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Liberia: Understanding Alternative Dispute Resolution Mechanisms in Post-Conflict Societies

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Abstract: Conflict and its resolution have often been part of human history. While the post-colonial state has often been the focus when explaining the persistence of conflicts and its resolution in Africa, the benefits of such focus and analysis has not been enough to explain the intra-and inter-state nature of conflicts and conflict management in Africa. This necessitates a reconsideration of conflict management strategies. Such reconsideration will show the intricate ways conflicts and its resolutions are shaped, especially in post-conflict societies, through the instrumentality of Alternative Dispute Resolution (ADR) mechanism. With Liberia as the focus and unit of analysis, it noted that the country has been the epicentre of several years of violent conflicts with both internal and external dimensions, raising questions about the effectiveness of the orthodox conflict management mechanisms given that the Liberian conflict was intractable for a long time. However, the adoption of alternative dispute resolution mechanisms has helped resolve most, if not all, of the conflicts. This paper, therefore, examines the local, traditional and communal alternative dispute resolution mechanisms used to solve the Liberian crisis. Specifically, the paper interrogates traditional methods of conflict resolution, inclusive of communalism, ethnocultural perception of conflicts and its resolution, as

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well as epistemic and ethical protocols guiding peace-building efforts. This is with the aim to provide an understanding of Africa's peace initiatives, choices and options.

Keywords: ADR, Post-conflict Societies, Liberia, Africa.

Introduction

Conflicts are part of human relations; as individuals and groups have orientations and beliefs that are often contradictory, resulting in disputes. These differences also play out in how conflicts and disputes are resolved. However, in post-colonial state Africa, the state focus, given its origin as a colonial creation and its character that is steeped in violence, has always been fixed on the state when explaining the persistence of conflicts and its resolution in Africa. While this has some benefits, it is not enough to explain the intra-and inter-state nature of conflicts and its difficulties in Africa. The urgent need for a reconsideration of conflict management strategies in Africa, that shows the intricate ways conflicts and its resolutions are shaped, especially in post-conflict societies through the instrumentality of Alternative Dispute Resolution (ADR) mechanism, becomes germane. The large number of African countries that have experienced and are still experiencing violent conflicts are steadily reducing (Bakken & Rustad, 2018; ACLED, 2017; Afolabi, 2015). However, Liberia, as the epicentre of violent conflicts for years, presents the unique opportunity to examine the causes of violence and the methods used to achieve peace in the country. Liberia is also very useful as the unit of analysis because it witnessed several years of violent conflicts with both internal and external dimensions - a conflict that was intractable for a long time, raising questions about the effectiveness of the orthodox conflict management mechanisms. The orthodox conflict management mechanism had to do with the court system, of characterised by and resulting in series of unending litigations. The adoption of alternative dispute resolution mechanisms has helped to largely resolve the conflicts. This paper, therefore, examines the local, traditional and communal alternative dispute resolution mechanisms used to solve the Liberian crisis. Specifically, the paper interrogates traditional methods of conflict resolution, inclusive of communalism, ethnocultural perception of conflicts and its resolution, as well as epistemic and ethical protocols guiding peace-building efforts. This is with the aim to provide an understanding of Africa's peace initiatives, choices and options.

The paper is structured as follows. The first section opens with the introduction, followed by conceptualization of what conflicts and Alternative Dispute Resolution (ARD) means. The third section of the paper examines post-conflict societies in transition, especially Liberia, as the focus of our work. Next, the paper critically examined ADR Techniques in Liberia, detailing the various techniques used, which is followed by appraising the problems of ADR in Liberia through an examining of the techniques and lessons learned from its implementation. The next section assesses the ADR Mechanism

as a Peace-building technique, exploring its possibilities. The last section concludes by examining what needs to be done to make ARD better in conflict resolution in Africa.

Conceptualising Conflicts and Alternative Dispute Resolution (ARD)

Conflict, in its simplest form of conceptualization, could be referred to as any situation of misunderstanding between two or more parties, usually as a result of disagreements over certain sensitive issues. Conflict, like most other terms, has received myriad of definitions. Conflict is inevitable in any human society; in as much as the interests of individuals in such society differs, there is bound to be conflict. The term has been mostly defined as a "disagreement through which the parties involved perceive a threat to their needs, interests or concerns" (Jack, 2014, p. 33; Fisher, Abdi, Smith, Williams & Williams 2000; Pia & Diez, 2007, p. 2; Oni-Ojo & Roland-Otaru, 2013, p. 40). It is a situation where two or more parties desire goals which are not likely to be obtained by all parties involved, thus, leads to some sort of negative competition (Stagner, 1967). What this implies is that conflict occurs when there is a struggle over scarce resources by two or more parties. Thus, Jack (2014) posits that conflict is characterized by disagreements resulting from the distribution of scarce resources, such as mineral resources, political power, etc., which are very important to all parties involved. Conflict may also arise as a result of different/opposing cultural, religious beliefs or values which are products of opposing ways/methods of doing things or achieving a particular objective. Hence, conflict could arise from social, political and economic issues in the society.

For Diez, Stetter & Albert (2006), "conflict denotes the incompatibility of subject positions" (p. 565). These definitions of conflict put incompatibility of interests, opinions or beliefs at the forefront of every conflict. Conflict is pervasive and occurs at various levels of society, inter-personal, family, tribes, national and international levels (Oni-Ojo & Roland-Otaru, 2013). Conflict has also been seen as a process which begins the moment party A perceives that party B is trying to frustrate or has already succeeded in frustrating some of his/her concerns or interest (Thomas, 1976). This implies that conflict will inevitably arise when a party's interest is at stake in the society. For Donohue and Kolt (1992) and Quincy (1971), conflict is a situation wherein interdependent groups (ethnic, tribal, religious) or persons express disagreements in a bid to achieve their diverse needs and protect their personal interests. Conflict is a dynamic process, ensuing through myriad of stages, usually from people/parties' perception that their interests are in danger of being negatively affected or already affected. Conflict can arise from issues such as failure in communication, misunderstanding, personality clashes, opposing goals and values, lack of cooperation, struggle over limited resources, among others (Oni-Ojo & Roland-Otaru, 2013).

Dokubo and Oluwadare (2011) described conflict as a situation which can be explained in two senses. One, it refers to a situation of incompatibility between/among parties; sec-

ondly, it refers to a situation of violent expression of this incompatibility. Furthermore, Wertheim (n.d., p. 2-3) highlights some major causes of conflict as follows:

- competition over scarce resources, time;
- ambiguity over responsibility and authority;
- opposing perceptions, work styles, beliefs, etc.;
- increase in level of interdependence, owing to more closely knitted relationship among individuals/groups;
- imbalance reward system;
- opposing points of view and goals imposed by division of labour; and
- the contentious nature and argument over equity and equality.

Conflict has been observed not to only resort in negative outcomes, as it has the potentials to also create positive outcomes (see for instance, Engel & Korf, 2005; Pia & Diez, 2007, p.2; Wertheim, n.d.). The table below presents some potential positive and negative outcomes of conflict.

Table 1: Potential Positive and Negative Outcomes of Conflict

S/N	Potential Positive Outcomes	Potential Negative Outcomes
1.	It can increase commitment	It can lead to anger, frustration, fear of failure, etc.
2.	It can give more clarity about the problem	It ensures that critical information is withheld
3.	It can give rise to new approaches and innovations	It lowers productivity
4.	It can facilitate change	It can side track career and ruin relationship
5.	It could sharpen approach to bargaining	It can disrupt the pattern of work
6.	It can lead to a solution	It leads to resource wastage, including time.

Source: Adapted from Wertheim (n. d., p.2)

Furthermore, relying on the conflict parties, the context of the conflict, the motivations behind the conflict, the consequences of the conflict, the duration of the conflict, the intensity of the conflict and absence or presence of violence in the conflict, among others, Ohana and Lyamouri-Bajja (2012, p. 57) attempt a classification of conflicts. The figure below encapsulates the classification of conflict for a broader horizon on the concept of conflict.

Alternative dispute resolution (ADR) refers to mechanisms for resolving conflicts/disputes, other than the court or litigation processes/mechanisms. It refers to conflict resolution mechanisms done outside of the court. Often times, ADR are not in accordance with formal laws in society, hence, the term 'alternative'. Smith (1998) avers that ADR emerged owing to the often-cumbersome nature of the formal court processes and litigations. Hence, he avers that ADR are quicker and less cumbersome methods of conflict resolution. ADR could refer to any process or procedure or mechanism for conflict resolution, other than an adjudication by a judge in the court of law (Rozdeiczer & Campa, 2006; Mnookin, 1998). ADR is "a general term used to define a set of

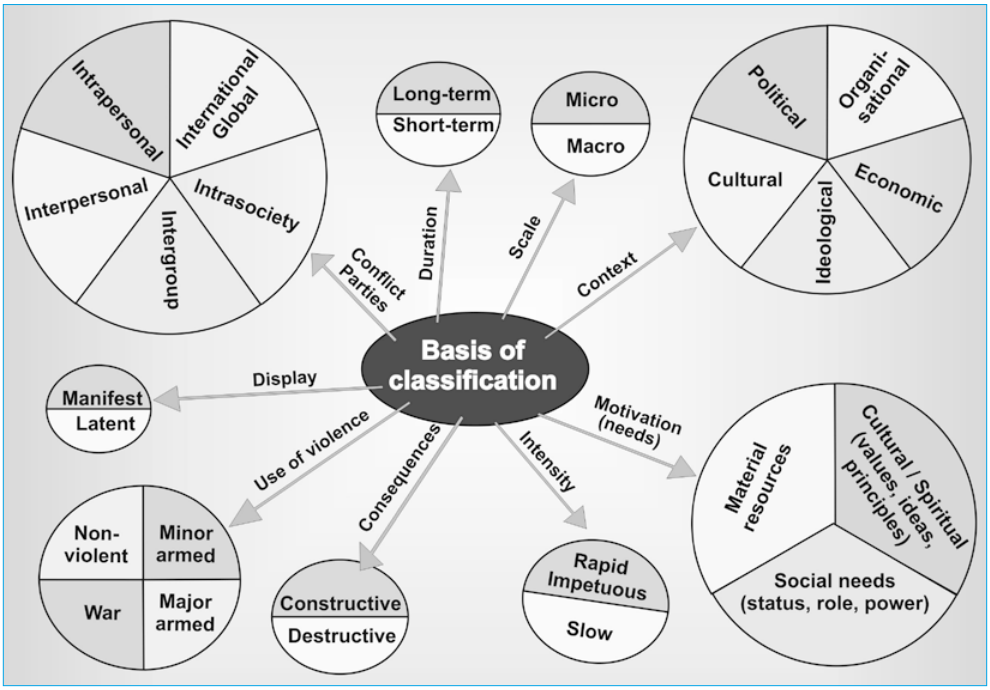

Figure 1: Classification of Conflicts

Source: Ohana and Lyamouri-Bajja (2012, p. 57)

approaches and techniques aimed at resolving disputes in a non-confrontational way" (Shamir, 2003, p. 2). It often involves third-party neutrals who are involved in facilitating the conflict resolution between or among parties (Kovach, 1994). This implies that the alternative dispute resolution usually, but not always, has third-party mediators who come in to resolve the conflict.

ADR methods have been categorized into two broad categories by Carver and Vondra (1994). The first category is the arbitration method under which parties involve in conflict agree to argue and settle their grievances before third party who then makes a binding decision on all. While the second category of ADR is negotiation; which may take the form of mediation, conciliation, etc. (Kauffman, 1992; Mckay, 1985). Overman (1992, p. 44) avers that the most common aspects of ADR are the arbitration and mediation methods. It is pertinent to note that ADR does not substitute the formal courts, rather, it only provides an alternative to it. It is "a range of procedures that serve as alternative to litigation through the courts for the resolution of disputes, usually involving the intercession and assistance of a neutral and impartial third party" (Brown & Marriot, 2012, p. 12).

