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THE PRACTICE OF *SIGETSUWA* (MEDIATION) ON SERIOUS OFFENCES AND ITS CHALLENGES IN DAWURO ZONE OF SNNPR: APPRAISAL IN LIGHT OF THE DETERRENCE PURPOSE OF PUNISHMENT

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Declaration

I, Tekle Bezabih Babu, declare that this thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used for the thesis have been duly acknowledged.

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Acronyms and Abbreviation of Words

E.C_____ Ethiopian Calendar

F.D.R.E_____ Federal Democratic Republic of Ethiopia

F.G.D_____ Focus Group Discussion

F.S.C _____ Federal Supreme Court

F.S.C.C.B _____ Federal Supreme Court Cassation Bench

S.N.N.P.R.S_____ Southern Nation, Nationalities and Peoples regional state

Glossary

Ac'aa _____ compensation

Amaara _____ peoples from northern part of Ethiopia resided in Dawuro

Ammatuwa _____ vowing not to commit evil again

Angiya _____ idir, in Amharic, social association organized by few persons

Bayiraa _____ elderly council

Bayiratseta _____ institution of elders

Bohuw _____ debarment or isolating from social participation

Bolla tsosantta _____ supernatural being (God)

c'aaquwa _____ swearing

C'aaqa tsilla _____ swear to verify your innocence

C'aaqo Zooziya _____ Mountain specified for swearing

Daana _____ political leader at third position of king

Dabboyusa _____ nearly it has sense of correlation

Degela _____ practitioners of tanning

Dogala _____clans whom are said to have been the most hazardous group traditionally and were claimed as the selects of religious authority

Dubbusha _____Public meeting place surrounding with big tree branches or shade

Gomiya _____ a bad consequence/suffering for evil doing

Huluuquwa _____ ritual cleansing

Kaasha_____ sanctuary forest land near to diviners confiding used to worship and ritual

Kaatiya _____ king in nation before formation of Ethiopian unification

Kiitsa _____ call for hearing

Kontiya sotsuwa _____ string up needle and other splintered metals by wispy thread

Kushiya hiila _____ nonagriculturalists/occupational groups/craft workers

Lookuwa _____ bloating horn used to announce public meeting

Maala _____ agriculturalists and believed to be good mannered community in nature in tradition

Makkuwa _____ conclusion

Mana _____ potters and the group perceived as evil eyed by its neighboring community customarily

Manja _____ formerly marginalized social groups due to the reason that they eat food taboos and whose economy rely on hunting, selling of fire wood and charcoal, are now becoming agriculturalists

Menatsuwa _____ purification

Sagga sheesha _____ clans categorized under dogala

Sharechuwa _____ traditional religious leader or diviner who believed to have possessed with god spirits

Sheqa/madhdhariya _____ curse

Shoobiya _____ intercession convincing to agree to mediation

Siga _____ peacefully

Sigetsuwa _____ mediation

Tooka bayiraa _____ a popular individual by the community held with power to enforce situations at kebele or woreda level and sometimes it can observe circumstances beyond woreda

Wogac'iya _____ communities who has long been engaged in producing local or hand metal tools

Wombora _____ delegate of religious leader

Zabba _____ institution related with deity

Abstract

The vital purpose of criminal law is prevention of offence thereby protection of society's peace and security through warning and punishment. To realize the goal of crime prevention, it considers criminal punishment as a means for similar acts in future. When taking punishment aligned with potential offenders' deterrence, the actual victim may dissatisfied while his injury taken as means than an end and decide to search extra options in which his victimization considered as an end.

Because of different pushing factors, crime victims' mediate with offenders' any serious offences in Dawuro nation via practice of Sigetsuwa. The practice often facilitates offender's freeing and innocents' blame. The offender's libration with innocent's punishment goes against all purposes of criminal punishment and particularly affects the deterrence effect of punishment. The practice can have significance in resolving less serious offences and group conflicts amicably. Therefore, giving legal recognition for this part and restricting its interference in to serious offence is necessary. Verifying the extent, motives and halting alternatives of the practice's involvement in serious offence is the concern of this study.

CHAPTER ONE
INTRODUCTION

1.1. Backgrounds to the Study

Before the formation of today's complex state structures that adjudicates specific cases, society used to apply strong customary rules, procedures, and institutions. Through which, they used to solve conflicts, repair damages and re-establish social peace. This is in a way keep going conflicting parties, backer and entire community together peacefully.[1]

Customary conflict resolution mechanisms commonly categorized as negotiation, mediation, reconciliation and arbitration.[2] Negotiation is an alternative dispute resolution mechanism through which disputants resolve their disagreement by their own initiation.[3] Unlike negotiation, mediation is a way in which conflicting parties move toward agreement via third party facilitation (encouragement)[4] and arbitration is another alternative conflict resolution method in which third party arbitrator passes a binding decision.[5]

Among alternative dispute resolution mechanisms, mediation on serious offenses usually challenges the deterrence purposes of criminal punishment than negotiation and arbitration. This is due to the seriousness of the offenses, the offender become humiliated to talk with a victim personally and hence negotiation is unsuccessful to obstruct the criminal punishments purposes. [6]

Arbitrators not undertake to pass binding decisions coerce parties to accept in serious offences than soft conclusions. Hence, it cannot compel parties if they did not want to accept the mediators' ruling. Accordingly, it cannot challenge the deterring purposes similar to mediation.

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[1] Anna Mestitz & Simona Ghetti (ed), *Victim-Offender Mediation with Youth Offenders in Europe: an Overview and Comparison of 15 Countries* (Springer 2005)

[2] Jetu Edossa, 'Mediating Criminal Matters in Ethiopian Criminal Justice System: the Prospect of Restorative Justice'(2012)1 Oromia Law Journal 99, 108

[3] Theresa Adeyinka & Oluwafemi Buhari, 'Methods of Conflict Resolution in African Traditional Society' (2014) 8 An International Multidisciplinary Journal, Ethiopia 138,151

[4] Adam Crawford, *French Victim/Offender Mediation* (Sage 2000)

[5] Jetu (n 2) 110.

[6] Tafese Tasew, 'Conflict Management through African Indigenous Institutions: A Study of the Anyuaa Community' (2016) 3 World Journal of Social Science 22, 24

Mediation process participate victims, offenders and the community within which the crimes had been committed unlike formal court litigation.[7] The participatory nature of mediation has unquestionable contribution in solving disagreements having both personal and group effect. Group conflicts like border clash, social unity's, religious or ethnic nature may not calm by standardized exterior body's decision in maintaining regular peace.[8] The mediation in such situation has positive roles to make justice accessible and participatory. The practice of mediation is not limited in customary institutions rather modern criminal justice systems re-adjusted mediation between victim and offender under criminal justice process through restorative justice as well.[9]

Mediation practiced under restorative justice sphere in western countries usually carried by qualified justice actors.[10] However, in customary mediations, unqualified elders can carry it positively. Even though the adjustment for restorative justice is yet not become visible in Ethiopia, as is the case in many legal pluralistic societies, literature reveal the existence of two distinct justice systems;[11] a formal and Informal operating by their own principles and procedures side by side throughout Ethiopia.[12]

Mediation practiced under restorative justice is not similar with customary mediation. Thus, in the former case specialized groups of persons capable to defend human right violation, constitutional law principles and criminal law from breach guide it. Furthermore, the process is recognized as a courtroom procedure, unlike mediators in indigenous reconciliation carry without any qualification and capacity to assess outcomes of the case from publics' interest perspective.

The commonly known indigenous conflict resolution method in Dawuro nation is *Sigetsuwa* (mediation) which is widely practiced throughout a Zone until nowadays. A nation as any other

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[7] Aberra Degefa, 'The Impact on Offenders of Rivalry between the Formal Criminal Justice System and the Indigenous Justice System: Experiences among Borana Oromo in relation to the Crime of homicide' (2013) Danish Institute for Human Rights Research paper 8/2013

[8] Tasew (n 6) 24.

[9] Endalew Lijalem, 'The Space for Restorative Justice in the Ethiopian Criminal Justice System' (2014) 2 Bergen Journal of Criminal Law and Criminal Justice 215,241

[10] Mestitz & Ghetti (n 1) 23.

[11] Endalew Lijalem, 'a Move towards Restorative Justice in Ethiopia: Accommodating Customary Dispute Resolution Mechanisms with the Criminal Justice System' (master's thesis, university of Tromso, 2013)

[12] Aberra, (n 7) 21.

Ethiopian nation solves conflicts in customary means starting from times in memorial using practice of *Sigetsuwa* for any nature of disagreements.[13]Through practice of *Sigetsuwa*, family matters, civil issues like property and contractual disagreements as well as group and border conflicts mediated apparently.[14] As the practice takes short time and easy procedure, reconciling disputes of group nature for instance, between religious, ethnic or other socially established institutions can have positive values if it recognized by law.

However, fouls of *Sigetsuwa* is its involvement in every criminal cases including very serious nature limitlessly. Local elders known as *bayiraa* either by their own motive or by the requests of conflicting parties tries to convince victim or victim's families, who can influence the entire process. The *bayiraa* intercede victim/s and victim's family to agree with the offenders demand for *Sigetsuwa* (mediation). The process is called *shoobiya*(intercession) in which *bayiraa* persuades victimized party by delegating the offender. Religious leaders and prominent elders of the society are preferred for the intervention process (*shoobiya*). The intention is in order to tighten alternatives out of mediation through their influence. If *shoobya* get acceptance then *bayiraa* re-elected by both parties consent among either interceded or out of them. The number of *bayiraa* determined by the gravity of offence committed. It is always odd number when *bayiraa* denominated to appoint one as a chairperson for *Sigetsuwa*. Usually seven *bayiraas* are required for grave crimes like homicide and arson while, three to five are required for petty offences and family cases consecutively.

Despite the fact that, many serious offences remain unreported if the victims convinced before reporting, crimes highly related with public interest withdrawn either during investigation stage or trial after prosecution. Practice of *Sigetsuwa* is not the only reasons for the withdrawal of criminal case. Nevertheless, there are a different possible reasons exist for the withdrawal of serious criminal trials. The matter made *Sigetsuwa*, as a significant contributor in stoppage of criminal case therewith hampering deterrence purpose is the crime victims fled from the process as of mediation. Thus, gravely injured party unless agreed with offender via *Sigetsuwa*, believed to follow his/her case attentively as reported the occasion.

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[13] Elias Dogisso, 'traditional aspects of the Dawuro nation' (2015) 2 Unique Ethiopia 82
[14] Ibid 82-4.

Offences having no direct or indirect influence on interests of wide public are open for mediation despite the prohibition of constitution and criminal law of Ethiopia.[15] As the violation is personal by its nature, nobody report and follow its outcome except crime victim him/herself and hence it is a victim's choice either to mediate or file complain against violators.

The pending restorative justice attitude of Ethiopia allows indigenous reconciliation of criminal cases under draft criminal procedure and criminal justice policy document.[16] This recognition authorizes value of *Sigetsuwa* and similar customary mediations' interference into purpose of criminal punishment boldly. Beyond the question of constitutionality,[17] it allows out of court process in all criminal cases excluding some highly linked crimes with state concern, like terrorism, genocide and aggravated homicide furthermore recidivist offenders.[18]

Purposes of the criminal law in general stated as prohibiting and preventing unpleasant conducts that can cause or threaten persons and public in general. Criminal law provide just warning for conducts declared as offensive and safeguards erroneous blame of some behavior as criminal. Likewise it rates offences into different classes reasonably and its effects there too, along with satisfaction of the community's sense of just revenge that all contributing to decrease extent of crime commission. [19] In order to achieve these purposes, criminal law accommodates sentencing and treating sections within it as well. This section also aims in promoting the correction and rehabilitation of offenders, preventing the commission of offenses, safeguarding offenders against disproportionate punishment and providing fair warning of the nature of the sentences that can be inflicted on conviction.

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[15] Lijalem (n 11) 68.

[16] Criminal Justice Policy of Federal Democratic Republic of Ethiopia 2011, preamble, sec, 4.6 & Ethiopia criminal procedure and evidence law 2009 E.C(draft), art 197(emphasis added).

[17] Ayalew Getachew, 'Customary Laws in Ethiopia: A need for Better Recognition? A women Right perspectives' (2012) Danish Institutes for Human Right Denmark's, NHRI Strandgade 56/2012.

[18] Draft criminal & evidence law (n 16) art. 197(2), criminal justice policy document sec. 4.6.2.1(b) criminal justice policy document have some smooth inclusion of customary mediation means, apply on youth offenders, non-recidivist and offences punishable by simple imprisonment. While, Draft criminal and evidence law principally recognizes the resolutions of customary mediation's in all offences, except very serious, related with state interest.

[19] Albert Alschuler, 'The Changing Purposes of Criminal Punishment: A Retrospective on the Past Century and Some Thoughts about the Next' (2003)70 University of Chicago Law Review 14

Likewise, Criminal code of Ethiopia principally aims prevention of crimes by giving due notice of the crimes and penalties prescribed under it.[20] It provides the punishment on criminals in order to deter them from committing fresh crimes and making them a lesson to others, Or by providing for their reform and measures to prevent from commission of further crimes.[21] This indicates that preventing the offence from being committed is the primary aim of Ethiopian criminal law than penalizing a single perpetrator and seeking his reform.

Criminal code classified offences into four major categories. Crimes against interest of state, community, individual and property, arranged along with its specific title and provisions. It does not classified nature of offences in a specific term as serious and less serious under these classifications'. Nevertheless, its categorization of punishment into rigorous imprisonment,[22] simple imprisonment,[23] fine or arrest[24] as principal penalty and secondary penalty on it or substituting it, indicates the arrangement of punishment based on seriousness and less seriousness of offences. Unlike the criminal code of Ethiopia, aims to prevent commission of possible offences in future, customary mediation in Dawuro nation (*Sigetsuwa*) usually imposes economic penalty, which can easily implemented by contribution, even if an offender is impecunious. As the result, criminal punishment lacks individuality to deter offender and lessoning his punishment to society.

1.2. Statement of the Problem

Resolving criminal cases in any means out of court method is not authorized under the FDRE constitution.[25] It only allows adjudication of family and personal matters in customary or religious institutions out of regular court process.[26]Still, the constitution limits the establishments of those institutions to adjudicate cases concerning personal and family matters.[27] Moreover, constitution strictly bans customary practices contradictory to its provisions.[28] Likewise, criminal

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[20] Criminal Law of Ethiopia 2004, preface sect iii, par. 3
[21] Ibid.
[22] Ibid art 108, articulates a period of one to twenty five years rigorous sentences for grave offences.
[23] Ibid art 106, ten days to three years simple imprisonment for offences of not very serious.
[24] Ibid art 747, stipulates one day to three months arrest for petty offences.
[25] Aberra (n 7) 9.
[26] Federal Democratic Republic of Ethiopian constitution 1995, art 34(5)
[27] Ibid art 78(5), articulates the establishment or recognition of a new or existing customary or religious institution to have adjudicatory power, require the house of peoples' representatives and state councils' approval.
[28] Ibid art 9(1).

law of Ethiopia does not provide any place for reconciliations in out of court process. Nevertheless, practice of *Sigetsuwa* adjudicating all maters including serious offences having lofty interest of public in Dawuro. The problem is not only its unlawful or unconstitutional involvement to reconcile criminal issues but its trustworthiness to handle serious offences more than state institutions. Mediators' get recognition and financial benefit from the process when reconciling serious offences and hence employ ultimate influence to convince parties for mediation. As most of population lives in rural area, communal life is strong and hence it is easy for mediators to use that opportunity otherwise segregating insubordinates form communal participations. The mediation currently practiced in disintegrated manner unlike its historical structure. This made its extension broad and available everywhere. Since, customary or religious actions carry out in an institutionalized means without legal authorization can easily be outlawed and manageable than individuals influence in a scattered manner.

The nation is also prominent with social stratifications[29] and hence equal verdict is unpredictable during entire process of *Sigetsuwa* from selection of elders' to compensation delineation. Some clans of a nation marginalized due to misapprehensions of society's outlook based on handcrafting activities (*kushiya hiila)* by their ancestors. Hand crafters and performers of musical instruments or artists considered as subordinates to other part of nation in the past.[30]The group includes *wogac'iya* (Smiths), *degela* (Tanners),*mana*(Potters) and *manja* (formerly hunters).Such view not yet avoided totally and hence mediation between such socially neglected family member and other from ordinary member of nation can never treated equally.[31]*Manja* (minority group in Dawuro) should not commonly shake hands with anyone of *maala* (dominant group in Dawuro) and not allowed to eat food cooked in houses other than his/her own, notwithstanding progressive betterment.[32] The outcome of reconciliation between party of the segregated group and dominant one is not open for discussion. Since, elders belonging to this minority category

[29] Ayele Tariku, 'State Formation and Dispute Resolution Mechanism in Ethiopia: a case of Wolaitta People' (2015) 11 European Scientific Journal 240, 243

[30] Wondaferaw Gezahegn, 'The Role of Indigenous Knowledge and Beliefs on Natural Resource Management: The Case of Sacred Forests in Dawuro Zone, South West Ethiopia' (MA thesis, Addis Ababa university 2012)

[31] Ibid 9.

