and communicate the case to them.

Moreover, the elders start investigations to identify the circumstances of the murder. In *Raya-Rayuma* there are two types of homicide: 'qey dem' (red blood) which means that the murder was committed negligently; or accidentally without having the intention to commit such a crime and 'tikur dem' (black blood) which shows that the offender has committed the murder intentionally, and/or cruelly or in the sense of revenge⁵⁶. Such categorization of circumstances of murder helps them to decide the amount of compensation payable to the family of the deceased and the types of additional penalty imposed upon the murderer.

The traditional rules of Raya society clearly put the amount of compensation for each type of damage and circumstance. For instance, Article 4 of *Zewold's* bylaw categorizes the murder into two and the amount of compensation is determined accordingly. It stipulates birr 5,000 for *qey dem* and birr 10,000 for *tikur dem* whereas Article 1 of the bylaw of *Abogereb* of Raya-Alamata *Woreda* stipulates birr 12,000 in general without classifying the circumstances. However, the elders have a discretionary power of minimizing the amount of compensation for *qey dem*.⁵⁷ Many generations ago, the amount of compensation was birr 60 bit it gradually increased depending on the political situation and socio-economic development of the Raya society. Nowadays, if the murder was committed while the victim was stealing property, raping someone's wife, or

55 Informants Ato Degu Kebede, Fentaye Abate (police officer) and Ato Kebede Mirete, 8 June 2012.

56 Ibid

57 Traditional rules of Zewold, Mezard, and Abogereb.

committing adultery, there is no compensation payable to the victim or his family members except some 200-500 birr meant to cover the cost of the funeral⁵⁸.

If a murder is committed to avenge blood after *erq* (conciliation) took place, the murderer will be required to stay away from the locality for at least one to ten years even to initiate another *erq* (conciliation) process. Once the *erq* is finalized, the offender is required to pay the victim's family double the amount normally paid for homicide (i.e. birr 20,000)⁵⁹. The conciliation process, however, is the same as that of other disputes.

2.2 The Nature of Group Conflict and its Handling Mechanisms

As far as external and group conflicts are concerned; reconciliation had no place in the community until 1930s when the central government publicly criticized the raids between the Raya and the Afar communities. Prior to that date, reconciliation, compensation for damage or return of booties was not known. In 1943, the Wejerat elders issued rules and regulations to bring about sustainable peace and security with the Afar community.

However, Aboli Michael made himself *Abogaz* of the area without getting legitimacy from the community and raided the people of Afar violating the regulations issued by the elders of the Wejerat. Because Aboli Michael's move was illegal, committee of elders decided to kill him and they sent the booties back to the Afar community⁶⁰. In 1945 the governor of Raya Azebo *Awuraja* after receiving confidential letter from the Ministry of Interior, attempted mediating the Raya and the Afar communities in order to stop the conflict between them⁶¹.

But the attempt was not as such fruitful. Then by the order of Emperor Haile Selassie, another round of attempt started in 1965 to end the raids and counter raids. After a discussion of five days, representatives of both the Raya and the Afar communities signed an agreement not to raid each other and to stop blood feuds. They also agreed that any party that violated the agreement would pay birr 5,000 for conducting raids and birr 15,000 for blood feuds⁶². However, some organized and individual attacks and campaigns were conducted sporadically and the agreement was not as functional as they thought it would be.

In 1974 a conflict broke out on the border area of *Charchar* of Raya and

58 Articles 3 and 11 of traditional bylaws of Mezard, Abogereb and Zewold respectively.

59 Ibid

60 Mengesha Rete (2003), P.20.

61 Fekadu Begna (1990), p.38-39

62 Getachew Meresa (1998), p.59.

Barentu of Afar and resulted in the death of three Raya and two Afaris. Further, three men were seriously wounded from each side. In the year that followed, members of the nearby Afar community raided the Raya at *Qobo Woreda* and the fight lasted for a whole day⁶³. However, these disputes which, of course, had negative impacts on the relationship of both people, were resolved through efforts made by the elders. Government law enforcement agencies usually failed to control and settle such repeated group conflicts.

Moreover, after some 20 years in 1993, a certain Afar killed three known Raya men at *Qobo Town* and an Afar was killed in retaliation. This incident created a strong sense of revenge on both sides and they started preparation for fighting. Nevertheless, *Zewold* and the Afar elders immediately intervened and resolved the dispute through conciliation. The same thing was repeated in 1996, when, the Raya of *Charchar* and *Mechare* on one side and the Afar of *Megale* on the other fought for two nights and three days. The result was that many people including members of the police force and some elders from both Raya and Afar trying to stop the fighting, died and others were seriously wounded⁶⁴.