Post-conflict Societies in Transition – The case of Liberia

For every society that has gone through conflict and achieved a measure of peace and stability, a number of measures must have been taken and implemented. In short, the time following crisis and conflicts are called post-conflict period. Therefore, preventing the re-occurrence of conflict(s) makes a society post-conflict society with the possibility of recurrence. The immediate aftermath of conflicts is seen as a period of transition in post-conflict societies. Missteps during this period, through lack of trust among the combatants, unfavourable background conditions or lack of clear-cut delineation of boundaries in terms of agreements among parties to the conflict can reignite or precipitate another round of crisis and/or intensify the previous conflict. While three reasons have been adduced as determinant of whether post-conflict societies in transition will fall back to conflicts, *viz* unfavourable internal conditions and contradictions (e.g. low income, resource dependency, conflict in the neighbourhood and the nature/character of the previous conflict); level of international support (ECOWAS, AU, UN, etc.) and the existence of frameworks to strengthen and support societal conflict transformation (SCT) platforms through ARD techniques (Afolabi & Idowu, 2018; Fiedler & Mroß, 2017; Sandu, 2013a). The existence and management of these conditions and frameworks often determine the sustainability of transition to peace of post-conflict societies.

For Liberia, the conflicts had their roots in the three conditions mentioned above. While unfavourable internal conditions and contradictions spurred and drove the violent conflicts, the level of international support at the initial stage was low, contributing to the intensity and longevity of the conflicts. The non-existence of frameworks to strengthen and support societal conflict transformation (SCT) platforms was also a factor in the conflicts. Remarkably, the elimination of unfavourable internal conditions and contradictions, or at least the minimization of the contradictions, increased level of regional, continental and international support and the development of frameworks to strengthen and support societal conflict transformation (SCT) platforms coupled with indigenous ARD mechanisms have helped solidify the peace process in post-conflict Liberia (Fiedler, Mroß, & Grävingholt, 2016; Afolabi, 2015; Sandu, 2013b). We will now examine the ARD techniques used in Liberia to achieve peace.

ADR Techniques in Liberia: A Critical Discourse

From the historicity of conflicts in Liberia, there were three (land, woman and cattle – money) primarily identified causes of conflicts in the setting of the indigenous people prior to the coming of modernity. The post-violence Liberia which was fragile, where societal tensions were very high, and the justice system was in dysfunction, there was the need for alternative dispute resolution. For as argued by Uwazie (2011), in such a post-violence society, where conflicts are not quickly attended to and treated with urgency, there are tendencies that such conflicts between/among individuals and groups

have the capacity to degenerate into broader conflict, capable of throwing the country into yet another turmoil. One of the challenges towards peacebuilding in post-violence Liberia was one of lack of trust on the part of citizens towards the justice system. Hence, Flamoku and Reeves (2010) aver that it was indeed difficult to get Liberians to trust the judicial system in post-conflict Liberia, as such, the preference for ADR. Despite various reforms in Liberia's judicial system, the effect has not been widely felt by Liberians. This explains the prevalence of the ADR mechanisms in post-violence Liberia. A 2009 survey in Liberia reveals that only 3 percent of disputes were taken to formal courts, while a whopping over 40 percent disputes were resolved using ADR, and the others were cases wherein citizens took laws into their hands (Uwazie, 2011).

Whenever there are disputes, some alternative dispute resolution (ADR) mechanisms were used to ensure peaceful settlement. Any of the ADR mechanisms discussed in this section could be used, depending on the nature of the dispute or conflict and severity of the offence. As ADR mechanism in Liberia, mediation and negotiation were parts of the most prominent in the country (Afolabi & Idowu, 2018). This section thus, takes a critical discourse on the various ADR in forms of negotiation and mediation adopted in post-violence Liberia.

a. Town Hall

The Town Hall method is used, when family head failed to resolve an issue arising from within the family. In its procedures, it very resembles with the *divano* and *Kris Romani* of the Roma community (Sandu, 2018). That is to say, two brothers or sisters or a sister and a brother or a husband and wife, and so on have a quarrel that their parents cannot handle, hence, it is brought before the family head. When the head of that family also fails to resolve the issue, then it is lifted to the head of the men or women groups, or the chief council (Galvanek, 2016). It is at this level, that a town hall meeting is held involving the disputed parties. There are always open hearings and cross-examinations that take into account the customary practices and procedures. Age, the status of the disputed persons, past involvement in previous conflicts, etc. are the parameters used to establish guilt. Penalties are paid by the party found guilty. Such penalties could include but are not limited to open apologies for days around the town at early morning or late evening. With the wrongdoer saying, for example; "I have offended Mr James by stealing his yams and do hereby apologize and ask for his forgiveness, so I am asking the town to join me in my pledge for mercy from him". In most instances, no fine is imposed.

The town hall meeting is usually run by traditional elders and could also be applied to disputes between and among communities. For instance, Flamoku and Reeves (2010) provide the example of the outbreak of violent conflict in Voinjama, Lofa County in February 2010 between youths of Lorme and Mandingo ethnicity, wherein the elders, via the town hall setting, resolved the conflict. Furthermore, in Bong County in December

2010, the town hall ADR mechanism was also adopted wherein an elder resolved a 50-year old land dispute between the Zaye, Queekon and Tonnie communities (Flamoku & Reeves, 2010). These disputes resolved were capable of degenerating into full blown conflicts, but for the timely intervention of the elders' council via the town hall ADR system in Liberia.

In the town hall, disputes are resolved by chiefs, elders or spiritual leaders, using widely accepted cultural paradigms. Galvanek (2016) refers to the town hall ADR in Liberia as a system of indigenous court. When it comes to conflict resolution in Liberia, the indigenous people respect and listen to their chiefs and elders, hence, they are often the custodians of the town hall ADR mechanism. Currently, the chiefs who preside over the town hall meetings are positioned within the executive branch of government, under the Ministry of Internal Affairs; and they are often, elected by their own people (Galvanek, 2016). However, there has not been any election for the chiefs since 2006, but they are now being appointed mostly based on nepotism, cronyism or special favours (United Nations Mission in Liberia [UNMIL], 2011). Nevertheless, Isser, Lubkemann and Saah (2009, p. 25) argue that the above development has not in any way, affected the legitimacy of the council of chiefs who preside over town hall meetings.

In the town hall meetings presided over by chiefs and/or elders, the common method often used to achieve reconciliation and harmony is by addressing the root cause(s) of the dispute in the first place. The importance of addressing the root cause(s) of disputes during conflict resolution has been stressed - it ensures that future occurrences are prevented, rather than just dealing with the features of the present conflict (Afolabi & Idowu, 2018). This practice of addressing the root cause of disputes in Liberia has been referred to as "searching for the truth, identifying the underlying issues and social factors that inform the disputes" (Isser, *et al.,* 2009, p. 26). Galvanek (2016) explains the process of doing this thus: "…through story telling: recalling the history of the families of the disputes, how and when they migrated to the current place and how they have been friends, and in the case of land disputes, explaining the history of the land" (p. 19). Furthermore, it is important that the chiefs/elders, outside the town hall meeting proceedings, visit the conflict scene or where the conflicting parties reside (Galvanek, 2016). This is often with the belief that one cannot resolve a dispute from afar without visiting the scene of such conflict/dispute. One major sign to demonstrate that conflict has been resolved is by requiring the conflicting parties to bring food, come to the town hall, sit together and eat and dance to show harmony and forgiveness.

The town hall meeting ADR mechanism has been consistently chosen over the formal court system because it is less costly and does not often involve the bribes and kick-backs in the formal courts. Nevertheless, Galvanek (2016) opines that in Liberia, the community often meets the needs of these chiefs/elders who preside over town hall meetings. This, they do by tending their farms, bringing food to them and sometimes

offering significant financial gifts to the chiefs/elders. However, these raise questions about the ability of the chiefs/elders to remain unbiased amidst these numerous favours. It also somewhat suggests paying the costs and kickbacks involved in the formal court system in disguise. Today, there has been transformation in the role of chiefs and elders. The traditional chiefs and elders have now been officially recognized by the Liberian government and has brought them under the aegis of National Council of Chiefs and Elders, to bridge the gap between government and the people.

b. Women Leaders

When it comes to the issues of peace, which conflict resolution is a significant part, women are central actors and 'right leaders' (Women's Organization, 2008). At the lowest level in Liberia, the women leaders' ADR mechanism is used when two ladies (either women or girls) quarrel and failed to resolve issue arising from such quarrels among themselves. Such disputes could include two ladies fighting over plot of land at the farming site, fighting over a gentleman, a lady beating up her friend's child and so on. Often times, the parties involved cannot handle the dispute among themselves, hence, it is brought before the woman leader. Then it is lifted to the head of the women groups, or the chief women council. It is at this level, that women meeting is held with the disputing parties in attendance. There are always opened hearings and cross-examinations that take into account the customary.

At a larger scale, the role of women and women leaders in conflict/dispute resolution in post-violence Liberia cannot be overemphasised. Galvanek and Planta (2017) observe that women leaders are accorded much respect in Liberia and they play a significant role in conflict resolution. Each community in Liberia has a woman leader who is active and influential in the community and continue to play a role in dispute resolution among her immediate populace. Women's role in peacebuilding in Liberia cuts across the local, national and international levels (Action Aid, Institute of Development Studies & Womankind Worldwide, 2014). This role has been severally demonstrated both during and post-conflict periods in Liberia. Women's right organizations and movements have often demanded and mounted pressures on their leaders to comply with, implement and maintain peace accords in the country. Also, during the early years of the war, a national women's coalition group- 'concerned women of Liberia' built peace process by making direct contact with women held in territories by warring factions, usually via the instrumentalities of mediation and negotiation (African Women & Peace Support Group, 1998, p.4).

The formation and existence of women groups such as the Mano River Union Women for Peace Network (MARWOPNET) and the Liberian Women's Initiative (LWI) (Afolabi & Idowu, 2018; Badmus, 2009) were also platforms via which the ADR mechanism of women leaders came into play in Liberia. As Moran and Pitcher (2004) observe, the

MARWOPNET played a significant role in bringing the Mano River presidents back to negotiations in September 2001 and the group was also a signatory to the Liberian Pace Accord in 2003. Furthermore, the LWI also played a role in attempts to frustrate the UN-sponsored peace accords because they saw the process as one which will further fuel the Liberian crisis (Action Aid, *et al.,* 2014). Another women group - the Women in Peacebuilding Network (WIPNET) also launched a 'Women of Liberia Mass Action for Peace' campaign in 2003, "focusing on the cessation of hostilities between the warring parties; and lobbied at governmental and UN levels (Action Aid, *et al.,* 2014, p. 3).

At the local level, the women/women leader ADR mechanism has also been effective in Liberia. Women in local rural areas use their positions within local institutions to rebuild, rehabilitate, reconstruct and reconcile war-torn communities. Moran and Pitcher (2004) provide an example of the Sande society in North-Western Liberia, where women leaders provide guidance for young girls who have lost their families. They also cite the example of the South-Eastern Liberia, where women leaders have been actively involved in the rehabilitation and reintegration of young male ex-combatants in their immediate communities. At the individual level, prominent women leaders, like Reffel Victoria, had played a significant role to secure the surrendering of Charles Tylor, the leader of the National Patriotic Front of Liberia (NPFL), a revolutionary force linked with major crises in Liberia. According to Badmus (2009), Reffel's diplomatic skills was key to convince the 1995 Extraordinary Summit of ECOWAS on Liberia of her boss' (Taylor) decision and willingness to negotiate peace. Reffel's diplomatic skill at the Summit eventually ensured that Taylor surrendered and apologized to Liberians for war crimes committed by the NPFL (Nigerian Tribune, 6 June, 1995, as cited in Annig, 1998, p.10).