[32] Data Dea, 'Christianity and Spirit Mediums: Experiencing Post-Socialist Religious Freedom in Southern Ethiopia'(2005) Max Planck Institute for Social Anthropology 75/2005, 15

could not selected for mediation except the conflict is among their clans and this increase the extent of imbalance between parties reconciliation option.

Most of the time persons leading social or religious institutions' selected for reconciliation. As they are deciders in those institutions, they limit the parties' right to ignore the mediation. As a result, disputed parties, usually a victim is influenced to propose whatever bitter the outcome of resolution is. The practice is not free from moderate punishments of pecuniary value but an issue differentiating it from formal court litigation is that it inflicts hidden yoke on party who negates the process than fair and public trial. Pecuniary penalty assessed to whole misdeeds with slight amount variation and its conclusion by victim's apology with offender's remorse is common. Mediators also influence more, those defendants who had participated in similar crime events so far even if nothing proves the case at hand. If one who pushed to accept is unable to comply with, grave social sanction follows him.[33] Therefore, the only alternative remaining for him is tolerating the verdict quietly.

Offences in general and serious offences specifically jeopardize public interest and hence it is a state responsibility to protect public safety and security by punishing the criminals, disobey the warnings prescribed under the law. This punishment is also presumed to rehabilitate offenders through extensive skill and academic training in rehabilitating institutions as well as hindering him from commission of further offences along with alerting others not to participate in similar acts.[34]

The objectives of *Sigetsuwa* is preventing the offender from criminal punishment and rebuilding usual peace through indemnity other than concerns its effect in deterring actual and potential offenders. In a nation there is rigid swearing system (*c'aaqo*) that mediators' let victims' not to testify before court and if possible to apply for withdrawal of criminal charge following their mediation. As victims are strongly bonded to communal unions, he/she never want to breach what they promised to mediators. Subsequently, the destiny of criminal investigation and charge will be withdrawal, which leads those who have wealth or fame to trample justice, and devaluation of justice is obvious. Furthermore, some offences like domestic violence's and rape by their nature needs individual victim's verification most of the time than anyone else, even if

[33] Bakalo Baredo, *Madda mashaa: Dawuro Omatiya peoples history and culture* (South media press 2012) 34
[34] Criminal Code (n 20) art 1, Para 2.

conviction is possible with victim's failure to testify. *Sigetsuwa* in such situation deteriorates the purpose of criminal law intended to deter the offender by punishing and lessoning entire society through offender's punishment.

In order to avoid criminal penalty of wrongdoer, a practice assesses any injury of a victim by money via various persuading mechanisms. Monetary assessment for life or blood injury may not give moral satisfactions for victimized and bystanders. Even so, the victims opt due to external pressures exert on him/her for the interest of offender and he/she might have their motives some times as well. While a formal legal institution, implementing criminal law required serving primarily the needs of a victim misusing this reality and instigating to confirm the results of any customary mediation passed through these biased methods, [35] further affirmation of the challenges on deterrence purpose of criminal punishment will be obvious.

If the continued challenges of a practice in deterring offender are not halt with the existing prohibitive laws of Ethiopia, authorizing it publically without scrutinizing its circumstances can aggravate the violation scope.

1.3. Research Objectives

1.3.1. General Objective

This study aims to identify the contributing factors for intervention of *Sigetsuwa* in serious offences therewith assessing the way it hinders the deterrence purpose of criminal punishment.

1.3.2. Specific Objectives

- Assessing the reason why victim drive to opt customary mediation than regular court procedure;
- To evaluate protection of parties' rights and interests under *Sigetsuwa* when handling serious offences;
- Pinpointing the contribution of victim when putting justice in motion;

[35] Criminal Justice Policy (n 16) section 4.6.2.1(a) articulates mediation between victim and offender or victim's compensation can let free the offender from prosecution.

- Identifying factors for continuity of a practice whether result of weak administration of formal institutions, cultural, religious and social influences, or parties' personal interest to be reconciled by it than state institutions;

- To scrutinize legality of the practice and capability of current law to stop a practice and future possible fate of it;

- To evaluate procedural fairness of *Sigetsuwa* while confirmed by court and prosecutor as mediation result shows disputants consent in forthcoming justice attitude and;

- To recommend viable solutions to bodies indebted in protecting criminal law

1.4. Research Questions

This study has the following research questions;

- What factors push the victims to desire on customary mediation than formal litigation in serious offences in case of Dawuro?

- How practice of *Sigetsuwa* fares with the deterrence purposes of Ethiopian criminal punishment?

- What legal alternatives are available to border *Sigetsuwa's* intervention in serious offences?

1.5. Literature Review

Wide applicability of customary mediation in different parts of Ethiopia including crimes of serious nature is not open for discussion at all[36] even though there is practical variation from one to the other area.[37] For instance, through customary practice, expressly *Chako, Chucha Chitcha,* and *Chimeteta* any grave offences can be mediated in wolaita nation of southern Ethiopia.[38] Among others three or four elected elders from both sides of conflicting parties use *chucha*

[36] Jetu (n 2) 107

[37] Julie Macfarlane, 'Working towards Restorative Justice in Ethiopia: Integrating Traditional Conflict Resolution Systems with the Formal Legal System'(2007) 8 Cardozo Journal of Conflict Resolution 487,508

[38] Madhuri Paradesi and Molalign Asmare, 'Customary Dispute Resolution Mechanisms in Wolaita: ACritical Analysis from Restorative Justice Context' (2014) 2 International Journal of Innovative Research and Practices 21, 23

chitcha (blood compensation) to solve homicide offence.[39] Likewise, *Guma* (blood price) is mandatory compensation offender required to restitute family of victim under the *jaarsumma* institution in different parts of Oromo region.[40]*Jaarsummaa* system and *qaalluu* institutions are the two major and well-known customary institutions among Haro Limmu society, prominent among other customary mechanisms of conflict resolution gifted to hold conflicts of various complex criminal cases such as homicide.[41] Religious institution like court of the sheikhs in Oromiya zone of Amhara regional state is also another significant to solve conflict of any nature to this area as above-mentioned institutions including homicide.[42] This indicates the reality of long rooted customary conflict resolution methods in different parts of Ethiopia performing parallel to state legislations that prohibit these practices thus crime is prohibit and punishable by law. Dawuro nation is also not excluded from sharing similar practices from the above institutions. Thus, the practice is not punishable and not authorized by law to do so apply to all customary mediations.[43]

Previously *dubbusha* is a regular institution to solve any disagreement specially group conflict and grave offences in community.[44] Now a day there is no well-identified customary institution but mediation is common through practice of sigetsuwa despite the collapse of institutional structure.[45] The writer in magazine 'traditional aspects of the Dawuro nation' under heading of *Dubbusha wogga* (Dawro customary justice system) addresses the general feature of customary justice system from commission of offence to execution of punishment. He concludes that currently the involvement of the system is only in civil cases of private nature.[46] However, this study reveals its involvement not in civil and less serious criminal matter other than serious offences, which dissociate form above writer's notion.

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[39] Ibid
[40] Jetu (n 1) 122,
[41] Gonfa Ebsa, 'customary conflict resolution among the Haro Limmu Oromo of northwest Wallaga: the case of Qaalluu institution'(MA thesis, Addis Ababa university 2014)
[42] Meron Zeleke, 'Ye Shakoch Chilot (the court of the sheikhs): A traditional institution of conflict resolution in Oromiya zone of Amhara regional state, Ethiopia' (2010) 10 AJCR, 63, 72
[43] Macfarlane(n 37) 490
[44] Elias (n 9) 82
[45] Elias (n 9)84
[46] ibid

Currently Ethiopia is moving to introduce restorative justice under criminal process. However, incorporating restorative justice does not recognize all customary mediation carried out by local elders and it was not a trend even in European states practiced restorative justice so far.[47] For instance, Ministry of justice and attorney general conduct the victim-offender mediation in Norway.[48] While Austria, Belgium, Finland, Netherlands and Spain by special police officers.[49] Likewise, Ethiopian criminal justice policy points the establishment of special institutions both in regional and federal level especially when youth offender participate.[50] The above and other few works done in Ethiopia in effect of customary mediation relay on extent of mediation, its advantage to maintain peaceful co-existences of parties to dispute as well as the compatibility and recognition of customary conflict resolution methods with criminal law. They argue on behalf of customary mediation's intervention to any criminal issue demonstrates the society's tendency to restorative justice than state legislation and recommends criminal law had better readjusted in away accommodating customary mediation. However, as my study targets the challenges of customary mediation's interference in serious offences having wide public interest towards criminal law purposes from, it will create new discourse in area.

1.6. Research Methodology

Employing both primary and secondary data, the qualitative research method is used.

Semi-structured in-depth interviews conducted with purposively selected informants of twenty victims, ten investigative police officers, ten elders, three social science experts and eight public prosecutors throughout the study. In a qualitative research, there is no formula of defining the desired number of population for broader or narrower unit of data collection. However, larger numbers is preferable than smaller for the reason that it can create greater confidence in a study's findings.[51] Thus, one woreda institutionally consists up to eight public prosecutors and eight investigative polices and therefore selecting half of them for this study makes it more reliable.

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[47] Macfarlane (n 37) 508
[48] Anna Mestitz & Simona Ghetti (n 1) 8
[49] Ibid 14
[50] Criminal justice document (n 16) sec. 6.4.4
[51] Robert Yin, *Qualitative Research from start to finish* (Guilford Press 2011)

Purposive selection of participant is essential as this study examines societal trend and selecting informant based on their age as well as work experience helps to gather important data more, than than other technique of sampling. [52] Quota sampling technique is also used to categorize public prosecutors and investigative police officers by work experience and elders according to their age precedence. In non-random sampling, categorizing predetermined particular cases by researcher's interest, based on age, sex, profession and like, is important.[53]In quota sampling, the researcher decides how many of each category of person should be included in the sample instead of selecting them at random from a sampling frame. [54] Hence, the quota sampling technique is again used to categorize number of victim's in serious offence from withdrawn case records to exclude prejudice.

Two focus group discussions conducted in both woredas with three members of police investigators together with the same number of public prosecutors those were not participated in in-depth interview. This helped the researcher to get further information by including almost all practitioners in those selected institutions. Three social science experts were also involved under this study to reflect on general desire of society towards customary mediation.

Compiled report of Justice and Police Departments' withdrawal case figures of last three years directed the researcher to select two Woreda namely (Mareka and Loma) among five due to prevalence of serious criminal case withdrawals. Accordingly, twenty dropped Police investigative and Prosecutors' charge files of last three years selected based on the gravity of penalty they carried from both woredas. Thus, selection of twenty dropout files of three consecutive years was for the sake of reliability that more choices minimize biases than little entry. Since, in a year due to different factors, exaggerated or underestimated record on serious offences might exist and likewise going beyond three year is unmanageable timely. Selections of mediators (*bayiraa*) were purposively near the area where participant victims and offenders reside furthermore victims sampling were in accordance with seriousness of selected files.

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[52] Ibid 88.
[53] Linda Kalof, Amy Dan and Thomas Dietz, *Essentials of social research* (Open University Press 2008)205
[54] Victor Jupp, *The Sage Dictionary of Social Research Methods* (sage 2006)197

Legislations like, Ethiopian constitution, criminal law and criminal procedure including drafts as well as other documents like, criminal justice policy document, books and journal articles explored intensively.

1.7. Data Analysis

The collected important data categorized, combined, and analyzed in accordance to its source and type. In analyzing the data, relevant documents and literatures on indigenous justice knowledge in the area and other parts were used to place this study from different contexts and perspectives. Preliminary analysis of data was made in line with data collections. The results obtained through in-depth interview and FGD were recorded often on the notepaper. Finally, the collected data were compiled, discussed, classified, processed and the report was written.

1.8. Ethical Consideration

Letter signed by competent authorities of Jimma University made known and given to participants as much as possible and in additions cooperation letter obtained from Dawuro Zone Justice and Police Departments. Participants informed about the objectives of the study and verbal consent for participation obtained individually. To maintain privacy, individual interview made in separate place and no disclosure of their identity to third party. Then finally, participants informed that they have full right to withdraw at any time during the interview

1.9. Significant of the Study

Informing; legislatures, policy planers and all legal actors to consider the influence of indigenous justice system when transforming legal and institutional adjustments, concerning, offenders' deterrence.

Demonstrating the way victims' interest best protected in formal criminal process together with potential offender's deterrence.

The study realizes individuality and equal application of criminal punishment to the extent deterring potential offenders.

It will guarantee the uniform application of state promises of the protection of peace and security of the persons.

As the study is novel in this area, it also helps as an input for researchers want to explore related issues in future.

The study will also be constructive for equal treatment of individuals through fair trial without partiality on social, economic, political or any other status.

1.10. Scope and Limitation of the Study

1.10.1. Scope

As *Sigetsuwa* practiced in Dawuro, there are various indigenous justice systems in different nations of Ethiopia.[55] However, it is impossible to incorporate all or some nations' customary mediation practices in this study due to shortage of different resources, and so this study is limited in Dawuro Zone geographically.

Dawuro Zone is one among fourteen Zones of southern nation, nationalities and peoples region. The capital of Dawuro Zone is Tarcha, located at about 438 km via Hossana to South West of Addis Ababa, 280 Km to the West of Hawassa, the regional state's capital, and 140km to south east of Jimma town.[56] Gojeb River defines the area from jimma Zone of Oromia regional state in North, Omo River in North East from Kambata Tambaro Zone, wolaita Zone in east and Gamo Gofa Zone in southern direction. This Zone comprises five woredas (Gena Bosa, Mareka, Loma, Essera, and Tocha) and one town administration (Tarcha).[57]

The research is limited to laws and policies adopted by the federal government of Ethiopia but it is not limit from observing drafts at the same level.

This study specifically deals with influence of *Sigetsuwa* on offender deterring purpose of criminal punishment. Because, among fundamental purposes of criminal punishment, deterrence can protect persons and properties from potential criminals and it has forward effect[58] unlike retribution dealing with the satisfaction of individual victim and incapacitation dealing with

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[55] Esayas Awash, 'Indigenous Conflict Resolution Institutions: A Study among the Gofa People of the Demba Gofa Woreda, SNNPR'(MA thesis Addis Ababa University 2015)

[56] SNNPR Dawuro Zone Trade and Investment Department Profile (2012) 17

[57] Terefe Zeleke, 'The Contribution of Rural Resettlement to the Livelihoods of Settlers in Ethiopia: A Case of Essera Woreda Resettlement Schemes in SNNPR'(2014) 4 Public Policy and Administration Research 2224, 2225

[58] Paul Robinson, *The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best'* (Penn Law 2003)

individual offender's perspective.[59] Deterrence directly or indirectly consists of almost all utilitarian purposes of criminal punishment under it.[60]

Serious offences in this study denote crimes of very grave nature punishable with rigorous imprisonment from one to twenty-five years.[61]

1.10.2. Limitations of the Study

Both mediators and parties to mediation understand, as it is not their mandate given by law to mediate serious offences. Consequently, they hide from view, mediations on some important serious cases that were highly publicized and withdrawn later in lack of witnesses, and this lead further exploration for reconciled offences, which were no more made known.

Legal practitioners consider the continuity of mediation on serious offences as their failure exclusively and hence they did not want to talk about their part (contribution) in stability of the practice during interview than pointing towards participants of mediation.

There are no publications by different scholars on this particular subject matter except works describing restorative nature of different nation's indigenous reconciliation systems in Ethiopia. Therefore, there was no option to authorize other than relying on social science researches on indigenous justice practices in different nation and restorative justice publications for it not yet applied in Ethiopia.

Disorganized recording system of crime statistics in police offices and department as well as selected justice offices and department was reason for likely lost of additional relevant data.

The reality and withdrawal cases records variation, i.e. the offence recorded as rape in initial phase may fall into bodily assault during mid trial or at conviction time. Therefore, the recordings of some offences are not accurate except offences like homicide and this required extra effort to reach on factual cases relevant to this study than dealing as it was documented in offices.

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[59] Paul Robinson, '*distributive principles of criminal law: who should be punished how much?'*(university of Pennsylvania 2008)

[60] Robinson '*the Role of Deterrence in the Formulation of Criminal Law* Rules' (n 58) 7.

[61] Criminal code (n 20) art 108.

1.11. Organization of the Study

This being the first chapter, the study has four chapters.

The second chapter deals with conceptual issues both related to mediation and purposes of criminal punishment.

The third chapter discuses the practice of *Sigetsuwa* along with the challenge it inflicts on deterrence purpose of criminal punishment.