Government law enforcing institutions could not contain the conflict, so they urged renowned Raya elders to intervene and stop the dispute. The elders then took the responsibility and immediately identified the causes of conflict. After that they submitted to the police individuals who aggravated the conflicting situation and resolved the problem in a day. In addition to the customary tribunals, religious leaders, *Abegars* and *Duberties*⁶⁵ also have a very important role in the conciliation process.

The role of religious leaders, *Abegars* and *Dubertis* is mere facilitation of the conciliation process for the peaceful settlement of conflict through *Shimgilna* (mediation of the conflicting parties). Customary tribunals decide the types of penalty and punishment to be imposed on the perpetrator, the amount of compensation payable to the victim and other verdicts to be passed.

2.3 Execution Mode of Decisions of Customary Tribunals

After the process of conciliation is completed or an agreement between the conflicting parties is concluded and the amount of compensation is determined, the perpetrator is obliged to pay the decided amount of money within a time specified by the customary tribunals. If close relatives of the victim agree to accept

63 Mengesha Rete (2003), p.21.

64 Ibid, Informants, Ato Kebede Mihrete and Ato Fentaw Abebe.

65 Both Abegar and Duberti are believed to have spiritual power to harm those who refuse to accept (conciliation) -by cursing. Abegar is an elder and respected man in the area where as Duberti is a woman representing a collection of elderly females who perform a cultural ceremony holding a long stick smeared with butter.

the compensation in whatever form, the offender together with his relatives would pay in kind i.e., camels, cows, oxen etc⁶⁶. On the other hand, if the offender's side is unable to pay the compensation, the offender will have to beg for money in market places, church premises and mosque areas declaring he took someone's life and is unable to pay compensation for the victim. In other words, the murderer is obliged to carry a chain which serves as a symbol of judgment debtor for blood money and begs until the stipulated amount of money is fully collected.

Besides, immediately after paying the compensation, the customary tribunals, if they find upon the perpetrator in relation to that particular case, are expected to be made by customary tribunals of such particular the Raya society. It necessary, may compel the murderer to leave his locality and live in other places about 10 to 15 kms. Away from the relatives of the victim, or sometimes the victim's family may request such additional sanctions in order to avoid the sentiment of revenge especially if the murder is *tikur dem* (black blood).

However, if the case is *qey dem* (red blood), the disputing parties usually establish a smooth relationship between them through marriage or any other social bond. In both cases, close relatives of the victim are expected to forgive the wrong-doer so as to develop good relationship with the offending parties⁶⁷. Therefore, the decision passed by the customary tribunals in *Raya-Rayuma* is morally respected and socially undisputed. Besides, the decision of such customary tribunals is mostly made in writing and contains expression like, This is an agreement made between X and Y and is binding "before the court of law."

However, if one of the disputants is aggrieved, s/he may take the case to the public court after paying the compensation determined by elders but before effecting the whole decision though experience shows no person went to the public court of law⁶⁸. If the judgment debtor refuses to take the elders' final decision, s/he will be exposed to serious social condemnation and other types of ostracization. In this regard, Mengesha Rete says "Power belongs to the people and one who violates decisions of elders will be an outcast. This is a public sanction against the outlaw and it is forbidden to communicate with such individual." ⁶⁹

If refusal comes from the offender's side, the relatives of the victim will also be initiated to revenge the murderer and his close relatives. In this case, the council of elders may order the guarantor of the perpetrator to perform the duties of judgment debtor in collaboration with close relatives of the offender to avoid such sense of retaliation. However, experience shows that no one refuses

66 Informants, Ato Tadese Hailu and Ato Kebede Mihrete

67 Ibid

68 Informants, Ato Fentaw Abebe and Ato Molla Endeshaw

69 Zewold's Traditional rule, Art. 13.p.3

to execute the elders' decision for two reasons. The first one is for fear of social condemnation and prosecution and the second one is for fear of retaliation by the relatives of the victim⁷⁰. Therefore, once a person gives consent to be tried by the council of elders and settle her/his case before such tribunals, s/he has to comply with the decisions of the council whether s/he is satisfied by the decision or not.

3. Comparative Analysis

As we have seen in the preceding sections, customary conflict resolution mechanisms have their own important and irreplaceable role in protecting interests of the society by maintaining sustainable peace and order. Moreover, they are readily accessible to the conflicting parties,; less costly more speedy, and open system when compared to modern laws and regular court litigations. However, they also have some drawbacks when traditional rules and customary practices are seen in light of modern laws and public court litigation procedures.

The Raya customary conflict resolution mechanisms have significant contributions in maintaining peace, security and stability. They serve in amicably resolving disputes and in developing different mechanisms to do so. Customary conflict resolution mechanisms in most cases fulfil the requirement of access to justice,; one of the fundamental rights of Ethiopian people, guaranteed in Article 37 (1) of the FDRE Constitution and in other substantive and procedural laws of the country. Justice in customary conflict resolution mechanisms is also made in each locality of the Raya community and judges of such customary tribunals are elected by the people concerned through direct participation of every individuals of Rayan society.