In explaining their role in peace process in Liberia, Annie Saydee reveals "we talked to them [leaders of warring factions]. They are children to us and we wanted this fighting to stop. We, the women, bear that pain. So, we begged them - Kromah, Boley, Taylor - at different times" (as cited in African Women and Peace Support Group, 2004, p.13). Another prominent display of the women ADR mechanism in conflict resolution played out when the women organization *Women in Liberia Liberty* (WILL) "initiated food aid and sensitization programmes that helped tremendously in alleviating the sufferings of war victims" (Badmus, 2009, p. 828). Also, during the war, another women group, the Women in Peacebuilding Network (WIPNET) mobilized and organized protests against the NPFL government and also organised prayer and fasting programmes to put an end to the conflict in Liberia. All of these women's action contributed in no small measure to the resolution of conflicts in Liberia and the restoration of peace in the country.

The role of women and women leaders in Liberia's peace process and national affairs is evident in the country's records in women leadership. Liberia holds the record of the first female president elected in 2005, the first female president of an African national university and the first female Head of State (Action Aid, *et al.,* 2014).

c. Cultural Fraternity (Sandi/Poro)

The cultural fraternity (Sandi/Poro) ADR method is used between members of the fraternities but also used to ensure public ordinance within communities. If a person uses a language that is considered as taboo or committed an act against the community, or the population, the fraternity comes in to settle any such disputes (Sites of Liberia, 2009). That is to say, a person commits a crime that is above the jurisdiction, like broken the laws of the community, killed a person or any such. It is at this level that a fraternity is being used involving the disputed parties or persons. There are almost, always no open hearings and cross-examinations that take into account the fraternity procedures. This is always concluded with fine of various types (goats, cows, based on the nature of the offence). This operates more often at the local level within the local communities. Disputes that are not resolvable by the cultural fraternity are taken to the elders/chiefs under the town hall meetings. The cultural fraternity is mostly made up of members who are the custodians of the cultures of the various local communities; and as such, it often deals majorly with cultural disputes.

d. Clan-to-Clan

This is somewhat similar to the elders/chiefs and the town hall ADR mechanism in Liberia. The clan-to-clan method is used when there are issues arising from between clans. That is to say, two or more clans are in a dispute that they cannot handle, hence, it is brought before the clan council. Then, it is lifted to the head of the clan council. It is at this level that the clan council meeting is held involving the disputed clans. The clan council is often made up of hierarchy of chiefs before whom the disputes are presented and the conflicts are resolved via a mixture of mediation and arbitration (Galvanek & Planta, 2017). The procedure to be adopted, whether it is mediation, arbitration or both varies, mostly based on the individual chiefs involved in the cases of disputes.

The decision from clan-to-clan dispute resolution are not rushed but are taken at a slower pace in order to give room to the different clans involved in the conflict to reflect and also to reach consensus (Galvanek & Planta, 2017). The single objective of the clan-to-clan ADR mechanism of dispute resolution mechanism in Liberia is to achieve social reconciliation and also to restore harmony between and among conflicting clans. This will further give room for peaceful coexistence among members of the community. Issues that go beyond the management or settlement within the clans are referred to the clan council for the resolution of such conflicts. The clan council is usually headed by a high-ranking chief who oversees a clan meeting over the resolution of a given clan-to-clan dispute. The clan-to-clan ADR mechanism of dispute resolution thus ensures that clan-to-clan disputes do not degenerate into community dispute, which has the potential of graduating into full-blown civil wars. There are always open hearings and cross-examinations that take into account the customary laws. This is always concluded with fine of various types.

e. Conflict Resolution by Ordeal (Sassy Wood)

Ordeal is the most common means or mechanism by which the settlement of disputes among the particularly rural population. Also known as 'Sassy wood', it is a controversial dispute resolution mechanism in Liberia. This practice is basically permanent among the indigenous settlements within the social-political and social-economic frontier of the nation's geography. Those who practice this are licensed by the government via the local or municipal authorities. They are said to be able to determine any wrong doer within the society, ranging from stolen properties, witchcraft activities, adulteries and any such offence against humanity and society (Ntuli, 2018). This system of dispute resolution, according to Ntuli (2018), Flamoku and Reeves (2010) and Galvanek and Planta (2017) has to do with an adjudication process which is based on the superstition that the judgement of guilt could be found in the hands of ancestral spirits. This ordeal ADR system is reserved for serious crimes and offences, such as rape, murder, theft and witchcraft, among others. Some of the approaches of the ordeal mechanism of dispute resolution are thought to be harmful (Flamoku & Reeves, 2010) and backwards (Galvanek & Plante, 2017) too.

One method often adopted by the ordeal system of dispute resolution is one in which victims are meant to take normally harmful substances, such as poisons, or having a red-hot cutlass placed on his/her legs. When the accused is guilty, he/she will definitely be hurt by any of these and if the accused is innocent, nothing will happen to him/her (Chereji & Wratto, 2013). Isser, *et al.* (2009, p.58) assert that the "supernatural power of the ritual will protect the innocent from harm". What this implies is that the guilty of alleged crimes will usually be hurt by either the poisonous foods or the red-hot cutlass, whereas, the innocent will not suffer any hurt under this mechanism. Another less harmful method adopted in the ordeal dispute resolution mechanism is by giving the accused person foods that are ordinarily not harmful or poisonous to consume. While the healthy non-poisonous food will hurt a guilty person, it will, nonetheless, not hurt an innocent person (Galvanek & Planta, 2017). Ntuli (2018) provides yet another strand of the dispute resolution by the bitter drink method. Here, the accused is presented with a bitter drink made from a local indigenous bitter plant, to consume. Regurgitating the bitter drink demonstrates innocence, whereas, where an accused fails to regurgitate the bitter drink, then, he is found guilty.

Once found guilty under the ordeal mechanism, such a person is publicly shamed and made to repent of his crimes, while also making a public apology, plus a paid compensation to his accuser. As a small parenthesis, shame is the central concept in any indigenous conflict resolution mechanism and it is understood as an efficient mechanism to control the behaviour of the individuals. This done, the guilty will then be reunited and reintegrated back into the community (Chereji & Sandu, 2018). Ntuli (2018) avers that in the case of witchcraft or murder, the offender could be punished to the extent of

being banished from the community. The major purpose of the ordeal dispute resolution mechanism is to keep crime as low at the barest minimum and also to encourage people to be truthful when a crime has been committed or when a dispute is being resolved (Galvanek & Planta, 2017, p. 33). However, given the very harmful nature of most strands of the ordeal method and the belief that it undermines human rights, the method has been banned by the Liberian government (Ntuli, 2018; Galvanek & Planta, 2017). This ban has however not gone down well with most Liberians, especially traditional leaders. This is so, as the traditional leaders and their communities believe that the ban on the ordeal ADR dispute resolution mechanism has led to a significant decrease in the "effectiveness of the customary system, as it has removed a method for them to ascertain the truth in particularly difficult cases" (Isser, *et al.,* 2009, p. 64). Notwithstanding this government ban, however, Ntuli (2018) avers that "it continues to be used and trusted by many" (p. 44).

f. Palaver Hut and Kinship of Pleasantry

These ADR mechanisms have served as forums where perpetrators, victims and survivors meet and confess. On the one hand, perpetrators confess their war crimes and, on the other hand, war survivors forgive them or subject them to go through community punishment as the case may be (Afolabi & Idowu, 2018; Kurz, 2010). As the name implies, the palaver hut is usually held in a round hut, where, under the leadership of community elders, the villagers gather to resolve disputes and mediate reconciliation (Ntuli, 2018). The *palaver hut* is an environment held with high esteem and believed to be sacrosanct. This is due to the superstitious belief that ancestral spirits are also in attendance and, as such, people do not leave the hut until disputes are fully resolved (Ntuli, 2018). For Pajabo (2008), the *palaver hut* can be applied in all kinds of disputes and its major aim is to get admission of guilt and apology from the offender and forgiveness from the victim. At the acceptance of the apology, the offender owes certain compensation to the victim, after which they (offender and victim) share a plate of food as a sign of sincere forgiveness (Danso, 2016). Danso (2016) further posits that the spirits are usually invoked during the process, so as to get all the parties to the dispute to be truthful, else, they will face the wrath of the spirits.

According to Naine (2005), the kinship of pleasantry creates a forum for a kind of friendship formed across cultural ties, usually based on humour and mockery. This should normally and usually contribute to the disruption of mounting pressures which are capable of midwiving full-blown crisis.

g. Sharing the Kola Nut

This ADR method in Liberia is usually based on forgiveness and is built on the slogan of "let bygones be bygones" (Pajabo, 2008). It is a system that also has to do with elders' investigation of a conflicting issue brought before them. In this method, when the ac-

cused is found guilty, he/she is asked to ask for forgiveness from his accuser/or victim. Ntuli (2018) observes that as a sign to show that forgiveness has been obtained, the accused offers kola nut to the victim; if the victim throws the kola nut away, it means he is not ready to forgive, but if he eats half of the kola nut and offers the other half to the accused, then he has forgiven him of his crime. The breaking and sharing of kola nuts between the accused and the victim thus symbolizes forgiveness and reconciliation in this mechanism of dispute resolution in Liberia.

Problems of ADR in Liberia: Examining Limitations and Lessons Learned

There is no gainsaying the fact that the various ADR mechanisms which have been adopted in Liberia has been productive in terms of dispute resolution. Albeit, this has not also been without some problems and/or limitations. For instance, no doubt that women have played a prominent role in peacebuilding in Liberia, however, the potentials of that mechanism still remain to be fully tapped and exploited, owing largely to what Badmus (2009) refers to as the 'socio-cultural practices of patriarchy'. The fact that men are still continuously being placed above women in the society in most parts of Africa, Liberia inclusive, has ensured that the women have not fully played a role in dispute resolution. This is true to the extent that most of these issues are consistently referred to the elders, who are mostly men in the society. Women's opinions and views are scarcely sought when there are issues of dispute in the society (Ekiyor, n.d.). One obvious practice of patriarchy in Liberia, for instance, is the prioritizing of the male child education to that of their female counterpart. This was reaffirmed as Angela Kearney, the UNICEF Liberian representative asserts: "we continue to remain in a situation where girls remain at a distinct disadvantage when it comes to enjoying their right to quality basic education. Consider these facts: the present ratio of girls to boys at the primary school level in Liberia is 40% to 59%" (UNICEF, Online, April 17, 2006). The continuous relegation of women to the back seat has continued to pose a limitation to the extent to which women can be fully utilized as an ADR mechanism in Liberia.

Closely linked to the above is the exclusion of youths from conflict resolution processes in Liberia. In Liberia, young and unmarried men/women are mostly excluded from decision-making processes, including those related to dispute resolution (Galvanek & Planta, 2017). Galvanek and Planta (2017) further aver that the exclusion of youths, arguably, was one of the major factors which led to the Liberian civil wars, as warlords consistently exploited the frustration, exclusion and grievances of youths. This corroborates with Carl's (2003) position that some traditional conflict resolution mechanisms have the potentials to "reinforce undemocratic patron-client relationships and may have contributed to the conflict" (p. 4). Hence, rural youths in Liberia felt "ill-treated with regard to land and marriage prospects by the customary sector" (Unruh, 2007, p. 7), a situation believed to have led to resentment and also contributed to the war.

Furthermore, the tendencies for some of the ADR mechanisms to abuse human rights is very much present. For instance, the conflict resolution by ordeal has been labelled as harmful and backwards (Galvanek & Planta, 2017). This is justified, given that some of the ordeal practices, as revealed in previous section, are very dangerous and indeed fatal and do not also conform with the ethics of punishment for crimes or offences, thereby posing a threat to human rights. For example, the ordeal method which requires people to drink from harmful substances, such as poison or have red-hot cutlass placed on his/her leg (Isser, *et al.,* 2009, p.58) are obviously an abuse on human rights. Uwazie (2011) also notes the possibility of some ADR mechanisms/practices being at odds with the modern and formal mechanisms, hence, could be very controversial. The ADR mechanisms in Liberia have also been significantly weakened by the wars. Circumstances such as "lack of resources and unclear mandates" have undermined, to a large extent, the ability of Liberian chiefs and elders to resolve conflicts (Uwazie, 2011, p. 45).