The fourth and final chapter sets out brief conclusion and recommendations.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

INTRODUCTION

This chapter deals the conceptual issues related with indigenous mediation and purposes of criminal punishment in general that would become helpful to scrutinize the challenges of practice of *Sigetsuwa* on deterrence purpose of criminal punishment. Naming of indigenous mediation varies through different literature. Some call it as aboriginal while others use the terms like customary and traditional mediations. I opt to use both terms, indigenous and customary throughout this study alternatively and practice instead of *Sigetsuwa* optionally.

It may not be possible to stop the commission of crime once and forever as preventing contagious diseases through vaccinations. Nevertheless, reducing the figure of commission is possible if proper methods are applied. That is the reason for the existence of criminal law and institutions operating it. Protection of society from harm by defending offensive act through different mechanism is the central aim of criminal law. It uses punishment mainly to achieve this goal. Though the purpose of criminal law is broader than purpose of criminal punishment, as former defines conducts permissible and prohibited by law as well as determines power and functions of interpreters and like, but the common denominator of crime reduction thereby social protection fuses them together. There are two general theories of punishment forms used under criminal law, desert (retributive) and utilitarian (crime control)[62] or some time called as reductionist approach that perceives punishment as a means of social control.[63]

The social protection purposes of punishment further classified into; deterrence, which aims discouraging those who may think committing a crime in the future, rehabilitation that aims molding offenders bad personality through modest punishments not to become recidivist after

[62] Paul Robinson and Michael Cahill, *Law Without Justice: Why Criminal Law Doesn't Give People What They Deserve*, (Oxford University Press 2006)117
[63] William Wilson, *Central Issues in Criminal Theory* (Hart publishing 2002) 43

commission of an offence and incapacitation, which aims prevention of offence by exterminating offender neither deterred, nor rehabilitated by punishments.[64]

The deterring purpose is prevention of offence by creating reasonable threat on potential offenders before commencement of offence. However, rehabilitation and incapacitation are effectuated following the commission of crime. Still they both have contribution in deterring purpose. It is not the utilitarian branches only that feed the deterrence purpose but also desert (retribution) punishments as well. Someone's desert punishment obvious creates threat on potential offenders by its extent of dissemination. Besides, punishment proposed to reduce crime through several approaches, particularly solid punishment may deter the individual from reoffending and others thinking to commit a similar offence. Hence discussing the deterrence purpose of criminal punishment treats all other remaining purposes of punishment, thus this chapter try to evaluate it with indigenous mediations.

Unlike criminal law opted punishment to prevent otherwise reduce crime rate and in so doing protecting peoples from possible offences, indigenous justice system focuses finding truth and restoring peace between disputants.[65] The basic target of reconciliation in customary means is solving happened offence than preventing similar occurrence in future though it have little contribution in deterring similar offences in future incidentally. Thus, for instance if the remorse of an offender is factual, he may rehabilitate by resolution otherwise it may not have value in crime prevention. Therefore, the further concern of this chapter will be addressing the outcome of indigenous justice system (*Sigetsuwa*) on deterrence purpose of criminal punishment.

2.1. Conceptual Frame Work

Cause for occurrence of conflict within a society is innumerable when individuals undertaking daily activities of living. This extends from individuals and families dispute to nationwide hostilities that can upset peace of million's life.[66] To avert the continuity and/or resolve the transpired conflict all society regardless of their locality and instances created competent rules managing otherwise calming disputes and realizing resolution of divergence. That the regular

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[64] Robinson & Cahill (n 62)118.
[65] Adeyinka & Buhari (n 3)154.
[66] Daniel Mekonnen, 'Major Features of Indigenous Conflict Resolution Mechanisms in Ethiopia'(2016)1 International Journal of Arts, Humanities and Social Sciences 1

court is not the only institution of solving every conflict and state laws as well. There are numerous customary institutions, systems including mediation between offended, and offender developed through human beings societal progress.[67]

Mediation is an out of court voluntary dispute resolution process in which a third party mediator promotes the process of settlement between the disputing parties.[68] The mediators have power of facilitation and supervising the process than making a decision or forcing an agreement taken.[69]Unlike in the case of restorative justice system that apply by well trained professionals of social science and legal experts within institutions in some states, indigenous mediation carried by traditional elders serving voluntarily upon the request of parties to the conflict or it can be by the mediators' own initiations as well.[70]

The indigenous conflict resolution methods slightly changed its antique character through development of modern criminal and other state laws including constitutional forcibility in many parts of the world. However, it still practiced in traditional societies of the world especially moving from center to margin. Indigenous conflict resolution methods have antedated values and rules of apology communally focusing the offender's remorse to forgiveness and restoration of social harmony. This procedural easiness and creation of mutuality believed to draw conflicting parties to regard their future agreement similar to past one by dealing happened mistakes than concerning the value of their agreement for surrounding individuals.

Yet again, the existence of customary meditation system take no notice of the development of state law, pass through different review means due to their flexible nature as well as thought as sustainable peace among society that they developed continually.[71] Their prolonged continuations grant community with a sense of ownership when compared with formal legal systems. Though there is no state law that publicly divergent to the specific community's

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[67] Daniel (n 66) 3, see also Disassa Alemu, 'Gender Power Relationship In The Discourse Of *Jaarsummaa*, A Traditional Dispute Mediation Among Arsi Oromo Of Ethiopia'(2015)Valley International Journal 601, 623

[68] Adeyinka & Buhari (n 3) 149.

[69] Abebe Demewoz, 'The Role of Sidama Indigenous Institutions in Conflict Resolution: In the Case of Dalle Woreda, Southern Ethiopia'(2016) 6 American Journal of Sociological Research 10, 12, see also Tasew (n 6) 24

[70] Alemu (n 67) 601.

[71] Peter Orebech and others, *'The Role of Customary Law in Sustainable Development'* (Cambridge University Press 2005)284

custom, governments can incorporate exemplary practices from abroad through legal transplantation, which may fail otherwise takes time to be internalized in to such community.

Unlike official court situated in center, indigenous institutions are accessible to society in need of resolution furthermore familiarity with the native system, reliance on elders around them besides the need not to waste time and money are always accepted as driving aspects to opt native conflict resolution institutions and methods than formal legal system.[72] Formal legal system alleged as unfamiliar to a significant number of traditional societies like most of African nations in which state laws transplanted from western states than long rooted customary laws in countries.[73] Another reason for preference of the customary mediation may tie to religious obligations that perceive the informal resolution in general and mediation particularly as compatible with religious beliefs and values.[74]

Likewise, peoples believe that customary law provides a fundamental and central role to maintain order in many communities resulted to sustain by local peoples because of their suitability with local circumstances.[75] Nevertheless, the capability of customary laws in maintaining order and sustaining peace fluctuates from custom to custom based on different factors.

2.2. Mediation in Indigenous and Restorative Justice

The introduction of concept of mediation in restorative justice as modern criminal justice arrangement is obvious the advancement of preexisting indigenous restoration's practice. As both of them are out of court conflict resolution processes, they concern the identification of the root cause of the problem and participates all parties involved in conflict to deal with the causal issues. Compensation or forgiveness is another common denominator they share usually that ties up both processes.

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[72] Abebe Demewoz, Seid Samson and Gebre Tessema, 'Indigenous Conflict Resolution Mechanisms among the Kembata Society' (2015) 3 American Journal of Educational Research 225, 240
[73] Ibid 241.
[74] Adenike Aiyedun and Ada Ordor, 'integrating the traditional with the contemporary in despite resolution in Africa' (2016) 20 Law Democracy and Development 154, 168
[75] Adeyinka & Buhari (n 3) 151.

Mediation practiced under restorative justice varies based on state's criminal law formulation. In some countries, only less serious crimes and youth offending left for mediation while in some other states it may extend to serious offences too.[76] Further than, restorative justice always carried under umbrella of institutions established to interpret and enforce laws. However, as it was discussed through above sections, indigenous mediation may not demand the authorization of any institutions of state and hence mediators' conclusion is final assessment for its fairness and justness.

Hearing in court has tough procedures of case presentation and debating. One party cannot overact against the other, also judge may not allow when skipping the issue. However, as main concern of an out of court process is come across all causative agents for conflict to reach up on truth, it may be biased by hearing irrelevant narrations. Because one who is gifted in creating causative elements better can challenges the hearing. Community can also contribute for biasness as participants have voice in process, they may side one and exert pressure on trial. This can happen in restorative justice realm as well apart from the existence of evaluation mechanisms after mediation by authorities.[77] In both mediation systems there are no strict procedures and rules to follow during mediation except verifying a few, like, legality and morality issues followed during mediation in restorative justice when result presented. However, the legality and morality issues of indigenous mediation determined by the analyzing ability of elders totally that various degrees of verdicts might conceded for similar offences as the circumstances allow by mediators' discretion. The discretionary power of mediators' is not limited to indigenous mediation only but happen in restorative justice also contrasting to court rule application of precisely articulated rules by judges.

2.3. Performers in Mediation Process

Conflicting parties are the main actor in the resolution process since the existence of the system depends on the presence of conflicting parties, who contend before mediators on fact of issue to arrive up on agreement. In absence of conflicting parties, it would not be possible to have the

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[76] Trenczek, Thomas , 'Victim offender mediation and restorative justice in Europe: a short overview'(2005)7 ADR Bulletin 108, 109

[77] Andrew Hirsch and others (eds), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?(*Hart publishing 2003)129

system of conflict resolution. Participants in the conflict resolution may be relatives, friends, and/or neighbors of the conflicting parties or any casual observer of the incidence can also manage the disagreements between groups or individuals unlike the state - defendant partaking in formal criminal litigation. [78]

In most cases participants out of disputants discusses the issue conscientiously in a way bringing parties to conformity.[79] The participants and mediators may exert force intended for persuasion, recommendations, suggestions, relevant norms, and rules to arrive at a solution. Because, they wish for their suggestions to be acceptable and if not, either siding or compelling one of the parties in a manner finalizing the case is inevitable.

The main facilitators always involved in the conflict resolution process of indigenous justice are elders and clan leaders unlike restorative or formal court process guide by officials.[80] The social soundness and habituation of high persuading ability as well as awareness of the community's custom counted as extra qualities for elders' selection.

2.4. Enforcement Mechanisms

The decision of indigenous mediation system depends on societal demands thus it has wide occasions not to be implemented following the decision. Offender's acceptance of responsibility and his/her remorse guide the victim either to forgive or ask compensation (reparation) as a preface for reconciliation and peaceful co-existence.[81] The methods of restitution differ from one to another custom and culture of society. Compensation supposed as cultural obligation in many ethnics and cleansing for the sake of religious responsibility supposed to secure and guarantee peace between the disputants.[82] That is because indigenous mediation often practiced in traditional societies that strongly associated with verbal custom and culture for centuries conventionally. Its implementation is based on the will of conflicting parties or religious and

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[78] Jetu (n 2) 106.
[79] ibid 119.
[80] ibid 117.
[81] Abebe et al (n 72) 230
[82] Abebe, 'The Role of Sidama Indigenous Institutions in Conflict Resolution' (n 54) 18, the writer discusses the similar feature of Ubuntu indigenous system in Africa finalizing the process of mediation, which 'embraces the notion of acknowledgement of guilt, showing of remorse and forgiveness, and paying compensation or reparation as a prelude for reconciliation and peaceful co-existence'

customary principles of society following verbal narration due to lack of written and codified concrete principle.[83]

The tools used to ascertain truth during trial is oath, blessing or cursing based on adherence of the elder's mediation verdict. Like cursing, isolation from social participation and shaming are also apply as another alternative penalty.[84]

If the victims refuse apologizing the offender, the remaining option will be compensation and it varies based on offences committed as well as other social standards based on particular society's culture. Compensation may extend from material to person (like woman) reward for marriage based on degree of offence, culture and custom of society.[85] If we take the indigenous mediation practice in homicide case from some ethnics groups of Ethiopia, in case of Anyuaa ethnic group, found in Gambela region, offender reimburse the victim by valuable cultural materials for misdeeds out of murder and for murder case surrendering either female or male child to victim's family by latter's preference.[86] Usually females are preferable in order to marry one of the deceased's families with the intention of giving child substituting a deceased.[87]

Similarly the Erob Community of Tigray people in northern Ethiopia accomplish the mediation process with the exchange of two daughters of disputants for marriage believing that it create sustainable peace between them.[88] The compensation of blood price for murder case is common in many parts of Ethiopia by different names.[89] In Kambata nation of southern Ethiopia, victims are liable to pay blood price to the family of the murdered.[90] Wrongdoer is indebted to reimburse the victim by giving hundred cattle for killing man and half of it for killing woman in Guma

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[83] Aberra Degefa, 'justice that heals and restores: the potential of embracing Borana Oromo indigenous justice system alongside the Ethiopian formal criminal Justice' (Dphil thesis, Addis Ababa university 2015)
[84] See Alemu (n 67) 619, Abebe (n 72) 240.
[85] Ayalew (n 17) 10.
[86] Tasew (n 6) 29.
[87] Ayalew (n 17) 11.
[88] Solomon Berhane, 'Indigenous Democracy: Alternative Conflict Management Mechanisms Among Tigray People, The Experiences of Erob, Community'(2014) 2 Journal of science and development 101, 111
[89] See jetu (n 2) 121, Esayas (n 40) 85, Ayele (n 29) 251, Daniel (n 51)113.
[90] Abebe et al (n 72) 237.

compensation system of Oromo people.[91] Another immoral and biased verdict of mediation is enslavement.[92]

Enslaving the offender when he is unable to reimburse victim financially is also another feature of indigenous justice compensation like the case in Anyuaa ethnic group of Gambela region.[93] In this nation there are institutions called *Nyieye* (Noble ship institution) and *Kwaari* (headman ship).[94] The offender who is unable to compensate the victim and her families by the valuable cultural material through these institutions becomes servant for one among the following persons.[95] Institutional leaders who demand to compensate the victim-substituting offender, a rich man recognized by the elder's council to pay instead of offender by adopting him or Victim's family finally if the above two options are unsuccessful.

Based on above discussions, mediation conducted customarily intended mainly to reinstate the broken interaction between the conflicting parties by identifying and diminishing the root cause of dispute.[96] Though it believes the parties future positive interaction as a core success, there are occasions that it goes against public morality and humanity.[97] The process often seen as arbitrary and unjust thus it discriminates based on gender, political outlook and ethnic background.[98] Women are often underprivileged in the process that some culture uses them as recompensing commodities for restitution.[99] Likewise, father or husband of victimized female reimbursed primarily disrespecting her as suffered.[100] Furthermore, women are excluded in many customary processes from adjudications.[101] Reverse to this deprivation, the offender belongs to high class and ruling family become advantageous in process. While we are on the subject, the contradictory actions of customary reconciliation both with international, regional and national

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[91] Alemu Disasa (n 67) 615.
[92] Tasew (n 6) 30.
[93] Ibid.
[94] Tasew (n 6) 30.
[95] Ibid.
[96] Theresa Adeyinka & Oluwafemi Buhari (n 3) 154.
[97] Abebe, 'The Role of Sidama Indigenous Institutions in Conflict Resolution (n 54)13, see also Jetu (n 2)127.
[98] Ayalew (n 17) 10.
[99] Ayalew (n 17) 10.
[100] Don Omale, 'Justice in History: an Examination of African Restorative Traditions' and The Emerging Restorative Justice Paradigm' (2006) 2 African journal of criminology & justice studies 33, 50
[101] Madhuri Paradesi and Molalign Asmare (n 38) 25

legislations declaring gender equality of women in every kind of participations with their counterpart may not need extra elaborations.[102]

2.5. Purposes of Criminal Law and Indigenous Mediation

Criminal law has broad purposes, including warning entire society by setting standards for morally condemned behaviors of individuals in community; it is also a device to implement the state responsibilities stipulated under constitution and human right instruments.[103] That state uses criminal law's muscle as an instrument to balance authority and liberty among weak and strong members of the community by defining, categorizing and assessing blame worthy behaviors in society unanimously applicable to all habitants in a jurisdiction.[104] Behavioral unworthiness may not be homogeneous throughout community rather it varies from person to person and in different customs, thus criminal law reconciles these differences unlike mediation dealing with individuals unworthy behavior merely. In order to realize its broad purposes, criminal law always organized in different chapters substantively defining certain types of conduct as criminal and setting feasible defenses for those who commit such criminal conduct.