Moreover, there is no delay of justice as they involve no complex procedures. Disputes may rather be resolved in a short period of time in the locality where the crime was committed and in the vernacular of the community. In addition, these traditional conflict resolution systems allow direct participation of the people living in the area. In *Raya-Rayuma*, customary tribunals perform their day today functions in the open trial system. Because of this, any interested person living in the vicinity can attend such customary tribunal proceedings. Sometimes, residents are even invited to give suggestions about the process in general and the case at hand in particular.

This open trial system coincides with the requirement of accountability and access to justice stipulated in modern laws and regular court proceedings. Therefore, these customary tribunals and their traditional conflict resolution mechanisms enhance access to justice guaranteed by the FDRE Constitution of 1995 and other subsidiary laws. Besides, customary conflict resolution mecha

70 Informants, Ato Tadese Hailu and Ato Kede Mihrete.

nisms and their customary tribunals are also very significant in avoiding the sense of revenge and further consequence of conflicts. In other words, they also meet the purpose of maintaining peace and stability between the disputants in particular and help to achieve the aim of the criminal law of the country in general.

However, the right to movement and the right to choosing residential area guaranteed by the FDRE Constitution of 1995 and the Civil Code of Ethiopia are sometimes affected by the decisions of such customary laws and their traditional tribunals. In some cases, if they believe it is necessary, or if close relatives of the victim request the perpetrator leave the locality, the murderer or the perpetrator will be obliged to do so for certain period of time or sometimes for good. The prosecution may also be terminated and the perpetrator may be made free from subsequent punishment if the dispute is resolved and the conciliation is concluded.

The elders may push in this line either directly by requesting the prosecution office to withdraw the charge against the murderer or indirectly by telling the witnesses to hide evidences or refuse to give testimony before the court. If witnesses disobey the elders' order and testify against the murderer, they will be excluded from social interaction since they are considered as disobedient to the elders or as one who violated the customary norms of the Raya society. According to the Head of Justice Bureau of Amhara Region and President of North Wollo High Court, the main problem with the elders is their reluctance to perpetrators of traditionally resolved conflicts⁷¹.

In addition to this, he claims that the punishment imposed by the elders is not deterring and would not help in rehabilitating the perpetrators; it only *punishes their pocket*, not the evil mind of the offenders. Thus, those who have enough money and wealth may commit crimes repeatedly as they have no problem to pay the compensation decided by the customary tribunals. The right of the innocents may also be encroached on in traditional tribunal proceedings. For instance, if an offence is committed in a certain village, part or whole of the community, especially relatives of the suspected person, will be required to either expose the offender or suffer the consequence by paying compensation to the victim.

Hence, the decision by elders' council may breach the rights of the innocent instead of punishing the actual offender. Besides, the compensation payable to the victim does not dig into the pocket of the actual offender only but also into that of the close relatives who did not involve in the commission of the offence. Therefore, customary conflict resolution mechanisms fail to individualize the punishment imposed on perpetrators and this contradicts with the principle of

71 Ali Muhamed Ali and Hailu Jemere Liben respectively.

criminal law.

4. Conclusion and Recommendations

The writer of this paper in his investigation realized that customary conflict resolution mechanisms are very important institutions in bringing about sustainable peace and order among individuals and between societies. Similarly, the Raya customary conflict resolution mechanisms contribute significantly to resolving disputes arising among members of the society or between the Raya and the neighbouring people of the Afar nationality. The organizational structure of these customary tribunals found in the whole Raya-Rayuma was/is democratically formulated. The tribunals perform their functions based on customary laws and traditional rules ratified by the assembly and approved by the people through direct participation. However, as mentioned in the comparative analysis, in most cases members of such customary tribunals are not aware of modern criminal laws and fundamental principles of the FDRE Constitution.

Because of this, they would not care about human rights guaranteed by the Constitution. Their only goal seems to be settling the conflict at hand in a peaceful and amicable manner and fixing compensation for the victims of such conflicts. As conflict is dynamic in nature and its transformation is an ongoing process, learning is a vital component to bring about behavioural change among members of the society and their traditional institutions.

Accordingly, concerned administrative agencies, non-governmental organizations and academic institutions should give due attention to these customary methods of conflict resolution and their traditional tribunals. Moreover, awareness creation in the society through training and education in general and among members of the customary tribunals in particular is an essential task to be recognized by those concerned federal, regional, and local government institutions.

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IV. List of Interviewees and Focus Group Discussants

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Ato Asefa Gitew;
Ato Tadese Gessesse;
Ato Degu Kebede;
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Ato Berihun Addisu,
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Ato Alemu Asnake;
Ato Ali Muhamed Ali;
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