Generally, giving it an African perspective, Uwazie (2011) observes that ADR programmes face four key challenges in Africa; *viz:* "inadequate political support, human resources, legal foundations and sustainable finances" (p. 5). This situation is not different in Liberia, where the government is often slow to understand and recognize the usefulness/need of ADR and, as such, they are often left in the hands or the third-party donors.

Retooling the ADR Mechanism as a Peace-building Technique – Exploring Possibilities

Because of the significant role ADR mechanisms have played in conflict resolution in Liberia and given the numerous challenges the ADR face, there is enough room for improving ADR in Liberia. This will ensure that the ADR mechanism is further and better utilized for dispute resolution in the country. To achieve this, steps/actions must be put in place to address the critical limitations/challenges which ADR encounters here. Since the role of women in ADR cannot be overemphasized, one critical step towards improving ADR in Liberia, therefore, would be the need to encourage women participation in conflict resolution processes (Badmus, 2009). This can be achieved by increasing the acceptance and incorporation of the views and opinions of women into peace negotiations. Women must also be given equal rights as their male counterparts, in terms of access to formal education. By educating the women, they are empowered which has the potentials of getting more women involved in dispute resolution. There is also the need to involve youths more in the ADR methods in Liberia. There is also the urgent need to completely modify or jettison those ADR mechanisms which tend towards barbarism and abuse of human rights.

Uwazie (2011) generally highlights, some important steps towards improving ADR in Africa. he argues that these steps are also useful to improve the ADR mechanism in

Liberia. Uwazie's steps include:

- Enacting robust ADR legislation: This is believed would improve the status of ADR, build public confidence and increase ADR's utilization;
- Investing in a broad capacity building: This will further improve the country's litigation and prevention capacity;
- Creating appropriate incentives for stakeholders: This will make clearer the benefits and contributions of ADR mechanisms to legal professionals, which will further improve the scope and use of ADR mechanism;
- Measuring progress: This will maximize the efficiencies and complementarities of ADR in the country; and
- Targeting youths early: This will not only improve the ADR mechanism, but will also engage the youths, thus, reducing youth restiveness which is capable of degenerating into civil wars (p. 36).

Conclusion: Immediate needs, future projections

The prevalence of violence and conflicts in Africa attracts the need for measures that stem and address, in a mediate manner, the recourse to conflicts as well as interrogate the alternative dispute resolution mechanisms that can be used to achieve peace, especially in post-conflict societies. This approach has two-way benefits, providing an understanding of the ADR techniques and how these can be used to in post-conflict societies, especially in Africa. Liberia, as unit of analysis, has had several recurrences of violence and conflicts calling for the need for ADR. The paper identified unfavourable internal conditions and contradictions (e.g. low income, resource dependency and conflict in the neighbourhood and the nature/character of the previous conflict); level of international support (ECOWAS, AU, UN, etc.) and the existence of frameworks to strengthen and support societal conflict transformation (SCT) platforms as issues that could shape and determine re-occurrence of violence and conflicts. The adoption of indigenous ADR techniques, including the ones discussed in this paper, it is believed, would go a long way to help put an end to conflicts and help post-conflict societies in Africa achieve peace.

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Sierra Leone: Critical Discussion on Conflict Resolution and the United Nation Mission

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Abstract: The aim of the current study is to explore the conceptual development of African civil conflicts with regards to five global dimensions in the African Societies. Sierra Leone Conflict and Conflict Resolution in African civil conflict studies presents a unique opportunity for the investigation of African culture due to its alive and fluid effects of the present situation. Currently, there is no comprehensive study that integrates the conceptual development of global dimensions of African civil conflicts through criticising the conflict resolution and UNAMSIL at the same time. In order to provide a conceptual evaluation of the five major global dimensions of African civil conflicts Sierra Leone conflict, conflict resolution and UNAMSIL were elaborated under the name of politics and contemporary issues in UN peacekeeping operations. The current criticism suggests that African civil culture related to the socio-economic issues have an impact on the conflict resolution reported over time by UN peacekeeping operations. During the chosen case, the analysis of national identity, weak governance structure and ethnic tensions were distinctive for Sierra Leone conflict and its aftermath.

Keywords: Sierra Leone conflict; conflict resolution; neo-patrimonial state; African conflicts; UNAMSIL.

1. Introduction

To begin with, an African civil conflict has five major global dimensions. These are the lack of national identity, weak governance structure, the corruption and neo-patrimonial state, ethnic tensions and the lumpen culture (Pham, 2006, p. 178). In order to make a proper and comprehensive understanding of Sierra Leone conflict, these five major dimensions should be included in this work. First, the reason of an African civil conflict, in general, and also in the specific

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case for Sierra Leone, would be found in the observation that most of the African countries like Sierra Leone were never a nation. However, Africa has a prosperous social, cultural and political history that they had never been altered as an advantage for African countries. Significantly, the absence of Sierra Leonean nation came from the composition of African states as colonial legacies. Extensively, this notion of colonial legacies constructed the infrastructure of disparate groups within the African countries, that they were merely influenced by the certain powers of time such as Britain and France. Specifically, this colonial structure had huge effects in the case of Sierra Leone, since it faced two separate colonial-era political units, which are the Crown Colony of Freetown and the Protectorate of Sierra Leone. For this point, it is important to mention that both colonial periods extended the ethnical separation of Sierra Leone's community by each of them relying upon the ancient differences instead of combining different ethnic groups together. As a result, it is hard to talk about national identity in most African countries like Sierra Leone (Pham, 2006).

Secondly, the weak governance structure is also a crucial reason for the 'failed states' of African countries and the global dimensions of an African civil war. To explain weak governance structures, one can argue that African countries had low measures in terms of improved national coherence. Also, as they were economically exploited by big economies, the effective use of their natural resources is almost impossible. As in the case of Sierra Leone, as a result of the weak governance structure, they had troubled situation in 1973 period of the global oil crisis that directly had affected on a decline in diamond and iron ore prices. Moreover, this economic failure of African countries could be linked with the incompetent statesman such as Joseph Momoh (Pham, 2006).

Thirdly, corruption and patrimonial state are the global dimensions of an African civil conflict. Here, diamonds conflict took place in the corruption process for Sierra Leone. According to Pham (2006), the APC regime would be considered as a stereotypical example of neo-patrimonial state structure, which indicates the idea that political power of the country shall enjoy their power to use for the benefit of '*clientelistic network*' (Pham, 2006).

The fourth, related with the first, the second and the third one, the ethnic conflict is not only global dimension of an African civil conflict, but also is the centre corner of the reasoning and shortcoming of all the above-mentioned deficiencies. Arguably, some suggest that Sierra Leone's civil war, led by RUF, had no ethnic dimension; however, it is hard to ignore the ethnic component of Sierra Leone's collapse. Finally, the lumpen culture proves that the experience of failed states in Africa and elsewhere, lack of national identity, ethnic tensions and corruption contributes to a lumpen culture among the marginalised youth of African countries. Similarly, in Sierra Leone, the Revolutionary United Front (RUF) had utilised the marginalised youth group (Pham, 2006).

2. Sierra Leone Civil War Started

In the light of all this information, Sierra Leone's civil war appeared at the end of the Cold War, which indicates that, while in the Cold War period enemy was apparent with distinct uniforms, but during the new wars period, the distinction between fighters and civilians was almost impossible (Kaldor, 1999; Lambert, 2015; Mitton, 2015). Dramatically, in the case of Sierra Leone, the concern of women, children or elderly as humanitarian bases disappeared. Deliberately, the destruction of the daily life had placed whole populations in a position of dependence on a specific group controlled by RUF.

The 1985 declaration of President Joseph Mamoh can be seen as the starting point of the 1991 Sierra Leone civilian war. The opposing group controlled by Foday Sankoh expanded their ideas on the rejection of Mamoh by marginalising youths, especially university students. These university students were deported from Sierra Leone, who was later refuge either Ghana or Liberia. Arguably, some believe that they were trained by Qaddafi's intelligence agency that they were deported from their own country. The common point for these students and proponent of Sankoh could be identified with regards to the dynamics of lumpen culture, which represents a group of hopeless and unemployment peoples. Significantly, the first phase of the war ran from 1991 to 1993 began with the invasion of RUF from the eastern border of the country, which is Liberia. As time continued, the RUF had a chance to strengthen their inhumane actions in the region (Richards & Vincent, 2008, p. 82, 83).

As Bellows and Miguel (2006) emphasise "the conflict eventually reached all regions of the country and led to major political instability (p. 394). Respectively, Sierra Leone had experienced two major coups as well as a deterioration of the Sierra Leone Army (SLA). Interestingly, Bellows and Miguel (2006) argue that there could be colluding issues among RUF rebels and SLA by disclosing the Foday Sankoh's connection with the Sierra Leone Army. As a result, they pointed out that the main victims of violence were civilian rather than soldiers that made Sierra Leone conflict tragic. Additionally, RUF aimed to generate their power for damaging the political and institutional structure of Sierra Leone government leading by Joseph Mamoh. Therefore, RUF rebels were specifically targeting the traditional rulers in rural area and chiefs in order to show their rejection against governance. Besides, in order to damage institutional structures, they were also burning the schools and courthouses. Indeed, young RUF recruits attacked civilian population in order to set internal disorder within Sierra Leone peoples as well as their home villages by leaving deep scars in their body (Bellows & Miguel, 2006).

Meanwhile, the RUF organisation took over the administration from Joseph Mamoh. Then, RUF organisation members started to deport people from Sierra Leone who were against RUF. Interestingly, when we go back to 1985, Mamoh administration also used this method to suppress his opponents, which caused the establishment and exacerbating RUF's actions. Yet, one can argue the lack of indication that with the RUF what sort of

government would replace the existing one?. Unfortunately, the major shortcomings of the RUF actions could be observed in humanitarian issues. To emphasise humanitarian issues, Bellows and Miguel (2006) declared that 500,000 people were killed; 1 million people displaced from their home, thousands of people are victims of brutal amputations, rape and assaults (p. 394).

Sierra Leone's tragedy is the consequences of multiple misfortunes. In this part of the work, in order to provide a critical understanding of Sierra Leone civil war, the essential consequences of multiple misfortunes is included the role of Liberia in the civil war process. The Liberian civil war had spill-over effects into Sierra Leone civil war. Moreover, the rising power of Foday Sankoh could be linked to his relationship with Charles Taylor, who is head of the National Patriotic Front of Liberia (NPFL). Also, Foday Sankoh had benefited from the role of external support by Muammar Qaddafi, who provided training, arms and ammunition for RUF's rebels. Clearly, Qaddafi's support came from the idea that his anti-Western crusade, which was also the ideology of RUF. In other words, RUF criticised Siaka Stevens's administration based on the idea motivated by Charles Taylor's NPFL that the necessity of protection of the country's resources from foreign capitals is required for Sierra Leone (Hirsch, 2001; Alao, 2017; Brown, 2017).

3. ECOSOC Resolution 1503

The important consideration of the Sierra Leone conflict can be observed with regards to ECOSOC resolution 1503 which is about the identification of gross and systematic violations of human rights. Clearly, the RUF, in its raising period, killed thousands of people and caused thousands of victims of brutal amputations, rapes and assaults as well as displacing approximately 1 million people, making them into refuges, including many children, women or elderly. To put it a different way, the RUF's so-called revolutionary movements became an important example of gross and systematic violations of human rights. On the other hand, the RUF's strategy on child soldiers was also the most problematic pars for the defence of RUF actions. Particularly, Zack-Williams (2001) pointed out that "It has been conservatively estimated that between 5,000 and 7,000 child combatants have fought on each side of the civil war in Sierra Leone" (p. 73). Indeed, these estimated numbers of child soldiers were under the RUF controlled. The age scale of these combatants was between the ages of 8 and 14 years, which directly touch upon the human rights concerns, especially children rights. Unfortunately, these children were recruited as they were ideal soldiers for RUF leaders not only they tend to obey the orders easily, but also supervising them was unproblematic (Zack-Williams, 2001, p. 79).