Criminal punishment needed to inflict some kind of loss on the offender and give formal public expression to the undesirability of the behavior to the community at wide. Criminal punishment itself is not the purpose of criminal law to which it running for, but it can be used as a tool to achieve those purposes through inflicting penalty.[105] As discussed in some parts of this paper, all restoration, rehabilitation and punishing through retribution, incapacitations and deterrence are not the purpose of criminal law in strict sense, rather prevention of harm and accordingly realizing society peace and security though all have not equal ability to prevent the harm.[106] If

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[102] Practice hindering the statements of Convention on Elimination of all forms of Discrimination Against Women 1979, art 30, see also, Universal Declaration of Human Right 1948 preamble, par. 5, African Convention on Human and Peoples Right 1986, art 18(3), International Covenant on Civil Political Rights 1966, art 3 and FDRE constitution 1995, art 35, all stipulates the participation of women have to be equal with men's in every decision making activities;

[103] Joanna Shapland, 'Restorative Justice and Criminal Justice: Just Responses to Crime?' in Andrew Hirsch and others (eds), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Hart publishing 2003)

[104] Dieter Rossner, 'Mediation as a Basic Element of Crime Control: Theoretical and Empirical Comments'(1999) 3 BUCrLR 211, 219

[105] Christopher Bennett, *The Apology Ritual: a Philosophical Theory of Punishment* (Cambridge university press 2008)14

[106] Larry Alexander and Kimberly Ferzan, *Crime and Culpability: a Theory of Criminal Law* (Cambridge University Press 2009) 4

the central aim of criminal law is deterring future harm to society, the existence of pre bisector mark (punishment) that can threaten everyone before commission of offence is necessary.[107] However, the intention of punishment never be thought as retribution. The concern in here is that, the determination of sentencing, aiming in prevention of future harm based on present wrongs of the offender must dissociate from retribution purpose clearly. If the intention of punishment inflicted is intermingled, we fail to identify retribution and deterrence purposes of criminal punishment.[108] Unlike retribution only evaluated by the satisfaction of crime victim with offender's punishment, deterrence assessed by prevention of all potential offenders even if one succeeds the interest of another incidentally. That is when an offender sent to prison, for somebody it creates sense of retribution for his misdeed because; he could not imprison if he refrained from crime commission in principle. For some others, his imprisonment reasoned as incapacitating or deterring. What so ever, imprisonment of offender collides all in one, and their positive and wide effect is deterring potential harms.[109]

When determination of sentencing bases the extent of punishment that can rehabilitate the offender's bad behavior, it will become mere speculation. For instance, some one's behavior can be molded by a month's simple imprisonment and, in contrary; another one's behavior even may not shaped by decade's of rigorous imprisonment.[110] The judges' articulation of 'proportional and educative punishment' during determination of penalty is very common.[111] This expression can create argument if we look it in glance of utilitarian theory of punishment. Because proportionality compared with offence committed than with would be deterrence effect and hence it resembling to retribution.[112] On the other hand, it means deserving punishment that is commensurable with the offender's misdeed.[113] Imposing grave punishment for serious offences and less on petty offence is obvious and fair. However, it is immeasurable except with purpose of lessoning others. Furthermore, if educative viewed in relation to offender's behavior, it may not

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[107] George Fletcher, *Basic Concept of Criminal Law* (Oxford University Press 1998)179.
[108] Mark Reiff, *Punishment, Compensation, and Law: A Theory of Enforceability* (Cambridge University Press 2005)121
[109] Mike Materni, 'Criminal Punishment and the Pursuit of Justice' (2013) 2 Br. J. Am. Leg. Studies 263, 295
[110] John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press 1989) 9
[111] *Habib Jemal vs. S.N.N.P.R.S. Public Prosecutor* [2015] F.S.C. 96378 [2016] 17 F.S.C.C.B 209
[112] *Akaki kalit sub city prosecution office vs. W/rt Firehiwot Fikadu et* al [2011] F.S.C. 56893 [2011] 12 F.S.C.C.B 457
[113] Ibid, see also *Ato Fasil Belayneh vs. Federal Public Prosecution* [2011] F.S.C. 67408 [2012] 13 F.S.C.C.B 350

go beyond speculation still.[114] Unlike this, federal Supreme Court used the extent of punishment capable to rehabilitate and educate an offender.[115]Even though, the adequacy of duration of offender in prison to rehabilitate him is incalculable. However, if educability were viewed by its lessoning general societies, no problem it can create relative threaten on would be offender and hence achieves the idea of general deterrence. Whatever, determining punishment on circumstance of commission and gravity of offence is inevitable and healthier than speculation.[116] Reasonable speculation can also draw from past violation thus we may not wait until more harm occurs. This is for the sake of deterring offence through prescribed guidelines than calculating would be event.[117]

Grading offences to serious and minor as well as provisions governing the conviction, sentencing, and treatment of offenders is also another division incorporated under it. Both mediation routine and criminal law generally said stick together at the point of restoring the usual peace between disputants. Restoring can be one aim of criminal law since it likely deter potential offender against victim not to inflict again but this may not serve as the essential purpose of criminal law thus it might not guarantee protection of an individual victim in future. However restoring conflicting parties to their original nonviolent position is the vital aim of mediation either in current restorative justice scheme or in indigenous system.

Through the above stated dissections, criminal law primarily aims in construction of responsible person to his/her deeds. Under general part it always defining the crimes and creates awareness of individuals to identify right and wrong action by that to make active participants in offense reduction actions. Declaring the obligation of every capable person in order to comply with those specified standards of behaviors stipulated under law by that a responsible individual expected to know are also set to keep community peace and security. The general part of criminal law again contains rules and principles without determinations of specific crimes.[118]Besides, it identifies

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[114] Paul Robinson, *Distributive Principles of Criminal Law: Who should be punished how much?'*(Oxford university press 2008) 79
[115] *Oromia regional state prosecutor vs. Ato Abdulkadir Mohamed* [2008] F.S.C 22452 [209] F.S.C.C.B 255
[116] Reiff (n 108) 112.
[117] ibid 113.
[118] Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (7th edn, Oxford University Press 2013)84

liabilities along with justifiable and excusable acts though offence completed in.[119]Wrongdoer may not be responsible criminally if his commission was following great coercion, mental incapability and unconsciousness by the time.[120] Since the foundation of criminal punishment is community condemnation of evil behaviors, uncontrollable acts for offence occurrence is not count as immoral except negligent and recklessness' of the offender.

Criminal law announce further obligations of conduct which every individuals either in fact recognizes or expected to recognize in order to conform with and avert violations of these basic obligations by providing for public blame and proper healing of violators.

Indigenous mediation distinguish each and every causal issues for conflict occurrences than assessing worthiness of a case at hand thus it may condemn every civil breach as immoral behavior. However preserving conducts that cannot amounts to criminal responsibility from condemnation is another core objective of criminal law.

Through one among above distributions, criminal law fairly warns conduct declared to constitute an offense. By intensifying legally prohibited behaviors into society through different means, it notifies individuals to abstain from criminal liability. Through provisions governing conviction, sentencing and treatment of criminals, criminal law further strengthens the purposes of criminal law illustrated under general part, which usually defines and classify offences. It illegalizes blame worthy conducts condemned by that specific society as immoral along with proportionate punishments as authorized by constitution.[121] That it imposes penalty only for conducts embracing of condemnation based on public statement. When criminal law states some behavior as blameworthy and need to be condemned, that behavior may not corrected unless treated specially.[122] It is the reason that criminal law organized not to punish those performing under legal limit than disobedient. However, punishing disobedient is and ought to be for behavioral change and sake of public protection.[123] As punishment all inclusion of imprisonment, Pecuniary

[119] Criminal code (n 20) art 68.
[120] Criminal code (n 20) art 68.
[121] Stephen shute and Andrew simester (ed), *Criminal law theory: doctrines of the general part* (Oxford University Press 2002)
[122] Bennett (n 105) 49.
[123] Robinson and Cahill (n 62) 18.

Penalties; like sequestration and confiscation, deportation and deprivation, incidental retribution is inevitable even though the aim is public safety and behavioral change.

Principally we can perceive the following purposes of criminal law under its specific sections that also tied with the entire purpose of criminal punishment commonly. Such as, promoting the correction and rehabilitation of offenders, controlling of those persons whose conduct indicates that they are disposed to commit crimes. Unlike retributive punishments, estimating the sentence equal with the value offender disposed or inflicted against a victim, rehabilitation considers the consequences of a punishment in future by imposing modest penalty that can make possible an offender's predisposition to rehabilitation.[124] It has contribution in making an offender a responsible person but not warning him with the reality of similar enforceable punishments.[125] The same is true for Ethiopian criminal law that focuses rehabilitation principle as important during punishment determination.[126]

Safeguarding offenders against unbalanced and arbitrary punishment are also further purposes of criminal law. Those who injured and witnessed the injuries may probably inflict harm on offended due to apprehension and intention of revenge. Therefore taking care can prevent similar harms against offender arbitrarily.[127] Utilitarian view of criminal punishment slightly interrelated in sentencing; however, each has its separate goal. Through fair sentences anticipated to educate the offender and behave his offensive behavior, it warns potential offenders', this obvious fulfills rehabilitating and deterring purposes of criminal punishment. It has cumulative values of rehabilitating an offender and warning the intended. Ethiopian criminal law has these two basic purposes as well.[128]

The power and function of court, executive branches of government and agencies responsible to enforce criminal law need to be specified in order not to drive free against the rights of both victims and offender. Consequently, criminal law accommodated this limit as well in a manner-

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[124] Robinson and Cahill (n 62)118.
[125] Ibid.
[126] Criminal Code (n 20) Art 108(1).
[127] Gardner John, 'Crime: in Proportion and Perspective' in Ashworth Andrew and Wasik M (eds), *Fundamentals of Sentencing Theory: Essays in Honour of Andrew von Hirsch* (1998) 32-34.
[128] Dejene Girma, 'The Relevance of Hobbesian Principles of Punishment in Today's World in Light of the Ethiopian Criminal System'(2012) 4 Jimma University journal of Law 35,45

bordering practitioner's discretion when carrying out their legal tasks.[129] For instance, out of limiting initial point and peak for sentence demarcation in a specific offence, criminal law further allow sentencing manual to limit judges discretionary based on different specific requirements of offences, offender and victim's condition.[130]

'In order to ensure the correctness and uniformity of sentencing, the Federal Supreme Court shall issue a manual relating to sentencing.'

Here it is understandable that criminal law to achieve its intended purpose, equalizes and control protection of the public by providing procedural safeguards against mistake and abuse, and substantive safeguards against disproportionate redress or retribution that can be exercised including by state officials as well.

2.5.1. Promoting the Correction and Rehabilitation of Offenders

Necessity of a sentence which taken together with the judgment of conviction sufficiently expresses the community's view of the gravity of the defendant's misbehavior. The constructiveness of sentencing is assessed by wrongdoer's rehabilitation that when he become responsible and functioning member of offended community other than revenge for his deed.[131] However, other persons out of him still may not touch rehabilitation of individual until he commits subsequent offence.

Remorse of offender by his misconduct and compensating the victim and community often infers the rehabilitative behavior of offender. The notion here is that rehabilitation realizes both the interest of community and individual victim too. However, it needs assessment whether whose interest be focal when rehabilitating. I think a victim should be center on a happened case though a misdeed is socially condemned act widely. A victim suffers instantaneously by the celebrated action.[132] Then what come next is the offender's potentiality to hurt community including present victim by the same manner and hence if it is possible to recognize future fate of offender's rehabilitation, it better be seen with the interest of wide communities.

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[129] Criminal code (n 20) art 746.
[130] ibid art 88(4).
[131] Albert (n 19) 2.
[132] Bennett (n 105)21.

Factually, rehabilitation is considered as indispensible goal of modern correction justice and contributes more for the deterrence purposes of criminal punishment as well.[133] When it thought offender is rehabilitated, its denotation is not only reflected by refusal to repeat offences similar with conviction but any other types of crime commission. It gives possibility to the offender once he lost to live at peace might be in emotion.

2.5.2. Public Control of Persons Likely to Commit Crimes (Deterrence Purposes)

Punishing wrongdoer merely for past wrong may not give sense for present criminal law objectives and it out to be viewed concerning present and future fate of offender's behaviors and other potential person's behavior.[134] Distributing criminal punishment for one's consequence is one issue but the vital point should be protecting persons from further anti social acts by the defendant and some others probably may involve in similar actions. This indicates it handles both general and specific deterring purposes together.

General deterrence is an incidental become cognizant through legislation and lawbreaker's punishment thus the terms of regulation can consequently disallow conduct that would be a criminal offence when committed by anyone but not for the specific defendant.[135] The idea of general deterrence is discouraging general population from commission of crime by showing punishments following the commission of crime. The entire process of criminal trial from investigation to decision and sometimes publication itself creates shame even up on family members of offender but not only his sentencing considered as deterring tool.[136] This does not mean that it intended to create fearful society of breaking the law[137], but one in which they could live proper lives neglecting to do it. General deterrence criticized by that it does not ignore the criminal act or forgive the criminal, save for reaffirms the established standards merely.[138] However, warning of such punishment helps people generally to be more careful. Therefore, it molds a responsible society during day-to-day actions along with controlling recklessness and negligent behavior within society.

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[133] Albert (n 19) 8.
[134] Reiff (n 108) 113.
[135] Robinson (n 58) 14.
[136] Andrew (n 118) 75.
[137] Robinson (n 58) 11.
[138] Ibid 16.

Deterrence discouraging the present offenders from further commission of similar offence in future is to be Special deterrence. The beneficiary in both deterrence situations are not only the victim but also believed all community. The victim's effectiveness here is not from his present injury but as one part of community, he can benefit future protection and hence criminal law made its goal of securing entire public including present victim from would-be injury. This does not mean that victim be unable to find anything for his present injury. He can have extra alternatives in civil laws[139] and if possible, it can achieve jointly with criminal trial process.[140]

Indigenous justice in general and for this study mediation particularly focuses healing the broken relations between disputants specifically. Resolving specific issue may not draw concentration of community that contributes large population to abstain from misdeeds. Mediation always takes place in aftermath of offence and dealing with pre violation conditions of parties. Leaving post violation effects that will have high outcome of similar instances in future made its scope narrow. I think criminal law also does not have disparity with restoring the broken relations of disputant but the dissimilarity is prioritizing one among various purposes that should have prime advantage in prevention of future crime and security of community in general. Pre violation and post violations are interconnected that the pronouncement on post violation today, also determines tomorrow's pre-violation's speculation. Besides this fact, post-violation can have strong amplifier to propagate the consequence of transgression and hence deters future involvement in crime commission.[141] Though both mediation and specific deterrence have similarities as to the trial in both case starts with the commencement of conflicts than mere legislative prohibition, there are considerable differences between mediation and criminal punishments.[142]

2.6. Conclusion

Both criminal law and indigenous justices have their respective institutions and procedures through which they finalize the issues. Unlike the former, indigenous justice focuses the remorse of individual offender and his compensation or request for forgiveness of crime victim. The

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[139] Antony Duff, *Answering for Crime : Responsibility and Liability in the Criminal Law*, (Hart publishing 2007)
[140] Andrew et al (n 77) 202.
[141] Reiff (n 108) 116.
[142] Andrew (n 77) 21.

offender can commit offense repeatedly if he has ample money to restitute the victims or the victims are those who can accept his apology. That is not different in restorative justice concept too. Both follows putting crime victim at the center of process than future fate of the offenders' mediation except assessing legality in restorative justice by concerned body. This is limited in criminal law via deterring offender. That it warns potential offender via legislation and punishing lawbreaker passing that notice. Unlike retributive purposes of criminal punishment, utilitarian types of punishment have better effect in prevention of crime in future, thus its effect is forward, assessment of punishment in utilitarian perceived with the extent that can hinder him from further commission, and lessoning others, than the amount offender injured a victim. Among utilitarian purposes, deterrence plays primary role in hindering further possible offences as both incapacitation and rehabilitations come if deterrence is ineffective.

CHAPTER THREE

THE PRACTICE OF *SIGETSUWA* AND DETERRENCE PURPOSES OF CRIMINAL PUNISHMENT

Introduction

Practice of *Sigetsuwa* is believed as capable method to maintain peace and tolerance within society through long existed institutions and faiths[143] as any indigenous restorative justice system of Ethiopian nations.[144] The practice mediate disputant by win-win relations after investigating truth using those indigenous institutions and techniques.[145] Its long rootedness and accessibility to society made it trustworthy and familiar to people more than state law. These basic reasons are not unique rationales for *Sigetsuwa* but also common for every indigenous justice system.[146] Unlike formal criminal law of Ethiopia, modify throughout time to accommodate new global and domestic advancement of society[147], practice of *Sigetsuwa* continued working without transformation apart from some renovations in penalty structure. Although it might have its own advantages to preserve peace and tolerance in community by smoothening crises among individuals that can raise through time and hold group nature, it has negative influences in safeguarding deterrence purpose of criminal punishment as offender release with modest financial penalty. Thus, this chapter going to discuss the historical background of practice of *Sigetsuwa,* its procedure from conflict calming to fact-finding and enforcement of sanctions along with the challenges it poses on deterrence purposes of Ethiopian criminal punishment. As stated in preamble and general part of criminal law of Ethiopia, ensuring peace, order and security of people is its fundamental purpose. To attain these purposes criminal law uses

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[143] Elias (n 13) 82.
[144] Macfarlane (n 37)489.
[145] Elias (n 13) 83.
[146] Daniel Mekonnen, 'Traditional Disputes Resolution Institution among Mareko Ethnic Group Southern Ethiopia'(2016) 4 Inter journals of Political Science and Development 108, 112
[147] Ethiopian Criminal Law transformed from historical Fewuse Menfessawi and Fetha Negest codes to the comprehensive criminal laws of Ethiopian Penal Code (1930), the Penal Code of the empire of Ethiopia (1957), the 1974 Revolution and Criminal Law Special Penal Code of 1981 and current criminal code of Ethiopia 2004.

punishment as a most important tool.[148] Yet the practice of *Sigetsuwa* encumbers this purpose by concealing offenders from criminal punishment provided for under the law.