Here, according to the Universal Declaration of Human Rights (UDHR) Article 38, "States parties shall take all feasible measures to ensure that *persons* who have not attained the age of fifteen years do not take a direct part in hostilities". From this clear explanation,

it can be said that by referring to article 38, the participation of children demanded by RUF in Sierra Leone's civil war was a breach of the Universal Declaration of Human Rights. However, it is not that simple to categorize child soldiers in Sierra Leone as most of them were volunteers to the RUF. For Sierra Leone's children, military life has provided better opportunities because they were 'street child'. Therefore, they voluntarily entered the RUF for the transition from street life to child soldiers, which mean a sense of belonging to a group. Effectively, the child soldiers issue in Sierra Leone had to have multidimensional implementation (Zack-Williams, 2001). Yet, on the one hand one can criticize government for their ineffective administration on economic and civil rights, which brought about the high ratio of poverty, was the main reason of children recruited as combatants. On the other hand, one can question the collapsed state structure in the field of the role of civil war led by the RUF. Basically, all these explanations shows that the role of the RUF for Sierra Leone 'failed state' and the incompetent authority was mixed and matched in the issue of child soldier, which could not change the reality that today the high number of children in disarmament, demobilisation and reintegration camp have been trained.

Transition to the peace, there was a regional search for a solution to Sierra Leone's civil war. Firstly, in 1996, the Abidjan Agreement, then, secondly, in 1999, the Lomé Peace Agreement was signed between RUF and Sierra Leone government. Unfortunately, the Abidjan Agreement was broken as a result of the RUF's unwillingness to disarm. Emphasising the role of neighbouring powers in Sierra Leone's Peace Process, one can easily say that although the Liberian connection seemed to be a promoter of the RUF and acted as a chief supporter to the rebels, Nigeria led a West African intervention force in order to displace the junta from Freetown. Gradually, the experience of the gradual rebel incursion to Freetown and also the Nigerian ECOMOG's activities to suppress rebels change the discourse of the conflict. Therefore, the government signed the Lomé Peace Agreement on July 7, 1999, by giving some places to RUF in government. However, the rebels were much less cooperative on such issues as demobilisation of combatants. Yet, Sierra Leone faced with the continuing fighting in many locations as well as persistence of human rights abuses, which represent that the Lomé Peace Agreement was also inadequate in terms of indication gross violations of human rights in Sierra Leone. Arguably, by not recognizing RUF's actions as genocide, crime against humanity, war crimes and other serious violations of international law, UN Security Council could be considered ineffective (O'Flaherty, 2009).

4. UN Observer Mission in Sierra Leone

The UN Security Council resolution allowed the establishment of UN Observer Mission in Sierra Leone (UNOMSIL), which was aimed to assist ECOMOG in implementing the agreement. The main purposes of the UNOMSIL were monitoring ECOMOG's adherence to international norms as well as rebuilding Sierra Leone police force in the wake of

the Conakry Peace Agreement. Apparently, neither the Conakry Peace Agreement nor UNOMSIL were effective in providing for the security of Sierra Leone people. After the UN peacekeeping operation in Sierra Leone has been replaced with UN Mission in Sierra Leone (UNAMSIL). It was created by the United Nations Security Council in October 1999 to manage the implementation of the Lomé Peace Accord that intended to end the Sierra Leone civil war. Compared with previous attempts at peace, UNAMSIL was a much larger mission with the approximately 15,255 military personnel, including 256 military observers (Dobbins, Jones, Crane, Rathmell & Steele, 2001, p.136).

Cook (2003) outlined the mandate of UNAMSIL in Sierra Leone by these words: "integrates military and civilian aspects and envisages the deployment in successive phases, into RUF-controlled areas of UNAMSIL troops, [U.N.] civil affairs, government personnel and assets to establish and consolidate State authority and basic services in these areas" (p. 24). In addition, there was a rapid deterioration on the security conditions in 2000, which impeded the full deployment of UNAMSIL. Gradually, the RUF and AFRC fought again intensified by the ECOMOG engaging in several armed confrontations with RUF fighters. These incidents resurrected the evidence that disarmament, demobilisation and reintegration (DDR) were not easily adopted by the RUF, AFRC (ex- SLA) and CDF fighters. Subsequently, in the DDR camp, UNAMSIL personnel refused RUF in order to prevent destroying events. However, RUF repeatedly continued their action against UNAMSIL personnel by taking UN troops hostage. These besieged UN personnel, as well as at least nine killed UN personnel, proved the RUF's attitudes on continued to violently confront ambush and take hostages (Cook, 2003; Bellamy, Williams, & Griffin, 2004; Ryan 2000).

Critically, a number of important proposals have been made to increase UNAMSIL and ECOWAS operations. Yet, the most influential one was led by UK Ambassador Jeremy Greenstock titled as the greatening UNAMSIL's effectiveness and capability of successful monitoring. The deployment of British forces operated to maintain security in Freetown and provide a positive step for Sierra Leone army. On the other hand, US Special forces composed of the Nigerian, Senegalese and Ghanaian army units that were helpful for UNAMSIL. In the light of this knowledge, United Nations Mission in Sierra Leone (UNAMSIL) could be considered successful by engaging adequate military troops operating to stop the aggressor, which was the RUF, to protect civilians as well as peace builders (Hirsch, 2001).

Nevertheless, United Nations Mission in Sierra Leone faced with the apparent challenges. The fundamental shortcomings of the UNAMSIL were similar with the fundamental shortcomings of the 3rd generation peacekeeping operations in general. Evidently, even UNAMSIL has been operating in Sierra Leone by monitoring established ceasefire; RUF continued to violate the ceasefire by rejecting the idea of demobilisation. Also, later with the development events indicates that poorly equipped peace enforcement mandate, as

well as inadequate support from the department of peace-keeping operations (DPKO), was not successful in case of Sierra Leone. Moreover, UNAMSIL with the lack of lead power to coordinate itself had trouble in Sierra Leone. By emphasizing all these shortcomings of UNAMSIL, UK Peace Support Operations entrenched the peace by drawing attention to requirement to support peace in Sierra Leone. Principally, as the threat to peace was based on the multi-dimensional reasons as well as multifunctional initiatives, that only an enforcement-capable force could establish the necessary stability to facilitate peacebuilding (Ramsbotham, Woodhouse, & Miall, 2005).

In addition, Ramsbotham *et al*. (2005) argued that "UK intervention at such a critical juncture in Sierra Leone ultimately saved both the missions and the peace process" (p. 153). Eventually, UK PSO was successful by deciding to take robust action in defence of the peace process was related to a subsequent characteristic of 3rd generation peacekeeping operations. As compared with the traditional peacekeeping operations, 3rd generation peacekeeping operations suggest more military robust rather than just monitoring, which was experienced in 1st generation peacekeeping operations cases, such as Cyprus. To put more emphasis on this issue, one can also argue that British interest in Sierra Leone. Of course, sustainable peace should be applied in every possible area that was faced with terrible conflicts, any defects in the UN structure could negatively be affected, it could also be the promoter for new conflicts. However, in the case of Sierra Leone, it is almost impossible to ignore the role of diamonds both in conflict and conflict resolution process. Then, the new question arose: 'is it need or greed' for the UK to bring peace in Sierra Leone regardless of the diamond economy. Besides, how realistic to say that UK or UN had no role in the 'free and fair' elections return of President Kabbah to power, who had been working for United Nations (Ramsbotham *et al*., 2005, p. 153). To criticise ECOMOG's role, in this case, one could argue that in Sierra remained a vulnerability of various armed political factions in the country. Indeed, the ECOMOG force did not prevent rebellion.

5. Discussion and Conclusion

The most fundamental principle of traditional peacekeeping of consent has remained a cornerstone of not only past experiences both success and failure but also current military peacekeeping. Since the principle of consent was not designated, so that it does differ from today's peacekeeping operations that we were facing in civil wars consent is uneven and incompatible. Significantly, operating without consent, I believe that UN have been facing its own security problem in hot war-fighting environment which will become its over-riding and preoccupation. As we were witnessing the reality which is proving above mentioned discussion that in the Sierra Leone case the Security Council belatedly ordered UN troops to use their weapons against rebels first to protect themselves and help the civilians in their vicinity. It is important to mention that the move

was not effectively successful, it damaged the credibility of UN peacekeeping efforts not only in Sierra Leone but also elsewhere if the troops continue to be ineffectual.

On the other hand, one can also argue that none of the UN peacekeeping efforts brought peace to Sierra Leone as they did not address its booming illicit trade in diamonds and an important dimension of neighbouring Liberia. By accepting Liberian diamond exports as legitimate and Unless legitimate businesses cooperate to stop the illicit diamond trade from arming West Africa's rebels and warlords, the best efforts of peacekeepers are bound to fail as a means of comprehensive 'peace'?. In the end rather than realist approach that highlights the ethnic-religious link and state sovereignty within the UN especially the idea of 'keep it as it is' could sometimes damage the conceptualization of peace, whereas the functionalist approach that emphasizes the eliminating war and then promoting peace could be too general that meets problems as in the case of Sierra Leone peacekeeping operations. Therefore, my reformist approach could be most realistic one that is tried to find unitary interests that is to say 'human security'.

In the light of all above-mentioned information, it is crucial to delineate the lessons learned from Sierra Leone's conflict resolution. United Nation Missions in Sierra Leone could be explained through two distinct phases, which are failure and success of its operations. The first phase marked by failure illustrates the vital deficiencies of strategies of UN operations in nation-building issues. As we are familiar with the Sierra Leone case 'the lack of interest, focus and support from the major powers as well as willingness to proceed on best-case assumptions with reliance on poorly trained and unprepared units led to the collapse of the operations.' (Dobbins, Jones & Crane *et al*., 2001, p.146,147). Here, it is important that the UN should seriously early warning to prevent civilians, as occurred with the humanitarian disasters in Somalia, Rwanda and the NATO airstrikes in Former Yugoslavia. The second phase demonstrated by success relies upon the disarmament provisions. As Dobbins, Jones & Crane *et al*. (2001) explained that "The original UNAMSIL mandate and force structure were premised on the assumption that the RUF would comply with the disarmament provision of the Lomé Agreement. Since the RUF had complied with neither of its two previous undertakings, such an assumption was unjustified" (p. 147).

In the aftermath of the Somalia disaster, the United States and most West European states turned their attention to clear engagement in African peacekeeping missions. They also took account of the war in Kosovo and the challenges of its postwar peace stabilisation. Accordingly, it is clear that there were little prospects of United States and West European countries on the engagement in Sierra Leone case until mid-1999. However, it is apparent that the regional search for a solution under Nigerian command had already failed to achieve sustainable peace in Sierra Leone, which proves that there was no reason to say regional force under UN command was better than ECOMOG predecessor (Dobbins, Jones & Crane *et al*., 2001, p. 147).

In my opinion, effectively, the use of multi-national military force in Sierra Leone let to reinstall the debate about the nature and goals of such operations with regards to 3rd generation peacekeeping operations. It is clear that divisions within the international command structure not only weakened the United Nations' efficacy in Sierra Leone mission, but also contributed to the dysfunctional results. On the other hand, I believe that the UN mission in Sierra Leone was too late. Since the UN and UK had a chance to shift their attention to Sierra Leone by mid-2000 that Kosovo had been occupied and stabilized. Nevertheless, the British-led peacekeeping operation in Sierra Leone helped to smooth coordination between divided forces in Sierra Leone international command. Also, 3rd generation peacekeeping operations especially UK PSO shows the necessity of 'deep intervention' which means addressing the roots of conflicts as well as engaging the issues of development and political culture rather than 'light intervention' applied in traditional peacekeeping operations. Significantly, the Sierra Leone case resurrected and reemphasized the importance of consent in any operation, otherwise UN would be faced its own security problem in hot war-fighting environment, which will become its over-riding preoccupation. All in all, whatever UK, UN and any international body operated in the country the outcomes of the Sierra Leone were not changed. Today, people in Sierra Leone are suffering not only economic conditions, but also they still have signals that recall themselves to psychological damage of the conflict. Also, the RUF's operation of cutting hands is not incidence, which refers Sierra Leonean people had power in their hands that is democracy. Today, the traces of war, mutilated people, and desperate people can be seen easily in abundant in the streets. Before the war Sierra Leone was among the developing countries of Africa but today besides having the largest diamond and gold reserves it is among the poorest countries. These people they have not only lost their part of their bodies but also their faith to power for democracy.

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Ethiopia:
The Roles of the Council of Elders (Menguddo) in Gumma Customary Institution of Conflict Resolution

Bamlaku Tadesse MENGISTU

Abstract: This study was conducted on the roles of the council of elders in Gumma customary institution of conflict resolution in the Meiso district of northeastern Oromia regional administration. The main objective was to examine the roles of the council of elders in Gumma customary mechanisms of peace-making with a prime focus on informal indigenous structures. An attempt was made to assess the roles of the council of elders in Gumma customary institution in addressing the political and socio-economic arena, the organisational governance structure of the Gumma system, how it functions and also assesses its judicial procedures in the process of conflict resolution. The paper found out that the Gumma customary institution is most effective and efficient for inter-intra clan conflicts than inter-ethnic conflicts. The processes of Gumma in addressing conflicts involve a series of ritual practices that aims to reintegrate the unity of the community which was broken down and fractured due to past atrocities. People are obedient to this customary system. As a result of this, people seem keen not to protract hostilities that may eventually divide the community members. It is through their elders and community leaders that the important issues pertinent to the unity and social stability will be addressed. The Meiso area Oromo clans have the council of elders (Menguddo) through which inter-clan conflicts are sorted out and thoroughly addressed. The local assemblies function as customary courts whose rules and regulations derive from shared norms and mutually binding value systems. The paper concludes that while the customary system is an efficient means of dealing with conflicts in the study area, an integration of the customary and modern systems is needed for sustainable peace and development in the region.

Keywords: Gumma system, customary institution, conflict resolution, Oromo clans, eastern Ethiopia.

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1. Introduction

Customary institutions are informal local institutions developed and maintained by the local community members for centu-

ries that corresponds and adheres to the society's norms, values, principles and sanctions. Such customary institutions include local cultural forms of organisation (like a clan), locally elected, appointed, or hereditary leaders and community elders. They have customary rules and regulations as well as indigenous practices and knowledge regulating the access to and ownership of resources by each member of the community (Watson, 2001).

In most sub-Saharan African countries, the unsuitability between modern laws and customary rules can be held through the concept of legal pluralism (Benda-Beckmann, 2001). While modern institutions are backed up by state legislature, customary institutions include kin networks, local cultural, administrative structures, customary land tenure rules, as well as conventions about marriage, inheritance or trade and customary procedures to resolve conflicts over resources. Customary institutions are more important where there is unpredictability of environments and unclear with regard to resource tenure, ownership rights, and ethnic identity (Krätli & Swift, 2001).

Furthermore, most pastoralists in the Horn of Africa have well proved and effective indigenous mechanism of preventing, mitigating, managing and resolving conflicts at grassroot level. The efficiency and effectiveness of such customary institutions draw the attention of the governments of the Horn of African countries to mainstream and adopt these indigenous mechanisms to make the region more stable and peaceful. If the roles of customary institutions in addressing conflicts in the region are diminished, things would have been exacerbated and gone out of the government's control and been developed to a full scale of conflict between the neighbouring states and ethnic/clan groups. When compared with the non-customary institutions for the prevention and resolution of conflicts, they are less complex, save time and give chances to parties in conflict to actively participate to resolve their own problems and to handle their affairs in relatively more acceptable way to them with their own language, norms and values (Sisay, 2008). They have the power to redress and heal the wounds due to the past atrocities made on the conflicting parties, cool down the grievances systematically and finally addresses the root causes and triggering factors of conflicts.

The Meiso area Oromo clans (Ittu, Alla, Nolle, Obera) have their own customary institutions which are responsible for the prevention, resolution and management of conflicts and the access, ownership and management of communal natural resources for long centuries. Such customary institutions are headed and run by the council of elders *(Menguddo).* The main focus of this paper is how the council of elders in *Gumma* customary institution resolves various types of conflicts including the ritual procedures, the amount and the types of compensations during the conflict resolution processes. It also addresses how the council of elders in *Gumma* institution is traditionally organised as a governing structure and how the different governing bodies are appointed or elected in the *Gumma* system. The *Gumma* customary institution among the Oromo is the commonly practised system which will be discussed in detail below.

2. Research Methodology

2.1. The Study Site

This study selected the Ittu pastoralist groups in Meiso district, West Hararaghe Zone of Oromia Regional state in eastern Ethiopia where there is the prevalence of recurrent ethnic/clan conflicts. The study area is one of the most affected by the impacts of recurrent conflicts and drought conditions in Ethiopia, in particular, and the Horn of Africa, in general, which hampered to sustain the traditional modes of pastoral livelihoods. The study area is largely arid and semi-arid with high temperatures and low precipitation. Given the dominance of pastoralism and an ongoing shift towards settled agriculture, dependence on rainfall is more obvious and stronger today than in the past. The region has suffered a series of recurrent catastrophes (such as conflicts, droughts and famines) for the last four or more decades. The 1984/85, 1999/2000 and 2004 drought episodes, described by some as the worst in recent memory, led to numerous deaths both of human lives and livestock species (Devereux, 2006). Such recurrent events in the area also led to the occurrence of widespread poverty and displacement of many pastoralists which affects all sections of the community irrespective of age and sex.

The study area has also experienced a change in land use, i.e. from communal grazing land ownership to privately owned land for crop farming and closure areas for drought periods. The natural resource degradation is also accelerating due to the impact of population pressure, climate change and variability, and among others. These, in turn, aggravate the scarcity of natural resources in which the (agro) pastoralists primarily depend on. Such acute shortage/scarcity of resources leads to the stiff competition between (agro) pastoralists for access and ownership rights.

2.2. Sampling Design and Method of Data Collection and Analysis

The study has employed qualitative based case study in which data were collected using semi-structured key informant interviews, focus group discussions, personal observations and informal discussions. These methods of qualitative data collection have been identified as appropriate (Yin, 2003) and used to collect data on the roles of the council of elders in *Gumma* in resolving conflicts, its judicial procedures and how compensations during the resolution process is addressed. Two kebeles (the lowest administrative unite) were selected purposively based on the severity of recurrent conflicts and drought. In-depth interviews with key informants were conducted and data generated in order to have a thick description of how the council of elders in *Gumma* customary institution is addressing inter-intra clan conflicts. Key informants were selected purposively based on their sex, age and awareness/knowledge about their culture, society and environment. Purposive and snowball sampling techniques were employed to select the key informants from each kebele. The number of key informants (a total of 16 consisting of six females and ten males) was adjusted after factors and conditions

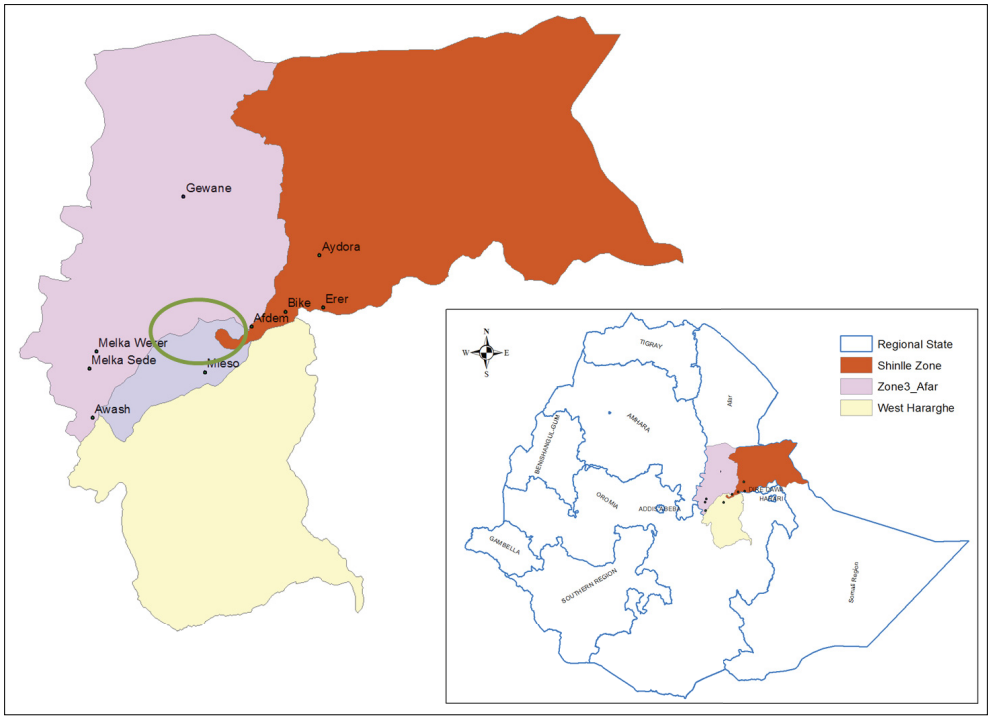


Figure 1: Map of the Study area (Meiso district with blue colour)

became clear and directive while the study was in operation. In addition, a total of 6 focus group discussions (three focus group discussions in each kebele, one with men, one with youth and another with women) were conducted to generate data for the purpose of understanding how the council of elders in *Gumma* system and its procedures, compensation mechanisms and ritual ceremonies are functioning. The focus group discussion participants were selected purposively based on their sex, age and awareness about their culture. In addition to collecting primary data, there were also systematic examinations of relevant documents – both published and unpublished from both the district, zone and regional offices which includes as reports, peace agreements, joint collaborative works on peace building and conflict prevention, resolution and management as secondary data sources.

Concerning with the analysis of qualitative data, the research was based on the theoretical and methodological principles of subjective interpretations (i.e. Grounded Theory). To this effect, a content analysis technique was employed to analyse the qualitative data. The analysis technique targets at organising and reducing the empirical data into themes or essences through analytical induction. Qualitative data analysis is a process of making sense of data through uncovering themes, concepts, insights, patterns, categories, perceptions and understandings. The analysis involves an iterative, inductive and reduc-

tive process of formulating conceptual ordering for data is called coding that facilitates conditions for the constructing themes, essences, descriptions and theories (Walker & Myrick, 2006). According to Miles and Huberman (1994), qualitative data analysis involves three macro processes. These are data reduction (extracting the essence), data display (organizing for meaning), and drawing conclusions (explaining the findings).