3.1. Preliminaries in Practice of *Sigetsuwa*

A term *Sigetsuwa* is used commonly for conflict resolutions in out of court process with the involvement of third party as a mediator in Dawuro nation. It is a derivation of the root word '*siga'* (peace) for the reason that parties did not deserve win loss outcomes during reconciliation rather than usual peaceful co existence unlike ordinary court litigation. Therefore, the impression of the term is that agreeing disputants by their mutual consent but not imposing external pressure on parties. Mediators may force disputants to come up on agreement but they presume that, pressure as an affirmative action for victimized parties to gain compensation from the process and offender to skip state punishment other than coercing to accept their proposition as binding only.[149]

There are also terminologies used interchangeably to *Sigetsuwa* in peripheral areas of a Zone sharing common boundaries with neighboring 'Omotic' language speaking nations of Wolaita and Gamo Gofa borders to address mediation, though not broadly apply like *Sigetsuwa*. These include; *dabboyusa*, nearly it has meaning of correlation and *makuwa* (conclusion) which have a propensity to state the process finalized with compensation.[150] Both secular and ritual assessments performed throughout the process, though the ritual procedures slightly weakened due to the expansion of Christianity in the area. On the other hand, when compared with the situation before decades, its secular techniques currently intensified by using some loopholes of formal process as a good opportunity.[151] The practice of *Sigetsuwa* has long procedure from complain communication to implementation phase, as the subsequent discussions.

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[148] Criminal Law (n 20) Preamble s 3, par 3 & art 1.
[149] Elias (n 13) 84.
[150] Ibid.
[151] Interview with Ato Legese Birhanu, head justice office, Loma woreda (Dawuro Zone March 2017), reveal increment in acquittal rate when investigating truth and time-consuming civil trial after criminal conviction are fundamental reasons according to their office's survey for withdrawal.

3.1.1. Initiation and Selection of *Bayiraa* (elders) for *Sigetsuwa*

As far as the initiation for reconciliation process is concerned, there is a possibility in which both parties request elders for the interference.[152] Usually the initiation for settlement comes from the side of offender when the offender admits his mistake or dreads certainty of wrong punishment though he was not participated in a crime commission. Thus, sometimes an innocent person may be influenced to admit responsibility of the offence by mere presumption. In this case, he /she select elders to request victim's pity and forgiveness as his misdeed. However, there are exceptional circumstances where the request might come from the victim‘s side, when the victim’s relation to offender is unbalanced or dependency of profession or any other relations that can impair his/her walk of life. In victim's initiation, the facilitating elders join the offender and encourage him to demand victim’s forgiveness. While in offender's initiation, they knock victim's door repeatedly to agree to the offender's proposal for mediation. The process is called *shoobiya* (intercession).

Shoobiya (intercession) is the footstep process in which *Sigetsuwa* starts primarily. *Bayiraa* (mediating elders) encourage victim/s and his/her family to agree to the offenders request for *Sigetsuwa* or instigate the process fearing that conflict can widen to other parts of society or relatives. If *shoobya* get acceptance by the victimized party, then *bayiraa* re-elected alternatively among interveners or out of them. Usually seven *bayiraas* are required for grave crimes like homicide and arson while, three up to five are required for petty offences and family cases consecutively. Always numbers of *bayiraas* need to be odd, in order to appoint one as a chairperson. There is no predetermined number of *bayiraa* even for similar cases and it varies based on gravity of offences as well as agreement of conflicted parties mainly victim.

The process of *shoobiya* (intercession) for mediation can waste extensive time based on social status of victim and/or her/his families’ perspective. The popularity and reputation of disputants’ family, economic, political and other social factors in part of both victim and offender determines the time duration to agree for mediation or not according to my informants. Again, the offender’s dispositions after emotional injury also attract the attention of the victim to give chance for him. That is sometimes the victim may advertise that he did the offence intentionally

[152] Interview with Ato Filphose Charko, culture study core work process, officer, office of culture, investment & public relation, Loma woreda (Dawuro Zone 9 march, 2017)

and thus he did not regret for his act. This heroic feeling of wrongdoer in turn makes the victim more effusive and compels intercession process to waste extra time. Reversely, if offender regret by his act, the victim may not exaggerate the action and this helps mediators to come together easily within short period.[153] Therefore, until the victim agreed for mediation, *bayiraas* expected to come repeatedly to the doorstep of the victims. The *bayiraas*' routine pall and humiliates the victim, which compel to agree with their request.

Selection of *bayiraa* needs agreement of both victim and offender. One of a party can contests preference of the other's, if he/ she think that the mediator can be biased or incapable to mediate due to lack of awareness on culture and skill for rational verdict. The exclusion criteria are not only awareness and skill gap but a party can also contest a selection if he had disagreement with proposed mediator.

Sigetsuwa habitually commenced in Dubusha (fixed place for mediation under the big trees shade) and it can be in victims or one of *bayiraas'* doorstep when offence is less serious and victim consents with the options. Time for mediation is fixed by *bayiraa* and it considers appropriateness' of both parties, especially a victim's interest.

3.2. Conflict Resolution Institutions and Mechanisms of *Sigetsuwa*

Sigetsuwa uses different institutions and mechanisms of conflict resolution through those institutions. Big indigenous trees, mountains, bedrocks and gateway of religious or local political leaders are used as preferable shelter for institutions other than well-established centers. The establishments of institutions are following secular and ritual implantation ways. Nevertheless, the institutions are associated one with the other when the resolution obliged to go through two different institutions. According to my key informants, indigenous institutions used to resolve conflict in Dawuro nation includes; *Dubbusha* (Public meeting place surrounding with big tree branches or shade), *Zabba* (institution related with deity), *Bayiraatseta* (institution of elders) *and Caaqo zooziya* (mountain specified for swearing)

[153] Elias (n 13) 82-4.

3.2.1. *Dubbusha* (Public meeting place surrounding with big tree branches or shade)

This institution always reconcile secularly via elders selected by the agreement of both parties. It has not only reconciliation purpose but also preferable place for any public meetings of the local area. *Dubusha* generally stands for public meeting in a nation according to my informants, in ordinary circumstances out of investigation for offence. The assembly often publicized by elders' authorization through *lookuwa funa* (bloating horn or an instrument used to notify public meeting). The reconciliation-meeting can also sometimes by mandate of state officials when offence committed is difficult to identify through formal justice investigation process only. Elders can be selected among ordinary people, religious or administrative leaders and relatives linked either by marriage or by blood with disputants. During investigation process, assemblage arranged separately by age and clan alignments for discussion to render the wrongdoer and to defend every participants of assembly and their family members from *gomiya* (bad suffering) of curse. The place was believed as landing strip of *tsosantto* (God) when elders seat there. The place (*Dubbusha*) is always under big indigenous trees having wide leaf and long age situated in wide plainest field.

This institution reconciles instituted case secularly and if the techniques of identifying specific offender and finding the truth in that secularly way fails, the practice apply curse via *sagga sheesha (race called sagga*, known by cursing unknown offender through ritual process). While we are on the subject, Dawuro nation generally classified under three main tribal divisions[154] (*maala*, *dogalaa* & *amaara*) which of each have their race listings and the cursing *sagga* race is one classified under *dogalaa* tribe whose saying believed as powerful in suffering.

If the offender identified and surrendered himself to *daana* (political leader at third position to *kaatiya* or king of nation), he get protection from reprisal and then regular *Sigetsuwa* (mediation) process commences. Even the offender fails to do so, families of offender requests the leader to cool down the problem and leaders take responsibility of mediating again. As to the gravity of offences, offender may obliged to serve sentences by the caution of clan called *mana* and pays *ac'aa* (compensation) for civil wrong.

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[154] Wondafraw (n 30) 15.

3.2.2. Bayiraatseta (institution of elders)

This institution is the most significant organization of socio-economic, cultural and spiritual life of the people besides conflict resolution function in a nation.[155] *Bayiraatseta* institution initiated from very beginning by *bayiraas'*(elders) themselves other than conflicting parties. The process they used to entertain is also called *bayiraatseta*. One or more elders convince disputants, that they want to mediate the disputable cases there after by agreeing disputants let them to select additional elders. However, if disputants agree with adequacy of initiators alone, they can move to the merit of the issues. This *bayiraatseta* institution can request cases present to other institutions like from previously mentioned *dubbusha*, forthcoming *zabba* or formal state institutions like court and police offices. *Bayiraas* expected to have the familiarity with the custom and the culture of the society, in order to resolve conflicts simply.

Bayiraa apply general knowledge and common understanding of the custom to settle dispute occurred between individuals or groups. The special qualities *bayiraa* need to have are tolerance, unbiased judging aptitude and reputation in the community.[156] Either due to inferior quality of elders or in any other grounds if one or both of the parties to the *bayiraatseta* dissatisfied with final verdict, they have further opportunity to appeal to *tooka bayiraa* (literally crown elder). *Tooka bayiraas* are famous community representatives of social institutions like *angiya (idir*, in Amharic)

3.2.3. *Zabba* (institution related with deity)

According to my informants, the institution come to flourish later than *Dubbusha* (secular institution inside a shade of particular tree) and *Bayiraatseta* (institution of elders) and weakened after decades of great influence above both of them. Its commencement is through ritual process by religious leaders called *sharechuwa* (traditional religious leader).[157] The religious leader investigates truth of the issue between his believers and inflicts his ritual power to leave out reparation and revenge between them. The disputants sent to *bayiraa* by represented mediator called *'wombora'*(delegate). Disputants select elders by guidance of delegated mediator and

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[155] Wondafraw (n 30) 58.
[156] Interview with Bakalo Sapa and Mitiku Worabo, elders Mareka woreda (Dawuro Zone 16 March, 2017) and Tomas Gobena and Bekele Babu, elders, Loma woreda (Dawuro Zone 23 March, 2017)
[157] Wondaferaw (n 30) 60.

delegator presents oral report of the resolution to religious leader. If the right owner (victimized party) wants material or financial compensation, he send back again to *zabba*. Then *sharechuwa*(religious leader) humiliates one who requires compensation bay saying *"tummuu neewa, hewe noo gidee*" (you are owner of the truth and that is an adequate amount to your wound), *taana tseela*!, *ta zabba tseela*!, *basha*! *Ne pacaa ta ayaanay kuntsanawa* (leave him free for my spirit and me, my sprit may compensate you). As right owner believes on the power of *sharechuwa's* spirits, due to fear of a religious leader's anger and institution, victim declares his agreement on resolution. Over all if the case is not identified through this ritual process, the plaintiff ordered to curse through the process called *kontiya sotsuwa*[158] (string up needle and other splintered metals) by wispy thread on *kaasha* (sacred trees) in *zabba*.[159] The need of thin thread is in order the stringed materials to drop immediately. Because the belief is that, he who fails to surrender himself before dropping of hanged material faces disaster.

3.2.4. *C'aaqo zooziya* (institution of recognized mountain for swearing purpose)

C'aaqo zooziya is one of spiritual reconciliation process of Dawuro nation, takes place on peak of highest mountain in vicinity. This institution is highly linked with *dubbusha* institution for the reason that issues concealed in dubbusha sent to this ritual institution and reversely *c'aaqo zooze* sends a case identified by ritual process to *dubbusha* for secular compensation process. As to my elder informants', the preference of Mountain with highest peak is due to the supposition that it is near to sky and hence *bolla tsosantto* (God in heaven) can hear their wordings easily and it's feasibility to pronounce commencement of assemblage furthermore visibility to all nearby public used as a requirement to choose elevated. In institution of *c'aaqo zooziya*, someone who suspects somebody as an offender against him or his property has the right of requesting him to swear to declare his innocence through *c'aaqo zooziya's* formal procedure. The ritual of swearing at this institution involves a set of rules and procedures. This ceremony takes place at the usual revered place on top of mountain when all other secular institutions unsuccessful to reveal a truth. A person who going to swear is not allowed to take food or drink until the ceremony completed. Swearing commenced through extinguishing of fire with water, clutching crag (rock face), get crossing lied down spear, savoring soil of burial place and stabbing wood flowing white fluid.

[158] Tsadiku Chachiro, *The History and Culture of Dawuro Nation* (2nd edn, Alfa printing press 2015)173
[159] Ibid 175.

Swearing arena is in accordance with the nature of each material. E.g. clutching crag (rock face) goes with *"ta sheeshay melo ta ha kobaa udaadi gidoope"* (I swear my generation be infertile as this stone if I have done this evil). In *c'aaqo zooziya* institution there is no compensation at all since one who admitted his liability lead to *dubbusha*, to compensate the victim through *dubbusha* process or it lets free that who affirm his innocence by swearing.

All the above-mentioned institutions endeavor to reconcile the conflict between disputants and *Sigetsuwa* practiced through each of them as the aim of all institutions is to reveal truth and mediate disputants. Gaining truth and healing the disturbances together with sober rituals make the reconciliation complete throughout these all institutions.[160]

3.3. Methods of Presenting the Case during *Sigetsuwa*

The conflict resolution process in *Sigetsuwa* starts with presenting one's case to *bayiraa*'s.[161] A plaintiff requested by *bayiraa's* to presents his cases before *dubusha* institution. However, this may not always be exact and still *bayiraa* can invite the victim of the crime to express the basic cause and nature of injury he suffered when mediation is initiated by *bayiraas'* themselves.

The key informants of my study those actually experienced with the process demonstrate that individuals present their cases before *dubbusha* institution in three different scenarios. These circumstances are; I) when a victim exactly knows who committed the crime against him/her can present evidences to prove his cases; ii) if he/she suspects that someone has committed a crime against him/her; and iii) when victim does not recognized or not suspects anyone for commission a crime against him. During last instance or if victim failed to know the offender, resolution process starts with the meeting of all people except children which takes longer time than two occasions mentioned above. Because the meeting may not succeed once and during meetings, every individual as well as family required investigating him/herself as well as opportunities are given to discuss at clan and family level not to be cursed with poise. If these all encouragement failed, the injured party pleads the case to supernatural being (*bola tsosantto)* through ritual cursing tradition and requests the assembly to curse in one voice. Then the assembly curses in one echo saying, *nu ayyaanay, gadiyaa ayyaanay neena sugawaa sugii nuuna besso* (have close

[160] Tsadiku (n 158) 172-74.
[161] Elias (n 13) 82-4.

meaning of, we apply for sprit of people and our sprit to reveal your truth and show evidence on offender who we could not). Sometimes in addition to these individuals in the meeting indebted to extinguish fire and stab a tree with spear, following/ repeating *bayiraas'* cursing words one by one.[162]

In all those above classifications, the first step towards the resolution starts when the plaintiff brings his/her case before *dubbusha* institution and requests *bayiraa* to call the defendant before them. This process of summoning is known as *kiitsa* (call for hearing). Summon cannot send by plaintiff rather by someone assigned to call defendant.

The major rituals of conflict resolution at *dubbusha* institution include; *c'aaquwa* (swearing), *sheqa*/*madhdhariya* (curse), *menatsuwa* (purification) and *ammatuwa* (vowing).

C'aaquwa (swearing) is one of the ritual techniques of conflict resolution in *Sigetsuwa*, believed *tsonto* (God's) involvement in the process. This happens when the suspect continue by his position of genuineness. The suspected swear first and the public follow him. Such type of process is common in many parts of Ethiopia when defendant failed to admit the allegation.[163] As to my informant elders', swearing is the final alternative and creates great apprehension in society because, society strong believes that one who failed to admit the reality, supposed to invites catastrophe or inflict crisis on him or his family's health and belongings that again tiresome society. Elders make understandable that *tsosantto* and their sprit is capable of causing catastrophe against him/her if he/she denies speaking truth. A reasonable suspicion is supported by past incidences of somebody too. However, if the defendant is confidentially free from the alleged crime and affirms that he has never committed the crime, the elders lead to the swearing process by saying *c'aaqa tsilla* (swear to verify your innocence). In this case, the defendant should prove his/her innocence by swearing an oath in the name of the *bolla tsoosantto* (almighty God). When the defendant swore it creates confidence that he/she is innocent.

When the suspect decides to swear, his decision has to pass the approval of *bayiraa* still, since they obliged socially to share when he/she go through disasters. Then elder from clan known as *sagga,* who is frighten by their cultural and religious ceremonial, called by *bayiraas'* and

[162] Elias (n 13) 82-4.
[163] Abebe (n 72) 241.

introduced with fundamental conclusion they reached up on. Then to affirm his/her innocence, the suspect passes all ritual process of swearing.