3. Result and Discussion

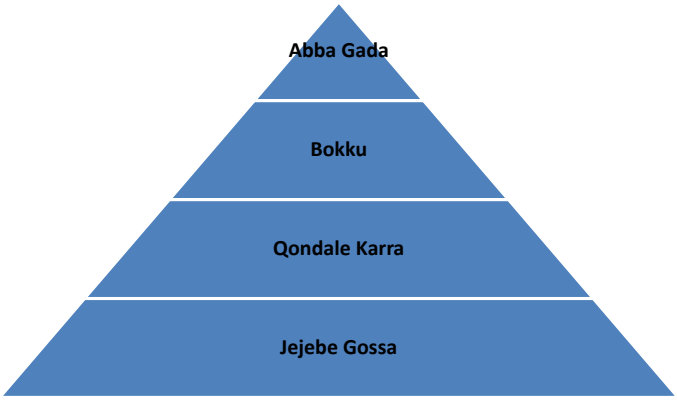
3.1. The Council of Elders in Gumma Customary Institution among the Oromo

The council of elders in *Gumma* customary institution of conflict resolution, justice administration and peace-building is able to carry out its purpose for long centuries and is still functional to the communities at large. As an indigenous conflict resolution mechanism, it is playing significant roles in bringing the conflicting parties together and discuss the problems at stake to acknowledge each other's perspectives and deal for mutual benefits. *Gumma* has the ability to manage and heal the wounds, psychological and social traumas of the victims while the state legal systems fail to manage such issues. As a mechanism, priority is given to the reconstruction of social and psychological traumas created by the conflict. The ideology of the state legal system in Ethiopia is drawn mainly from the Western legal philosophy which is highly predisposed by an individualistic orientation and does not fit the strong social orientation and commitment on the ground where it is being implemented. This idea precisely exemplifies Ethiopia's legal system's neglect of the psycho-social aspects of conflict resolution, justice administration and peacebuilding. In other words, the state legal systems attempt to bring about retributive justice by simply punishing the criminal person while the council of elders in G*umma* strives to bring about restorative justice by focusing on restoration of the fractured psychological and social capital as a result of homicide at various levels. Restoring interpersonal, intergroup or intercommunity relationships and reintegrating delinquents into their communities are important goals of any sustainable conflict-resolving, justice-doing, and peace-building process as the council of elders in *Gumma* system is doing. Edossa and his acquaintances make a good point of inquiry about the importance of customary institutions such as the *Gadaa* system in managing conflict, particularly conflict that emanates from access to natural resources (Edossa, Babel, Gupta, & Awulachew, 2005). Therefore, it is imperative that the council of elders in *Gumma* institution practice restorative justice that state courts and legal practitioners are unable to bring restorative justice among the disputants. It can be considered as an alternative strategy to a state legal system. It is retributive in nature since it can manage the likely cycles of vendetta arising from homicide.

In addition, the council of elders in *Gumma* institution is part of the complex and holistic nature of the *Gadaa* system that encompasses the political, social and economic aspects of the Oromo people. The *Gadaa* system is a complex institution that the Oromo people have been practising since time immemorial to deal with the impediments and workings

of their communal lives (Assefa, 2008). According to Sisay (2008:53), "The Oromo have one of the most open and democratic cultures among Ethiopians. Their system of African Democracy known as Geda is a well-known African indigenous political system that governs social order, politics, as well as peaceful conflict resolution". Here, the council of elders in Gumma and the Gadaa systems are not independent to each other. Gumma is simply a sub-set of the bigger Gadaa system. In other words, while the council of elders in *Gumma* system focuses more to conflict issues, the *Gadaa* system deal with the social, cultural, political and economic aspects that infuses all aspects of their day to day life.

3.2. Traditional Governance Structure of the council of elders in Gumma System



Source: Field Inquisition

The council of elders in *Gumaa* customary governance structure has the capacity of creating a conducive environment so as to ensure justice among the communities. The fair treatment of the disputants according to the rules and regulations of the council of elders in *Gumma* system is primarily based on the core principles of narrations and reflections on the misdeeds of one over the other. The narrations, arguments and counter-arguments among the disputants help the parties come to a revelation of root causes of their conflicts, acknowledgement of apologies for atrocities, and particulars of bad experiences the parties acquired from the conflict (Karbo & Mutisi, 2008).

The governance structure of the council of elders in *Gumma* system is hierarchical in its structural, administrative and governing principles and procedures. There are different hierarchical positions with their own duties and responsibilities to discharge in accordance with the rules, procedures and regulations of the council of elders in *Gumma* system. Each position has its own duties and responsibilities which are directly accountable to the immediate next top position in the *Gumma* governance structure. For example, the Abba Gada is the head of the council of elders in *Gumma* system who

hold the top position in the council of elders in *Gumma* customary governance system. The Abba Gada is in charge of responding to all walks of life that affects the smooth operations of the council of elders in *Gumma* system which have a direct impact on the wellbeing of his subordinates including resolving conflicts. The next most top position is the Bokku(s) who is/are equated in modern governance system as minister(s) who has different duties and responsibilities in the community. It is also named as Damina in Arabic word which means representative to the respective clan/village members. Next to the Bokku is the Qondale Karra who is responsible for the fair distributions of resources and contribution of the compensations supplied from members of each clan during conflict resolution processes. The next most important position is the Jejebi Gossa which is the lowest position in the council of elders in *Gumma* governing structure. Jejebi Gossa is normally a soldier (s) who is/are responsible for enforcing the decisions made by the council of elders (*Menguddo*) in the *Gumma* administration. They are responsible for collecting cattle for compensation, punish, whip or any other form of retribution against the criminal at grass root level in kebeles or small level administrative units. They are also responsible for disseminating all types of information channelled from the top position (*Abba Gada*) down through those hierarchical positions to the community members at grass root level.

This system of governing violence and conflicts is preferred by most community members over the state legal system for a number of reasons. To mention, the council of elders in *Gumma* system takes shorter period, has low cost, cases are handed near to their homesteads (not expected to travel long distances to find out courts), parties can speak and address their cases with their own languages, and among others. This point of argumentation is in line with the work of Meron (2010) about the court of sheikhs. The authors underline the advantages of customary institutions over the state legal system and also the doubts of the public at large about the effectiveness and trustworthiness of the state legal system. The author further underlined that the longer time state courts require for processing a case, the high amount of expenses incurred at the state court, the unnecessary emphasis on testimony and verification, and the possibility of corruption are some of the reasons for the preference for customary institutions such as the sheikhs' court over the state-based legal system (Meron, 2010).

3.2.1. The Electoral systems and procedures under the council of elders in Gumma governance structure

Jejebi Gossa is the lowest administrative unit in the council of elders in *Gumma* governance structure that acts as a messenger for Qondalla Karra at the village level, elected based on their efficiency on their duties and responsibilities. They should be strong enough, young and energetic to go everywhere in the fastest way to collect cattle for compensation. They are elected by the Qondalla Karra. They should have a special skill in persuading people and collect money and/or cattle for compensations besides to their physical strength.

Qondalla Karras (the next top position to Jejebi Gossa) are also elected by the Abba Boku based on their merit. The special selection criteria to be a Qondalla Karra are the one who has tolerance, orator skill, respected by others, genuine and trustworthy, and the like. Before the final election, the potential Qondalla Karras will be nominated by the Abba Boku. They will be assigned by the Abba Boku for different responsibilities for a certain period of time to test their strength, efficiency, skill, acceptability by the community and other qualities. If the Abba Boku wants to nominate three Qondallas, there will be four to six potential candidates that will be assigned to the different positions to testify their qualities. The potential candidates will be presented to the community for nomination/voting and out of the four to six potential candidates, only three (the intended ones) who performs best and got the highest voting will be nominated and finally approved by the Abba Boku in front of the community members. In that day there will be celebrations of ritual ceremonies. In that day one well-fattened ox will be slaughtered for the ceremony and all the community members will participate and enjoy that festivity. The Abba Boku then introduces the elected Qondallas for each community and empowered them by blessing. The elected Qondallas will be blessed by the Abba Boku and other community elders by saying "*If you bless someone who accepts your instructions and act accordingly, he will be blessed and on the contrary, if you curse someone who refuses you, he will be cursed".*

Abba Boku (the next top position to Qondalla Karra) is elected by the Abba Gada for each clan based on their merit. The numbers of the Abba Boku are based on the number of clans in West Hararghe zone of Oromia regional state. They are representing their own respective clans in the assemblies of the council of the Abba Gada.

And finally the Abba Gada will be elected for eight years from all the potential candidates who perform well and got the highest voting. The Abba Gada is also elected based on merit at a place called Odda Boltum near Gelemso. The Abba Gada should have special qualities like tolerance, knowledgeable, knows the culture of the West Hararghe Oromo people, respected by all the community members, descent, and orator skill. If the Abba Gada is elected from one clan for the first rounds of eight years, then the next Abba Gada will be elected from another clan on competitive basis. For the West Hararghe zone, there is one Abba Gada. For the election process, each clan from all the districts in West Hararghe zone sent their potential candidates at Odda Boltum for nomination to be an Abba Gada. At Odda Bultum a temporary house will be constructed for this purpose since the election ceremony lasts for several days. There are also ritual ceremonies. Oxen will be slaughtered for the ceremony; and there will be chants, songs and festivities.

Unlike the Borena and Guji Oromo clans in southern Ethiopia, the Abba Gada of the West Hararghe zone Oromo clans is not hereditary. This is because according to the community elders, they have different clan groups while the Borena and Guji have only one clan (Borena and Gujji clan). In Borena and Guji the Abba Gada is nominated from

one specific family which is hereditary. In Borena and Guji, the next Abba Gada will be trained, well informed and share experiences from the current Abba Gada before the termination of his period. Such practice is impossible in the study area Oromo clans because the next Abba Gada will not be identified or unknown while the current ones is still in power as it is not hereditary. The Abba Gada is elected in every eight years, but the Abba Boku and Qondalla clan administrators go beyond eight years based on their performance. The Abba Gada will be deported from power if he committed a mistake/crime during his ruling period. Jejebi are assigned for administration for temporal periods in times of crises only.

The different Oromo clans in eastern Ethiopia identified themselves and belong to one of the members of the several clan groups by counting/tracing to their apical ancestors through their father's line. This is because membership to a certain clan group is solely counted through the patrilineal descent family as these pastoral communities are patriarchal. In a patriarchal (agro) pastoral community where there is the domination of males over females in all aspects (including property inheritance and transfer, ownership, access/use rights), females after marriage belong to their husband's clan group. In accordance to this principle of patrilineal descent system, the Oromo generally classified as Borena and Barentu. The Borena lived in the south, southwestern and western parts of Ethiopia while the Barentu lived in the southeastern, eastern and northeastern parts of Ethiopia.

3.4. The Procedure of the council of elders in Gumma Customary System in Resolving Conflicts

The Meiso area Oromo clans have their traditional ways of conflict resolution in both intra-inter clan conflicts. In the process and procedures of conflict resolution, first the council of elders named *Menguddo* who have ample experiences, knowledgeable, and orator skill that can persuade others is appointed to address the case. In the procedure of the council of elders in *Gumma* customary system, the *Menguddo* should be an independent third party from another clan as a mediator between the disputed parties/clans. The independent third party, the mediator now takes their cases and become responsible for handling the matter according to the laws and procedures of the council of elders in *Gumma* customary system. They first identify the problem what is at stake and then tries to address those problems that need immediate attention. For instance, if there are murder or wound cases, these should be first addressed/handled properly before the council of elders tries to embark on other aspects of the conflict resolution process.

Then, the delinquent will be handed over to an independent third party of another clan member until the case is handled by the council of elders (*Menguddo*). These independent third parties who host the murderer voluntarily on temporary bases are referred to as mediators. No one knows where the mediator hides the criminal, to the

extent that his families don't know where he is. Once the criminal is handed over to the mediators, there will not be revenge actions as he is departed from his family and clan members in the form of refugee/custody. After this initial *Gumma* ceremony has been performed, it is customary that by no means there will be any form of retaliatory actions of one over the other for the purpose feuding.

Then after this initial and binding resolution ceremony, the elder's council set a larger appointment for resolving their conflict at clan level by involving members of the two clan groups. This takes long periods of time so that the delinquent's clan members will have ample time to get ready for the compensation. This is known as *Agajimma (literal meaning- time of preparation for the resolution process).* It takes for a month up to three months. If they are not ready to pay on the first appointment date, the elder's council will set another appointment and this will continue for three times in readjusting the appointment date. Sometimes the appointment period will be extended up to six months if there is prolonged drought which forces the pastoralists and their cattle away from their homesteads for longer periods for water and pasture. Even sometimes it will be extended for a year if there are socio-political instabilities in the area beside to drought. This hinders the clan members of the delinquent to collect the required numbers of cattle for compensation.

Then, the *Abba Boku* instructs the *Qondallas* to collect the required amount of cattle for compensations. The *Qondallas* called an urgent meeting with the delinquent clan members termed as *Mamulti* to form a committee called *seglen* (nine in number) so as to collect cattle for compensation from their own clan members.