3.4. Reparation and Forgiveness Procedure

Unlike state's formal procedures of charge, trial and sentencing, apology and blaming or cursing are common measures of indigenous justice process[164]and *Sigetsuwa* also has similar outcome.[165] As discussed earlier, the aim of mediation is generally finding truth and care for offender not to be cursed. Accordingly, it contributes for sustaining peace between disputants. In most cases offender pushed to bestow truth but not compensation from offender. There is long-lived belief of community that compensation is realized as debt. One who compensated today will reimburse it tomorrow incidentally to payer or certainly to another.

3.4.1. *Huluuquwa* (Ritual cleansing)

In the ritual of *huluuquwa, someone who* declares him/her selves as a wrong doer during swearing ordered to get washing fluids. A fluid includes blood of bull or sheep, honey and milks each full of a jar. *Huluuquwa* is conducted in hall (cave) having entry and exit and with sufficient size to cross by walk. The amount of fluid is determined by the distance of a cave (hall) that it must flood from entrance to outlet. Then the wrongdoer required passing the cave by walking on this fluid to be clean from his wrong. The process is common for incest and other misdeeds specially happen between family members. It implies declaring or concluding an incident not to happen again.

3.4.2. *Bohuw* (debarment)

This is not appealable stage, mediators and entire community imposes on involuntary to discharge the outcome of reconciliation. Reconciliation my requires the offender's compensation or requesting apology from eternal remorse. It is reflected by isolating the convicted from any social participation like, mourning, wedding, and reverence places. This measures force an offender to discharge his obligations of reconciliation. Such types of measures practicing currently in social institutions, established for communal purpose in every areas of a Zone as to my informants. The institution like '*idir'* imposes disproportionate financial penalty on offender

[164] Kimberley Brownlee, 'Retributive, Restorative and Ritualistic Justice'(2010) 30 Oxford Journal of Legal Studies 385, 386

[165] Elias (n 13) 82-4.

and if he/she fails to discharge, the fate will become exclusion from any participation in communal institutions. As to my informants, those who communicate personally with him also excluded from those institutions similarly. However, the only option of excluded is going to neighboring associations of similar goal, if agree to accept his/her request of membership or can establish new one, if as much as necessary number of members to carry social tasks.

3.5. Present Status of Practice of *Sigetsuwa*

As to my informants, there are great modifications of practice both institutionally and procedurally on these traditions following state outlawing and religion influences. Currently the institutions highly fragmented specially due to entry of non-tradition religions to nation.[166] There is no sentencing institution currently as it had been practiced in *dubbusha* tradition. Nevertheless, it still performs ensue of some principles of these institutions. For instance there is still swearing following the afore mentioned *c'aaqo zooziya* ritual process and use of materials like spear, fire, stone and likes throughout a Zone for secret offences but they (mediators) neglected adhering strict procedures and rules of the institution antique nature merely. The modification regarding compensation in practice of *Sigetsuwa* radically changed from forgiveness through ritual process to cash payment presently, apart from apologizing for resolution taken place within close families like, couples and families in direct line. During my interview with elders and victims, I distinguished that they have knowledge about the state responsibility of investigation and resolution of criminal issues.[167] However, their reliance on *Sigetsuwa* is its ability of retrieving peace easily and no punishment except pecuniary. Due to these and some other considerable reasons, analogous cases are negotiable from thousands to hundreds of thousand Ethiopian birr all over a Zone.[168] This indicates complete autonomy of individual victim on criminal issues that jeopardize state's articulation on deterrence purpose of criminal punishment. I am not arguing against victim's reinstitution and the mediation's effect of seeking peaceful living, have no significance in crime reduction at all. Nevertheless, the reimbursement of victim and repairing

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[166] Wondaferaw (n 30) 63.
[167] Interviews with Victim and Mediators of Serious Offences in both Mareka and Loma woreda (Dawuro Zone, 1 march 30 –7 April, 2017)
[168] Interview with Gebeyehu Mandoye ,Deputy Inspector, Head Mareka woreda police office (Dawuro Zone, 13 march, 2017) & Tesfaye Getachew, public prosecutor , Justice department (Dawuro Zone, 14 March 2017)

peace between disputants is not the vital means for crime reduction. For this reason, criminal law targeted crime reduction techniques than restoring broken relations.

3.6. Motives to Favor Indigenous Conflict Resolution System in Ethiopia

Studies confirm that indigenous conflict resolution methods apply throughout Ethiopia.[169] It also elucidates some basic reasons of Ethiopian indigenous conflict resolution practices existence in spite of state laws segregation.[170] Some of pointed reasons for its continuity are; mutual growth of indigenous conflict resolution system together with the other values of society and procedural straightforwardness unlike sophisticated procedures of state law. People know what applies to whom and the result expected from an indigenous system too as it is not alien to them.

Some other people may choose it because the cultural or religious rituals of the system satisfy them more than the formal court litigation and seeking preservation of the system for next generation. Resolving the issues before these institutions is also considered as adherence of this cultural and ritual practice that they trust them as foundation of overall success in their life.[171] As the parties are followers of the practice, they lay full confidence on impartiality and capability of the institutions in disclosing a truth. This is not the only motive but sophisticated state bureaucracy and officials' uneasy functioning can also taken as another factor that annoy community and drive to trust loosely the formal method.[172] A victim may incur financial expenses in a process in addition to his injury. Yet after months' or years' of court's adjournment, the suspect perhaps release by acquittal. Similarly, he may serve short time imprisonment and return soon by probation for grave bodily injury or other serious offences like sexual crimes, robbing and homicide. This may be proper in different prospects' like; inmate's rehabilitation and extent of punishment imposed on him but it create sense of weak sanctioning ability of formal institutions in side of victimized outlook. After all, victim may not be certain with reimbursement of his/her part after criminal punishment of state.

Unlike this, during *Sigetsuwa* process if victim has tracing toward offender, he may not back barehanded. This does not mean that victim can get compensation from anybody he suspects as

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[169] Alemu (n 67) 602.
[170] Macfarlane (n 37) 496.
[171] Tsadiku (n 158) 174.
[172] Braithwaite (n 110) 113.

offender but the absence of strict rule and procedure of practice along with its win-win principle, stabilize both parties relatively.[173] During calming, one or both of the parties may be disadvantageous or beneficiary incidentally from the process. Here, either disadvantage or benefit is not based on clear, correct and reliable procedures but simply to reduce long journey of disputants and to create smooth relation between them in future.

One key informant of this study expressed a long existence of the practice is due to its convenience. [174] He supported his assertion via recent real case.

> *It was both the commission of abduction and rape offence when we (elders) reviewed. Both parties agreed in conclusion of the issue by twenty five thousand Ethiopian birr. We mediators asked the offender additional five thousand birr for our exhaustion. Since, the reconciliation took several days and we lose our earnings through those days. We warned him that we could inform the case to police and become witness on matter unless our payment completed. However, he failed to do so and mediation ended unsuccessfully. Then latter the case was tried by formal state institutions and the offender convicted by proved abduction offence. Nevertheless, a criminal escaped from detention before sent to prison center due to guards' carelessness. Now he depart from his family and the victim gone barehanded. If it were finalized through process of Sigetsuwa, both parties were advantageous but now both parties are ruined.*

Fame and financial seeking are substantive factors motivate mediators to resolve serious issues according to my informants. There are trustworthy elders in every area to reconcile those serious offences and no one tries to report or testify on those cases after their motion due to high soundness of elders in that society. While, they have similar influence to alter the effect on the contrary if they lack the financial gain due to parties disagreement to pay or fail to be bound by the resolutions. They organize to testify either by siding one party or on reality as onlooker, because they had full knowledge on issue as it was presented for them. Therefore parties specially victim of the disclosure of information tries all his/her ultimate effort to satisfy

[173] Bennett (n 105)132.
[174] Interview with Tafese Uma, Fifty-seven years old famed elder, Zima Waruma kebele of Loma woreda (Dawuro Zone, 26 March 2017)

mediators. Otherwise, the secret dealing of offence will become publicized. The elders pointing towards looseness of state institutions and parties disadvantageousness from formal trial is to preach their strength than concern for conflicting parties.

As the practice is long rooted within the community and mutually developed with other adjacent values, state laws that contain additional modified and novel norms cannot easily substitute it. It needs extra effort and time to circulate and create awareness on those legislations. Otherwise, awareness gap can guide either victim or offender to lose their legal rights.[175] For instance, civil allegation for compensation is separated from criminal charge; the victim thinks the prosecution is for the benefit of state interest and nothing to him. An offender may also compel to pay amount doubles if it were in formal process fearing a harsh punishment of court law. Not only offender but also innocent person may admit criminal responsibility simply by mediators' deceit exaggeration of court punishment on issue.

According to my informant in the following case, though nothing proves the criminal responsibility of payer in an incident, he admitted the guiltiness due to mediators' hesitation of severe punishment of criminal law and its effect unless he agrees on reconciliations'.[176]

> *As soon as, a man passes across the road by driving his vehicle, the dead body of a boy aged eighteen years found on a street. He knows nothing about the occurrence but summoned by police when returning. He requested families of deceased for mediation albeit his innocence. As he is a merchant, he senses collapse of his economy if unfortunately he stays in prison along with elders pressurizing. The victimized family agreed to his request thus there is high probability of his acquittal, if the case tried by regular court system. We reconciled them proposing offender to cover all funeral expenses and family moral damages fairly.*

It is understandable that this mediation was due to awareness gap and fear of punishment but not the offender's remorse to request apology. While we are on the subject, offender's apology is not

[175] Macfarlane(n 37) 489.
[176] Interview with Ato Dejene Babulo, Famed mediator aged 51 years old, Tulema Tama kebele of Loma woreda (Dawuro Zone 3 March 2017)

always from genuine remorse.[177]However, wrongdoer demands to hide away of such a harsh condition. Likewise, suspected innocent can request apology in fear of sentencing due to gap of legal understanding.

The aim of criminal law is not to terrify individuals through its articulations of severe punishments other than deterring guilt with punishments prescribed following accurate legal procedures. Thus, getting away of actual offenders free of liability and penalizing probably suspected innocent cannot contribute something in crime prevention. The function of sanctions as punishment need not necessarily give rise to any broader crime control. To some extent, punishments are imposed on offenders because it is widely regarded as simply being the right thing to do. It is appropriate that offenders experience some sort of loss or burden, in recognition of the community's disapproval of their actions.[178] However, the consequence of offender's liberty following commission of serious offences may not create any doubt on us. It builds his thinking of safe living by escaping justice. After all, it deteriorates the lessoning aim of criminal law in view of that; it weakens the central purpose of criminal punishment of deterring an offender. From the above real case, course of mediation not only halt deterrence effect of criminal punishment but also other pillars believed to increase crime preventions. The practice's ignorance to investigate real offender shielded his rehabilitation and evade victim's satisfaction when real offender punished as well. If formal justice machineries' investigated it and actual offender punished, its attractiveness to safeguard criminal punishment purpose of offender deterrence will be positive.

The practice is victimizing an innocent when seeking to redress the victim of an actual offence thus an innocent individual is induced to restitute a victim despite his innocence. As a result nobody is deterred from committing similar offence due to failure of criminal law's aim of giving due notice to society. As it can be understood from this real case, the contribution for failure of potential offenders' deterrence is not the suspected demand of mediation. Nevertheless, the crime victim's ignorance to differentiate his real offender, mediator's improper convincing and official's failure to follow the effect of reported case all contributed.

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[177] Bennett (n 105) 24.
[178] Materni, (n 109) 286.

3.6.1. Victim's Right and Responsibility during Criminal Process

The participation of Victims in the criminal justice system plays a great role for the effective operation of the system. Among other rights, a right to be guaranteed participation that includes understanding every decision of investigative police officer and public prosecutor during investigation and prosecution phases. Timely restitution[179], right to fair and respectful treatment of dignity and privacy in entire process is also another right of victim that motivates to maintain the system. Furthermore victim have right to be secured from attack of indicted. If one of this right usually faces risk, it is obvious crime victims choose alternatives not to lose his/her rights and to reduce further sufferings. As rights and responsibilities are always inseparable, the participation in criminal process; in reporting and being witness of crime committed is the responsibility imposed on crime victim as up on any spectator.

A rape victim, now sixteen years old girl expresses her withdrawal from criminal investigation process due to improper investigation process in addition to reconciliation requesting.[180]

> *It was March 2006 Ethiopian colander, when I come to our resident from shop, which I was keeping. Suddenly I got a boy within a few distance from my shopping. He was my boy friend in fact and requested to talk with me in my shopping. However, he forced me and fortunately, my father arrived in that moment. He called police officers and a boy took by them to detention. On the investigation moment, he sent his brothers and friends to intercede me. On the other hand, my families irritated with his act and forced me not to be repentant for him. The only option for me was to prove my innocence and dignifying my family by testifying his use of force for an occurrence. All public of a town was attentively followed the issue and investigation room was filled by investigators, public prosecutors and other officials from women's affairs office. I disliked the investigation process in that manner, and persons including very old was begging me not to testify against him.* She further expresses the mediation request was for not only here, but also her families were begged by persons including police officers to opt mediation. *Though my families disagreed for mediation request, I negated their resistance and gave my consent for mediators*

[179] Bennett (n 105) 21.
[180] Interview with MK, victim of rape offence, sixteen year old girl, Loma woreda (Dawuro Zone, 17 April 2017)

> *disliking the investigation held publically.* She says that, she even jailed in detention with her own consent to express grievance on boy's detention after her agreement for mediation. *However, after a month's of withdrawal, the prosecution finalized by conviction of Sexual Outrages committed on minors with another relevant evidences on a case.*[181]

There was tangible medical document and many eyewitnesses to affirm the case and it could fulfill the offence of rape cumulatively if the crime victim testified in that manner. However, her failure due to mediation with the offender diverted the process according to my informant.[182] However, a case's failure was not only due to external pressure exerted on her, other than publicly conducted investigation disregards her privacy and age capacity reasoned for her leaving out.

The idea to run restorative justice is resulting from the notion of accommodating victim's interest to center of criminal process.[183]However, positioning victim's interest in center alone cannot guarantee achievement of offenders' deterrence and crime preventions though it has modest contribution. Still it faces different challenges and loses more worthy purposes of crime prevention when focusing victims' participation at center. Nevertheless, undoubtedly criminal justice system ignorance to the victims' interest is one of the grand causes that make victims to lose interest in the system. This in turn leads the infirmity of the system itself.

An informant expression of one abduction victim can proves this reality of victim's move away from the criminal justice system by estimating the effect from past verdicts.[184]

> *When I was a primary student, our neighbor raped my sister. He was sent to prison but my sister did not get any compensation following his criminal responsibility. It might be our fortune thus, I also abducted by a boy who has intimacy in school with me last year. He was held by police officers due to strongly work in collaboration with my family. With his release from detention by bail, his families and elders*

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[181] Interview held with Aschalew Tesfaye, public prosecutor, loma woreda (Dawuro Zone, 11 April 2017)
[182] Interview with Asfaw Chobe, public prosecutor, loma woreda (Dawuro Zone, 11 April 2017)
[183] Endalew (n 11) 220.
[184] Interview with GA, victim of abduction offense, a girl of 18 years attending her preparatory education in Loma Bale secondary and preparatory school (Dawuro Zone, 5 April 2017)

adjured my families and me repetitively. My families convinced me favoring the mediation standing from prior effect of my sister's rape case. Finally, we agreed with mediators' resolution of twenty five thousand birr for compensation.

It has to be thought that something better exists than the formal procedure or its malfunctioning when crime victims opt to fled from being witness. It is observable that enhancing the rights and liberties of victims encourages their cooperation within the criminal justice system. These result in effectiveness of the criminal justice system to condemn and detain criminals and deter potential offender along with reduction of crime rate. However, the parameter of participating victim in a system better not dragged him further again.[185]

The incident of one key informant who mediated willful bodily injury against him substantiates his superfluous participation leads him to forget or not to shed adherence on the system.

When I was in bedroom of a hotel with my girl friend, somebody knocked the door. As soon as I opened, I recognized him and greeted him for the reason that there was no quarrel between us so far. Suddenly he stabbed me by knife and fled. No one gave an appropriate attention for his capture and I waste too much money including police officers' allowance in searching him out of the region. Though it was a task of police office, the office respond as there was no sufficient budget to send officers out of a region. Latter on he sent interveners to me in order to conclude the conflict by conciliation, promising to cover all my expenses during hospital stay and searching to seize him more over bodily injury. I agreed without reservation because it may need more additional expense from my pocket if I want to conclude it through formal court process. That is because if I incur such loss in search of offender himself by sharing police duty, witness's cost may double this and hence mediation was an option less solution to me.

[185] Interview with Abicho Abera, a victim of willful bodily injury, civil servant in Mareka woreda (Dawuro Zone, 9 March 2017)

Based on this case, even though searching the offenders is the task given to police by law, they were reasoning budget shortage to seize him out of the region and hence the victim incurred extra cost as his duty mainly.[186]

A victim is not the only person annoying his limitless participation above practitioners in bringing the offender before justice but practitioners themselves affirm the less attention of governments partaking to maintain the system. The system has to request the victim for collaboration but reversely the victim requesting the system to support them.

The two focus group discussion of this study identified the witness allowance surreptitiously covered by victims though it is supposed that witnesses discharging their legal duty.[187]

> *There is no budget allocated in woreda level for prosecution witness. Victims convince their witness to appear court often. If they fail to come together with other prosecution witnesses, we brought them by court summon but those witnesses appear forcefully, sometimes either change place or deny to testify the truth. Victims bring all relevant witnesses of their case, thinking it as their duty to do so. We sometimes fail to get witnesses on victimless crimes because there is no incentive for witnesses to appear at courtroom including transport allowance. Nobody intends to cover all daily costs of a voluntary witness appearing before courtroom for testimony.*

3.6.2. Fair and Speedy Criminal Trial in Sustaining Deterrence Purpose of Punishment

The major efforts required by the criminal justice system would be restoring a sense of deterrence in criminal defendants and a sense of confidence in victims. The fair trial is the summation of right to a public hearing, right to be heard by a competent, impartial and independent tribunal, the right to counsel and interpretation and the right to be heard within reasonable time minimally.[188] Missing one or more of these basic elements of fair trial, can jeopardizes not only the defendants right to justice but can also risks the victims right too. Preventing any particular kind of crime or crimes generally is competent enough always when avoiding the conviction of the innocent and of enhancing that intelligence of peace and security

[186] Ibid.
[187] Focus Group Discussions with public prosecutors and investigative police officers of Mareka woreda (Dawuro Zone 20 March 2017)
[188] Ibid.

throughout the society, which is one of the major utility among various purpose of Ethiopian criminal law.[189] The conviction of innocent and acquittal of offender creates mistrust of society by justice system, which directly forces the disputants to opt informal systems like in our case *Sigetsuwa*. If I take applicability of a single element, the right to legal counsel, from the above listed elements of fair trial in my study area; it may not be said as exaggeration if I say right without implementation from my empirical data. During my focus group discussions in both selected woredas of Dawuro Zone, practitioners' addresses lack of legal counseling as a one-reason mediation to be opt by disputants mainly by suspects.[190]

> *For those who have money to pay for advocacy service, advocators are available more or less in every area a Zone. Neither prosecutor nor police were recording the event during happen; hence, prosecution witness could not believed testifying truth always. Therefore, to put a reasonable challenge on prosecution witnesses the victim must have such ability by his own or capable to hire advocacy. Out of balancing a trial, public prosecutor cannot represent the suspect and the suspect may fail to rise logical and legal questions on his counter party. Financially incapable suspects obliged to contest with legal experts without such knowledge thus probability of his conviction is high though he is innocent. There is only one defense counsel in zonal level and he never reaches trials in woreda courts.*

Due to lack of legal counseling, the poor offender or suspect only going to prefer informal resolution methods. While wealthy represented by advocacy can opt the formal litigation in consequence the system widening imbalance that it sustaining only capable, represented by legal professional and excluding out wide part of society. Wealthy can alternatively choose mediation only if he has no confidence on formal litigation's favor. The movement of poor toward mediation is not to save time or money as riches hire advocate, instead searching for better or less crush. Majority of peoples are unable to pay for advocacy service in case of Dawuro and hence unless alternative ways of representation by legal professionals planed, expansion of

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[189] Constitution (n 26) art 20(3).

[190] Focus group discussions conducted with both police investigators and public prosecutors in Loma & Mareka woreda (Dawuro Zone, 13&20 March 2017)

mediation and its influence on criminal law purposes due to suspected or offenders push is inevitable.

Financial seeking of victims for their loss due to injury they faced is another core stake occurs when timely reimbursement disregarded in criminal proceeding. Victim may not concern deterrence of further offence in expense of the injury they faced unless reimbursement of their civil damages timely. Criminal procedure law of Ethiopia allows framing of civil claim for damages victim ensue jointly with criminal charges.[191] Furthermore, it articulates similar assessment of compensation as in civil bench.[192] However, the realization of jointly instituted civil suit with criminal charge is no more different from separate civil claim. It contains a lot of dismissing grounds.[193] The victim alleging compensation is also required to pay court fees and the costs of summoning witnesses and calling experts.[194] This indicates the arrangement of civil claim jointly with criminal charge also no more efficient. Nevertheless, the practice shows it is not accustomed ever.

A key *informant of this study describes this reality of joint claim for reimbursement.*[195]

> *Though the law allows institution of civil suit with criminal charge, it was not practicing in our area and no more suitable due to its specificity and request for additional evidence and execution.*
>
> *About eleven charges of negligent homicide within these three years failed due to lack of relevant evidences specially victims' failure to participate and testify during trial. Though there is no survey conducted on the reason of victims' failure to participate during criminal trial throughout a Zone, the long rooted mediation custom of community supposed to influences parties to opt informal system mainly. Victims often desired by easy reimbursement method than long journey in formal process.*

[191] Criminal procedure code Ethiopia 1961, art 154
[192] Ibid art 210.
[193] Ibid art 155.
[194] Ibid art 222.
[195] Interview with Terefe Ketero, public prosecutor, Dawuro Zone justice department (Dawuro Zone, 1 April 2017)

3.7. Position of Practice of *Sigetsuwa* with Deterrence Purpose of Criminal Punishment

The fundamental purpose of criminal law is prevention of society from harm.[196] In order to achieve these purposes, criminal law sets norms into permissive and prohibitive.[197] These classifications of norms are not creativity of criminal law based on alien culture and custom but standing from real challenges such a specific society facing or prospection to face from valid speculations. Criminal law defines the minimum conditions for man's responsibility to society and reciprocally enshrines that condition to him in similar manner. This is the way criminal law achieves its vital role of forming good society.[198] Accordingly, it warns entire society not to carry out prohibitive norms through legislation and punishing if completed. Punishment is not an essential intention of criminal law to deserve comparable reward for criminal's misdeed. However, warning prohibitive conducts via legislation and executing them on antisocial behavior through punishment guarantees real capability of legislation in safeguarding wide community[199]. Likewise, it is not used for demonstration of state tyranny or weight of enacted rule other than social protection through deterring, incapacitating and rehabilitating offenders unworthy behavior during sentencing institutions.[200] During my fieldwork, one of my key informants, having long experience in investigation process, expresses his evaluation in reduction of some serious offences with entering into force of present criminal law embracing severe sentence. [201]

> *I have been working for 21 years as a police investigator from whole my work experience of 25 years in police institution. My observation through these entire work experiences is that it is not considered as a serious mistake to rape or abduct a girl before coming into force of 2004, criminal law of Ethiopia. By the time, he who abducted or raped required to merry the victim of the offence at most, otherwise obliged to compensate victim and her families financially. There is presumption that nobody choose to merry a girl abducted or raped and hence better preference is capitulation to abductor or rapist himself. This has been encouraging offenders to*

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[196] Alexander & Ferzan, (n 106)17.
[197] Ibid 6.
[198] Reiff (n 108)113.
[199] Fletcher (n 107)36.
[200] Bennett (n 105) 14.
[201] Interview with Mesfin Dejene, Deputy Commander , Crime Investigation Core Work Process, Loma woreda Police Office (Dawuro Zone, 9 Feb. 2017)

involve in criminal acts if they want to succeed in that manner and increased the extent of offence commission. However, latter the infliction of painful punishment highly changed the spread of similar offences though mediation between offenders and victims on such grave offences not yet eliminated. We use all our effort to implement criminal law's objectives in such a grave offences but parties resolve it secretly and deny cooperating with us. Forcing them to Participate often produces negative results though not always. The persistent survival of Sigetsuwa can observe publicly, when parties or mediators brought written agreement of disputants for us in any serious crimes.

3.7.1. General Deterrence Purposes of Criminal Punishment and Position of *Sigetsuwa*

Deterrence assumption speculates that crimes can be prevented when the costs of committing the crime are perceived by the offender to balance the benefits in general. When general population is discouraged from committing a crime in apprehension of punishment inflicted necessarily by crime commission, general deterrence will turn into true-life.

All rehabilitation, incapacitation and deterrence punishments have forward-looking effect as an infliction of punishment deters those punished as well as the general population will be deterred from committing future crimes. As general deterrence's enforcement is pre violation, it cannot be realized without any forms of publicity.[202]In the pre violation state of affairs, the threat of punishment prescribed under the law or enforcing it on violator that can function mainly as a deterrent. If a change in wellbeing is to qualify as punishment in the pre violation sense, then its evaluative and relational elements must be satisfied from the potential violator's point of view.[203]

General deterrence is one of Ethiopian criminal Punishment's purposes, which follow utilitarian concept. It gives due notice for the prevention of offence and if this warning is inadequate to deter the offenders, punishment is taken as a key ingredient of warning to prospective offenders.[204]

[202] Comprehensive justice system reform program (FDRE 2005- 02) 174
[203] Rief (n 108)89.
[204] Criminal code (n 20) preface IV, art 1.

In converse to the general deterring purpose of criminal punishment that intends to make wrongdoers punishment to be lesson for others, in practice of Sigetsuwa, offenders release with the modest amount of financial reimbursement. There is no labeling of criminal and civil punishment other than evaluate both payments in one chain.

One key informant from the prosecution office told this researcher that:[205]

> *A person going to own or drive a vehicle, saves compensation payment for homicide than maintenances, purchase of spare part and for fuel. Even prosecuting traffic injury is surprised and the act is being taken as moral widely within community. The commencement of investigation itself is due to unavoidable recording of the accident by traffic police. If not reported to police as soon, no victim may want to claim for her/his injury and the figure of annual accident itself had been unknown. The amount of money is predetermined and hence it is not time taking to mediate the case.*

According to my informants, mediation in accidental injury and death is no more criticized even in office level, supposing that there is no intention in side of offender. The car accident is alarmingly increasing in our country in every year but negligent act of drivers' blocked by mediation and accepted as unforeseen before all.

3.7.2. Specific Deterrence Purpose of Criminal Punishment and Position of *Sigetsuwa*

Special deterrence purpose of criminal punishment achieves its goal through punishing offender in order to deter his/her future participation in similar offences.[206]Punishing an offender is to insure the public safety by preventing the commission of offenses through the deterrent influences authorized by law and the rehabilitating those convicted not to reoffend.

The specific deterrence is also focal point under Ethiopian criminal punishment aim to prevent crime commission. [207]It imposes severe punishment like life imprisonment or death to succeed this purpose.[208]

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[205] Interview with Engidawork Kasu, coordinator, prosecution core work process, Mareka (Dawuro 31 march, 2017)
[206] William Wilson, Central Issues in Criminal Theory(Hart Publishing 2002) 49
[207] criminal law(n 20) preface iv & art 1.
[208] Ibid Preface IV.

'....Providing for the punishment of criminals in order to deter them from committing another crime',

'Although imprisonment and death are enforced in respect of certain crimes, the main objective is temporarily or permanently to prevent wrongdoers from committing further crimes against society'.

It inflicts punishment on criminals with the intent to discourage them from committing crimes in the future. This function is accomplished by establishing a law that provides a punishment for crimes, which relates it with general deterrence together. Specific deterrence become applicable when deterring an offender via general deterrence is unsuccessful. The need to concern education standard of convicted during calculation of sentences is also an outcome of his failure to lead by general deterrence as his/her awareness intensity.[209]Educated person can access electronic and print Medias easily and hence supposed to have better understanding of law and need to be deterring him well again than uneducated. Aggravating sentencing on him is due to this perception.

Practice of *Sigetsuwa* hinders this specific purpose of criminal punishment totally. interview with the following two victims in different offences reveals its hindrance of the specific deterrence purpose of criminal punishment.

A woman, victim of grave willful injury describes her mediation circumstances in the following manner:[210]

> *I have been living together with the offender in marriage since 1999 E.C. we have two daughters in common. Dispute within us was frequent for previous four years. When he punches me as usual, it inflicted high injury on my left eye. Medical result given to me shows that my eye will stop functioning after a year's of duration. Nevertheless, the elders including my family influenced me by narrating the outcome of his sentencing on my life and my daughters,' thus, I remained at home by the day*

[209] Ibid art 88(2).
[210] Interview with Ballot Ashango, victim of domestic violence, Gendo Bacho kebele, Mareka woreda (Dawuro 7 April 2017)

for hearing in court. I am now living with him together, in trouble with tomorrow's occasion.

Report in such domestic violence is very rare, since traditionally society including victimizing women, hate a woman who reports family dispute to police, other than asking divorce if she dislikes the relation.[211]

An interview with a victim of abduction and rape offence also verifies the practices favor of offender and how it deteriorating the individual deterrence purpose.[212]

When I was coming back to our home from market, the abductor and his friends changed my direction forcefully. It was a bad fortune that I never want to think it again. Unexpectedly I fled at early morning after a day with them and reported the incident to police. While polices searching them, they requested my families and me via mediators,' urging us that they are going to temper the case or leaving the territory if the request fails to succeed. My rapist is from family of higher social status thus challenging him was not easy for us actually. We opted to mediate and resolution finalized with five thousand birr compensation surprisingly. This amount of compensation was only in my case in our locale. Now he married through similar situation (abducting) another girl.

She is uneducated countryside girl but very annoyed with such type of actions, and requesting me by informing his name whether I am in a need to charge him. Without doubt, he did get such chance to commit the second similar offence by the same year if he had punished for the first offence.

We can recognize from here that, practice of *Sigetsuwa* deterring innocents from legally authorized deeds instead of deterring potential offenders. The one who drive his car, obeying legal rule forced to condemnation,[213]innocent woman required to agree to illegal, repeated

[211] Interview with Asegid Takele head justice office, Mareka woreda (Dawuro 30 March, 2017)
[212] Interview with BA, victim of abduction and rape, Fullasa Borze kebele, Loma woreda (Dawuro Zone 22 march, 2017)
[213] Interview with Ato Dejene Babulo (n 176).

domestic punishment inflicted from her husband due to *Sigetsuwa*.[214]Influence of mediators when reconciling cases related with socially segregated group is also borderless due to their less soundness in community.[215]As a result, the practice imposes unreasonable fright on law-abiding innocent than potential offenders contrast with the offender deterring purpose of criminal punishment.

3.8. Position of Actual and potential Offences under Criminal Law and *Sigetsuwa*

Preventing an offence before happen is one of a core purpose of Ethiopian criminal law. It takes punishment as a tool for post violations to prevent the commission of further crimes accordingly protects society peace and security.[216]

This indicates criminal law no more stressed to settle a happened particular wrong but based on that wrong culminating similar act is its vital aim.[217] The criminal law does not let aside a perpetuated offence and victim's right. It explores truth and designates directions based on result of investigated truth for a problem at hand. Since, he who raped one of the two girls on the street is pervading tension on escaped one and we need not stay until the offence doubled. Therefore, the deterrence can be achieved by punishing him for completed action.

Unlike this specific and understandable purpose of criminal law, practice of *Sigetsuwa* situates the reimbursement of victim at center to any other competing interests. Both during pre enactment of state law of Ethiopia or in present time elders' asses, the victim's injury by items or cash money and process ends with ritual blessing or cursing.[218] The practice circulates whenever the crime committed. The discovery of actual offender and bringing back the truth of victim that he lost is considered as more vital than looking forward effect of the resolution. Forward looking is only in relation with the smooth relations of disputed parties. To deter the harm, punishment for committed offense ought to be somewhat solid according to circumstances of its commission. However, if the offenses occur between relatives linked by affinity or biological, elders drive the victim to skip over compensation.[219] Therefore, the utmost punishment in this case would be

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[214] Interview with Ballote Ashango (n 210).
[215] Interview with victim of abduction and rape, (n 209), see also Wondaferaw Gezahegn (n 30)
[216] Criminal Law (n 20) preface sect iii, par. 3.
[217] Ibid art 1 & Fletcher (n 107) 36.
[218] Interview held with elders (n 156).
[219] Interview with Gotoro Gonosho, elder , Bale town of Loma woreda (Dawuro Zone, 30 April 2017)

request for forgiveness. My empirical data for this study did not direct me to conclude the extent of forgiveness in deterring harms. Nevertheless, it is logical to distinguish requesting forgiveness whether categorized under harsh or easy punishment, or is it punishment after all and have ability to deter likely offenders.

In *Sigetsuwa,* now a day financial punishment further modified and supposed as a harsh punishment that inflicted on offender. If a criminal is financially incapable or under aged, a burden is shift to any close relative, who is capable to pay compensation instead of offender and if this is unsuccessful, it can be covered by contribution. Here the punishment lacks responsible individual and consequently offender cannot regret, as he/she would have punished in formal justice system. Due to the easiness of monetary punishment, the one who is intends to commit analogous offence may not discouraged. This also contradict both general and special deterrence goal of criminal punishment.

3.9. The Current and Potential Legal Opportunities to Limit the Challenges of *Sigetsuwa*

Unlike the western states started restorative justice practice just about 1970th and 1980th [220], there is no place for any types of criminal resolution in out of court system under Ethiopian constitution.[221] However, Ethiopian criminal justice policy document and draft criminal procedure code authorizing restoration in out of court system.[222] The authorization may not intend to modernize criminal process by assimilating western trends. Nevertheless, various literatures show that the competence of indigenous conflict resolution mechanism of different nations of Ethiopia as comparable to the western states restorative justice standard.[223]

Restoration is one and central idea among other relevancies of mediation and other indigenous conflict resolution methods according to proponents of indigenous justice advancement.[224] By that, it presumed to reinstate the usual peace between disputants and offenders. Moreover, rehabilitation of offender following his immense remorse supposed to circumvent future possible

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[220] Maggie Grace, 'Criminal Alternative Dispute Resolution: Restoring Justice, Respecting Responsibility, and Renewing Public Norms'(2010) 34 Vermont law review 563,564
[221] Endalew (n 11) 233.
[222] Criminal Justice Policy document , preamble, sec, 4.6 & criminal procedure and evidence law (draft) (n 16) art 196 ff
[223] Macfarlane (n 37) 488.
[224] Bennett (n 105) 22.

injury against a victim. From criminal justice policy document and draft criminal procedure law of Ethiopia, it is understandable that both *Sigetsuwa* and restorative justice focus is in resolving conflicts and restoring relationships between parties. Parties suffering from the incidents may receive compensation from the adversary. Restorative justice emphasizes the values of restoration[225], reparation, and reintegration, whereas *Sigetsuwa* provides chances for offenders to take up their responsibilities and to improve their relationship with the one being affected in the incidents, and its ultimate goal is to establish a harmonious way of living of parties. In addition, the agreements in both restorative justice and *Sigetsuwa* have their own implementation ways. Parties are liable to follow the agreement or further prosecution. Therefore, restorative justice and *Sigetsuwa* could provide alternatives to prosecution and divert some cases from the formal trial procedure. Reimbursement or excuses ensue offenders remorse brings *Sigetsuwa* to an end that it proposes an individual victim's satisfaction. However, focusing restoration of offender's good behavior through any mechanism is better than restoring peace between two individuals. Because, restoring a good behavior of offender can safeguards would be restoration of many individuals. There is still competing interest, giving due care mainly for consummated offense and there by satisfying present victim like as in *Sigetsuwa* practices or prioritizing protection of society from future would be harm of present offender or somebody else as formal criminal law operating today.

The usual critique towards formal criminal law is having little position to concentrate on the injury done by an offense than implementation of appropriate rules on wrongdoer.[226] The intention of realizing pre determined rules and regulations is on one occasion to educate the offender and to warn entire community through his punishments intending protection of peace and security of society. Incidentally, this creates modest satisfaction for the victim when his adversary embarrassed. Nevertheless, the offender can or cannot be reimbursed for his financial, health or moral loss in civil process later on due to various barriers. In fact, it is not impossible to amalgamate both the interests of victim and social protection mutually than making them rivalry.

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[226] John Winslade and Gerald Monk, *Practicing Narrative Mediation: Loosening the Grip of Conflict* (Jossey Bass 2008) 233

Both indigenous and restorative justice believed to rehabilitate the offender's bad behavior through face-to-face discussion between disputants. Furthermore rehabilitation of offender's evil behavior predictable in deterring him not to inflict similar crime. However, unlike restoration, rehabilitation of offender has no gain for victim's injury personally, except protection from future potential harm, which can be inflicted by offender as on any member of society. Because, he is not a sole victim to be attacked frequently and reversely also lacks guarantee from similar offence. Rehabilitation is assessed case by case rather not easy to conclude offender rehabilitated once. Our parameter to evaluate rehabilitation may be based on future conduct of offender whether he continuing by his aggressiveness or behaved than tentative remorse. If it is successful or not re involves in similar or new other offences, it highly reduces recidivism rate[227]that contributes tiny protection for community at least from the present perpetrator.

In practice of *Sigetsuwa* there is promise not to participate again in crime. There is even no aggravating or mitigating condition on the extent of pecuniary imbursement for recidivist and beginner. However, the mere vows have no bridle to stop the offender from further commission. Unlike incoherently applying practices of *Sigetsuwa*, criminal law articulated following different outlooks. It categorizes grounds of commissions or omission based on different criteria; intention of some gain from commission, negligence and recklessness is evaluated to impose penalty but not concerns final effect only. Again, recidivist and first offender also not obtain identical amount of sentencing in criminal law as well. This all classification of offender, offense and offending manner is required to discipline awful behavior of a man with prescribed norms and rules there with limiting deciders' power not to apply arbitrarily and insuring fair trial.

All *Sigetsuwa*, formal criminal process or would be restorative justice of Ethiopia can have rehabilitating effect. However, the extent of their rehabilitating capacity is not conclusively considerable.[228] Again, it is impossible to nullify the rehabilitation effect of one of them as its effect can vary according to case bases. Still I can argue that criminal sentencing have not the only purpose rehabilitating single offender to become reproductive society or satisfying individual victim by offender's reimbursement as indigenous and restorative justices do. It has

[227] Robinson (n 58) 79.
[228] Bennett (n 105) 132.
[228] Macfarlane (n 37) 489.

these cumulative objectives and lessoning others through punishment of one's misdeed that all contributes to sustain peace and security within society.

The countries of 40 and 50 years of experience are not free from practical procedural challenges during restoration.[229] Some states impose reduced sentences on offenders who had taken part in mediation and reparation. Some others may approve the mediation result provided without reservation following a victim's expression of forgiveness unless offender has previous criminal record.[230] Above all, restorative justice criticized by its reliance on formal criminal law to find facts[231] or merge to previously existing indigenous system to conduct restoration for offences committed by specified classes of persons like juvenile and beginners in countries like united kingdom.[232] The challenge can be extensive if we look Ethiopian factual situation of accommodating the diversified culture and custom in uniform tier.[233] Because, various nations have their own indigenous means of conflict resolution systems. Some reimburse by donating women for marriage, others financial compensation or apology, which situated in opposite peaks. Therefore, planning for restorative justice must not base on its relevancy of participating victims only. Nevertheless, it needs further scrutinizing whether the mediation systems of each nation going to be advanced through restorative justice able to prevent subsequent harms. Victim's need and victim's safety is incomparable after all.[234] In practice of *Sigetsuwa*, whether for reimbursement or any other purposes victim need to conclude his case by mediation but offender watches occasions to repaid amount of he paid. If his payment was for bodily injury, he originate cruel to be compensated. Restorative justice does nothing new to prevent such type retribution. If *Sigetsuwa* influencing the crime prevention means with prohibition of state laws, getting strength after some authorization is obvious.

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[229] Ibid 491.
[230] Nancy Lucas, 'Restitution, Rehabilitation, Prevention, and Transformation: Victim-Offender Mediation for First-Time Non-Violent Youthful Offenders' (2001) 29 Hofstra Law Review 1365, 1399
[231] William Wood and Masahiro Suzuki, 'Four Challenges in the Future of Restorative Justice, Victims and Offenders' (2016) 11 Routledge 149, 154
[232] Ibid 156.
[233] Macfarlane(n 37) 505.
[234] Barbara Tomporowski et al, 'Restorative Justice: Past, Present, and Future'(2011) 48 Alberta Law Review 816, 826

3.10. Conclusion

Practice of *Sigetsuwa* has been serving as a main and suitable conflict resolution method of Dawuro nation from times in memorial. Its intermingling with the other customs and culture of nation empowered it to survive besides prohibiting formal law of state. It has also many factors to go parallel with state legislation in a nation. For instance, victims' need for extra amount of material compensation by conciliation than amount set reasonably in court trial, lack of timely trial in formal institutions, limited participation of victim in process and low awareness of parties in state laws can be counted as basic initiators, a practice to be opting by parties than formal system. The challenge is not its desirableness' than the formal criminal law. Since, it has its own positive sides in preserving peace and security except mediation of any serious offence inordinately by uneducated elders simply. The elder's focus is reimbursing the victims disregard the offenders' circumstances during crime commission.

Ignoring circumstances for offence commission makes condemned aggressive than rehabilitating. The weak punishment and condemnation on unidentified issue or blameless due to mere suspicion of the practice made it challenger of the criminal punishment's purposes that intends to impose educative penalty on identified owner of the offence. The other doubt of its stoppage in future is recognition of restorative justice. The unremitting influence on criminal punishment's purpose of deterrence with consecutive prohibitions of state law will becomes powerful by getting little authorization.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1.Conclusion

Deterring potential offender from crime commission is a vital purpose of criminal law among other purposes intended to keep peace and security of state and its inhabitants. The deterrence purpose of criminal punishment achieves its goal by punishing offender who infringed the pre arranged legal warning.

Indigenous reconciliation practice, like *Sigetsuwa* impedes criminal punishment's pre warning of potential offenders. The intention of the criminal law in providing grave penalties for serious offences is in order to prevent those offences, exceptionally dangerous to society. However, *Sigetsuwa* conversely interfere on those serious offences than less serious. The practice's trustworthiness of reconciling any serious offence by society drives the parties to opt it. Thus, very serious offences like, offences related with injury to Sexual Liberty and crimes against life that carries high extent of penalty reconciled via practice of *Sigetsuwa* in case of Dawuro nation.

The disputants' preference of serious offences' reconciliation via practice let the regular court to entertain less serious offences and of parties opting to bind by it only. This increase the offenders' can skip criminal punishment by committing crime along with increments of crime rate.

Sigetsuwa focuses on individual victim's material enrichment unlike deterrence purpose of criminal punishment that has forward looking to deter potential offenders. The practice believed well in regretting the offenders as he/she gets option to discuss with victim face to face. Nevertheless, offender's demand of excuse via fake remorse after intentional commission is to skip criminal liability by handing over money or goods of monetary value.

The victim of serious offence can allege innocent person who can compensate better during practice as an offender other than the actual offender if for instance more than two offenders participate in commission.

Criminal punishment seeking to deter the potential offender inflicted only on identified offenders in order to educate and rehabilitate an offender and to make his punishment a lesson for others. Oppositely, persons less sound socially and incapable to resist the elders influence by suspicion become punishable rather than wrongdoer during practice of Sigetsuwa. Despite condemning an innocent, the practice lets offenders of serious crime free with moderate pecuniary penalties. The reimbursement money collected from any source like families and partners of offender if he is unable to pay by his own. This leads the offender to think irresponsible in similar offences.

Punishment is not the only and perfect means to deter offender and guarantee social protection. However, as it passes prescribed rules and procedures, more or less reliable in punishing wrongdoer that society condemns. The practice of *Sigetsuwa* immediately inflicts restriction on social participation of offender. It may not be concluded that *Sigetsuwa*'s severe social isolating sanctions and long rooted nature of it is the only factors pushes the offender to opt the practice. However, state laws and practices used to implement those purposes of criminal punishment also highly contributed in making the indigenous mediation preferable. Isolation of civil suit from criminal charge in practice and little coverage of it under law is also another factor letting the victim to opt short cut reimbursement means.

The result of improved effectiveness of the criminal justice system in apprehending and convicting criminals will deter crime and lower the overall crime rate. Hence, the researcher would like to underline that; the forth-coming criminal justice realm had better consider the influence of indigenous reconciliation systems on purposes of criminal law before application.

The practice is capable of attacking the deterrence purpose of criminal punishment through instantly prohibiting positive law. While, authorizing it through forthcoming restorative justice attitude without scrutiny, severs the challenge practice inflicts on purpose of criminal punishment and law as well. Because, the up to dated version of draft criminal procedure bans mediation on limited offences in exclusion of many serious offences that open the door for the practice's intervention.

4.2.Recommendations

- Broaden applicability of civil claim with criminal prosecution is necessary to guarantee the participation of victims in a process. It needs both legal and practical transform, i.e. including precise procedural setup for civil claims of crime fruit under criminal procedure.

- Pre assessment of practice's compatibility with the criminal punishments purpose of deterring offender better considered before authorizing it via restorative justice realm

- Periodic exploration on withdrawal reasons of specific serious offences and taking action on it is necessary in a way enabling to suit with offender deterrence purpose, throughout justice and police offices of all level.

- Awareness creation to community through both print and electronic media, concerning the purposes of criminal law and criminal punishment can alleviate the problem. Awareness creation can handle the extent of right and responsibility of offender erroneously driving to choose mediation with fear of punishment.

- Responding appropriately on witnesses failing to testify or altering their statement given during investigation can also deter victims fail to report or testify in process.

- The government cooperation with crime victim for achievement of his reimbursement in civil litigation after conviction of offender for crime responsibility is required; or,

- Arranging reconciliation process along with criminal trial under procedural laws and compensating victim's during it, is required. Since victims choose mediation fearing retaliation and seeking compensation, likewise offenders pushed to hide from sever punishments and hence reducing offender's penalty as of mediation than disregarding criminal part in forthcoming restorative view shall considered. If those both can jointly furnish in formal institutions, the deterrence purpose of criminal punishment can be saved from impairment.

- Formulation of specific legislation is required to limit mediators on specified scope or setting limit for offences only necessitate state involvement and condemning who passes that limit visibly.

- Allocating adequate resources and incentives for criminal witnesses in entire process, in order to achieve expected deterrence purpose in extent serious offences considered under the law.
- Working mutually with societal institutions and communities in investigating serious offences
- Properly disciplining mediators, as they are primary partakers in process of *Sigetsuwa* to safeguard deterring purpose of criminal punishment;

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Appendix

Appendix 1

Interview Guide 1: In-depth Interview Guide with victim of serious offences

Thank him/her for agreeing to take part and explain about myself. Starting the reason I am doing interview.

1 Why do you prefer customary mediation with offender?
2 Is there any social influence lead to opt mediation than litigation?
3 Do you think the state law is not constructive to restitute you?
4 Is that because, you did not want roughness relation with offender?
5 Is it due to efficient, effectiveness or accessibility?
6 May you doing it because nobody can challenge you/ considering it as your right to decide on it?
7 Do you know you have obligation to report crime and to testify on offender?
8 Do you believe you better compensated in mediation than if it were through court litigation?
9 Is it for the reason that it favors you or for fair trial?
10 Is there any limitation on sides of justice machinery?
11 Do you think mediation is better solution on indictable offences?
12 Do you think it can hinder offender from further commission?
13 Do you believe it can create societies satisfaction?
14 Is the mediation commensurably reattributed the offender?
15 Do you think neither of parties Privileged in the process?

Appendix 2

Interview Guide 2: In-depth Interview Guide with justice machinery personnel

Thank him/her for agreeing to take part and explain about myself. Starting the reason I am doing interview.

I. Police investigators

1 Would you introduce yourself? Position, Title, Experience
2 What do you know about the existence of customary victim offender mediation in this society?
3 Have you ever observed it during or after process?
4 Is there any legal reaction taken on it?
5 Are parties ever ask you to resolve indictable/ offences not brought by individual complaint to resolve through mediation?
6 Are parties in the investigation ever brought mediation report during or after investigation process concluded?
7 Have you ever faced victim ceasing to attend the case after reporting the nature of offence?
8 What measures do you take on pending investigation?
9 Do you collect other supportive evidences?
10 Do you force the victim to testify?
11 Have you closed the file?
12 Is it pending for unlimited time?

II. Public prosecutor

1 Would you introduce yourself? Position, Title, Experience,
2 Do you ever face victim's failure to testify or alter on his own case?
3 Is there any victim punished for failure to testify?
4 What possible rational is there behind their alteration?
5 What measure do you take on case?
6 Is it dropped temporarily or closed?
7 Have it continued by other evidence?
8 Is it finalized by acquittal or conviction?

Appendix 3

Interview Guide 3: In-depth Interview Guide with famed mediators (elders)

Thank him/her for agreeing to take part and explain about myself. Starting the reason I am doing interview.

1 Would you introduce yourself? Position, Title, Experience
2 What requirements needed to mediate victim offender in serious criminal cases?
3 With whose initiation is the mediation starts?
4 What type of criminal issues finalized by your mediation?
5 What is your gain from the process?
6 What type of punishment levied on offenders?
7 Is there any organ to which you report the finding?
8 What happen if one of the parties fails to bind by your solution?
9 What happen if one of the parties takes his case to justice machinery after mediation?

Appendix 4

Interview Guide 4: In-depth Interview Guide with social science experts

1 Thank him/her for agreeing to take part and explain about myself. Starting the reason I am doing interview.

1. Is there any reason toward society's desire on customary mediation than formal systems in Dawuro?
2. Does the mediation modified by modernization and positive law or stagnant with previous?
3. Is the mediation considered as positive in entire society or to parts?