Then, the delinquent will be assigned to look after those cattle contributed by his clan members for compensation until the committee members finished their duty. Till that time (the date of final resolution), the perpetrator is obliged to pass all the sanctions and punishments based on the peace accords of the council of elders in *Gumma* customary governance system which are believed to be good lessons for the other clan members. To mention some of the social sanctions that his community members imposed on him because of his guiltiness are as follows:

> *He is isolated from his community members and not allowed to do communal activities. He is also isolated from his family, he is not allowed make love with his wife, not allowed to eat and drink together with people since he is considered as impure (as his hands are dirty with blood), forced to eat and drink with broken dishes/utensils, he is allowed to get in to (out) home at backyards only as if he is robber, he is not allowed to cut his nail short, not allowed to cut his hair short, not allowed to wash his body and clothes, and among others.*

These procedures and sanctions are all symbols and ways of punishing the delinquent. Then after the *seglen* finished the preparation and when the appointment date ap-

proaches, a large temporary tent (locally named as *dass*) that has shade and accommodates all clan members of both sides will be constructed in the homestead of the delinquent's family. This is because all the expenses related to the conflict resolution process and ritual ceremonies including chat, cigarettes, food, and the like should be covered by the delinquent's clan besides to the expenses related to compensation and funeral ceremonies. This huge amount of expenses and burden at different stages of the resolution process on the delinquent's clan members is considered as a lesson for others not to repeat this type of mistake again. Before the two clan members entered in to the huge tent, they will seat under the shed of the near bye tree to discuss all the matters, express all the grievances and worries, accusations and counter-accusations, charges on wrongdoers, etc so that all misdeeds and mistakes should be addressed under the shed in front of the traditional jurisdiction. The jurisdiction listens to the accusations raised by the deceased families in connection to the murder of their son. After thoroughly discussing all the issues, accusations and counter-accusations from both sides, the mediators together with the conflicting parties will go directly to the temporarily constructed huge tent. Then the elders instruct the delinquent's family to present one selected (top-ranked) ox – named as *Feyissa Garri* which will be given to the *Qondallas* of the deceased clan. It will not be counted on the total number of contributed cattle for compensation.

Once they entered in to the tent, it is strictly forbidden to raise charges, complaints, accusations and counter-accusations of one over the other. There are also rules and regulations on the seating arrangement of the conflicting parties (the two clan members) at the temporarily constructed huge tent. The deceased clan members will seat on the right side while the delinquent's clan members will seat on the left side of the tent. This has its own implications. That is in Oromo culture if someone who offends others (murder, theft, insult, etc), there is the saying that elders will enforce him to bring a guarantor and stood at the left side (not on the right side). Its implication is the left side represents that they fell as if they are inferior, wrongdoers, criminals, and the like while the right side represents they are faithful, normal, superior, they are considered as a king, and the like. At the middle, an independent third party (the mediators) will seat. Both parties will be served food independently.

The huge temporary tent has two gates. If someone who serves the audiences with food/meat entered in the right part of the gate, then another clan representative who serves the audiences will enter the gate on the opposite side. And both of them will serve both clan members and should go out of the tent on the opposite side of their entrance. They should not return back to their entrance gate. This indicates that once the contending parties reached a consensus and eat together under one tent, they should not raise complaints, charges, and accusations and counter-accusations rather they should strengthen their friendship and peaceful coexistence. It is considered as one family, no more revenge and blood feud, and the like. They are not allowed to intermarry to each

other. In all these days where the ritual ceremony has performed, the delinquent is imprisoned inside the kraal together with the cattle collected for compensation.

On the morning of the next day, the audiences of the two clan members will be served with roasted meat. Then it is followed by the ritual ceremony on the delinquent himself. The delinquent who looks after the cattle for compensations for several months and now imprisoned at the nearby kraal with the cattle will be allowed to come out to the audience tied with a rope at his right hand together with *difin qill* (unbroken and unprepared traditional vase like drinking pot/container containing bitter test). The symbolic interpretation of this unbroken *qill* tied on his right hand is the bitterness of assassinating someone irrespective of the different causes. The assassination of someone (usually at his right hand except for left-handed individuals in rear cases) and its subsequent public exclusion and serious punishment are equated with the bitter taste of the fruits of this traditional container (*qill)*. The fruits of murder have also bitter taste, grief, apprehension, guiltiness, frustration, mental illness and the like for the delinquent.

The *Qondalla* of the delinquent clan is now allowed to stand in front of the large audiences and speak loudly by saying this "Please allow me to go to the water points, grazing areas, participate in public affairs and festivities, etc. freely as the delinquent was isolated from the public affairs for several months". He repeats these words loudly three times to the audience. Then, the *Qondalla* of the deceased clan responds to this call three times by saying this "I forgive you and permit you to go to the water points and grazing areas freely".

This is what we call forgiveness in conflict resolution processes. Until this time, the delinquent was not allowed to go to the grazing areas and water points. But now this permission allows him to access both resources and participate in all public affairs freely and equally. Again the *Qondalla* of the delinquent clan also shouts three times loudly by saying "*Please break this bitter and unbroken qill from the hand of the delinquent".* Then, the *Qondalla* of the deceased clan responds loudly three times by saying "I broke it".

After this public solemn promise, the deceased family members took all the animals contributed for compensation from the kraal. Then, now the delinquent will be allowed to stand in front of the large audience so as to beg them and make him free from all of these sanctions and forgive him for his transgression. Then, again the delinquent tied together with the brother of the deceased by a rope made of leather (locally named as *Meditcha*)[1] and came together in front of the large audience. Community elders and religious leaders will now bless them to be united as one and become brothers as they tied together and came close to each other. The right hands of the delinquent

1 The *Medicha* rope is made of a skin from the ox taken from the legs around their wrist.

and deceased brother will be tied with this *Medicha* by an independent third party elder's representative, named as *Menguddo Amba (*also termed as *Faji Amba*) and all their close relatives will stand behind them accordingly. The *Meditcha* that tied them together symbolises that they are now united together and their enmity came to an end for peace and development. Then, it is followed by a statement of community elders by saying like this:

> *From this time onwards the two individuals/clan groups are no more enemies rather they are brothers, same clan members and the like. It is also declared that one group should allow and welcome others to their own territory, home and homestead at all times (during crises, good times and at other times). From this time onwards, it is also considered as having five cattle in common, i.e if an individual from either member of the two clans killed someone from another third clan/ethnic group, the two clans should contribute the five cattle for compensation as if they are members of the same clan. At this juncture they agreed that they will help each other during compensations, crises, and even funeral ceremonies. All these statements are loudly declared in front of the large audience. It is also cursed if someone violates this agreement and the curse will be up on him if someone breaks all these agreements*.

The deceased mother will lash butter on the hair of the belligerents (particularly the close relatives of the delinquent and the deceased). In turn, the delinquent's mother will come holding milk with a traditional drinking pot called *qill* so as to drink her son (the delinquent) and the deceased brother. And then, the delinquent and the deceased brother will also serve each other with honey which shows that their enmity/bitterness should be get rid of from their body and replenish themselves with sweat, love and friendship. Again the delinquent's mother brings butter and lashes on their chest so that the evil spirit will disappear from their heart and in turn good hopes replace their thoughts and feelings. They also give each other one heifer. Finally, they will go to one of the two houses to eat and drink together and then repeat it to the house of the second one. This indicates that their agreement and forgiveness is real since eating and drinking together is considered as a sign of love and friendship. The symbolic interpretation of this ceremony is that the butter that lashes on their head and chest will get rid of evil spirits from their womb or mind and begun as relatives rather than enemies. It is also a customary norm that from that time onwards, they are not allowed to inter-marry among themselves since they are considered as close relatives by that resolution process.

The delinquent then went to a hillside. Here, his eye brow will be cut short, the *difin qill* (the traditional and natural drinking pot) tied to his right hand will be broken down, his nail cut short, he will be allowed to change his old clothing with a new one, he is allowed to eat together with people, and those utensils who used during his confession

time will be broken and buried in that hill. This is followed by slaughtering a sheep at his family's home and he will be blessed at this ceremony by his close relatives. These all symbolises that the evil spirit attached to and encouraged him for murder will be now dispossessed from him and buried with these all things. Then, it is believed that he is now becoming normal and will be allowed to join the community. This seclusion process may last for about one to six months and sometimes more depending on the seasons in which this process takes place.

After the delinquent is becoming "clean" by these ritual ceremonies, all his utensils that serve him food and drink during his custody will be broken down and thrown away which indicates the beginning of new life, hope, peaceful coexistence and love with others. Compared to the modern system of conflict resolution, the customary system of resolving conflicts is more solemn, cumbersome, and gives good lessons that instruct individuals. All the above-mentioned sanctions are more difficult and tiresome not only for the delinquent but also to his families/clan members compared to the modern system. In the modern system, if someone commits a crime, he will be simply imprisoned and he has the right to be visited by his relatives, make love with his wife and the like. Focus group discussants added that if a baby is conceived when his father is at jail committing a crime, it is believed that the baby will also repeat by committing the same crime as his father did. This is because it is believed that the spirit attached to the father will pass on to the baby during the time of conception at the mother's womb.

Women's role in customary conflict resolution practice is a continuation of their domestic burdens. Their participation is restricted only to serving the council of elders with food and coffee during the resolution process. However, without their presence the resolution process will not be performed because if they are not part of the process and not observing the decision process, they will instigate another conflict. Women are not directly participated in conflict resolution process. There is a saying in Oromo culture that women's and children's cases are not handled under a tree (as if their cases are simple and hence it can be solved at home by their neighbours) and they cannot address complex societal issues under a tree by themselves. This implies how patriarchy in this society is deeply embedded in their culture that restricts women's community role and also their cases are believed to be simple in its scope and complexity. Here, the shed of a tree doesn't mean a simple tree/shed rather the traditional courtroom in which disputes and various social, political and economic issues are discussed and handled. Therefore, a tree shed symbolizes justice, fairness, equality, and the like.

These long and time taking procedures of the council of elders in *Gumma* system are targeting for the reconstruction and rebuilding of the fractured social cosmos and regain the unity and oneness of the community in disputes. The system enables to achieve this through the arrangement of continuous negotiations and argumentations so as to repair the wounds of the socio-psychological traumas occurred as a result of the

conflicts. It closely scrutinises the conflicting parties, treats their fear and frustration, and repairs the societal cracks. The crucial goal of any customary conflict resolution mechanism is socio-psychological reintegration, reestablishment of community relationships and reunification of delinquents into their communities (Karbo & Mutisi, 2008) by stimulating emotional attachments of the conflict parties. The council of elders in G*umma* system is, therefore, to restore the social, moral, and psychological values of the community damaged by the conflict. Although council of elders in *Gumma* most of the time addresses cases of vendetta, revenge, blood price or compensation, feud, and the ritual aspects of purification that follows homicide (Dejene, 2002), it can generally be seen as a compensation and purification process that follows a conflict.

Therefore, these procedures and ritual ceremonies are primarily meant for peace-building strategies that are used to restore violated social rules and detached emotional attachments through full confession, honest remorse and sincere apology, rather than through the mere restitution of and compensation for lost life or property. Through this system, there will be the recovery of the normal social space by restoring the wrinkled socio-psychological assets that are embedded in the societal cultural values by performing ritual ceremonies altogether. The system also has the capacity to effectively restore the social bonds and oneness of the conflicting parties (at this time communities of conflicting parties) by reintegrating them in their social, psychological and moral values. It has the ultimate supremacy to impede conflicts reduce (and if possible eradicate) hostilities, revenge killings; reduce the polarizations of disputants; and ultimately restore peace and harmony among the communities with its legitimate power.

According to the theory of structural functionalism, many scholars have accepted that dispute processing involves rituals. The pioneering studies of Durkheim show that rituals have the power of reinforcing collective emotion and forming group cohesion. If group cohesion is fractured and broken down due to violence and conflicts among the rival groups, performing such rituals among these parties have the power to restore their cohesion and oneness. This view of Durkheim was adopted by later structural-functionalists who have emphasised the role of rituals in supporting the survival of the larger system (Seymour-Smith, 1986). The structural functional theory is one of the major theoretical approaches to the study of conflict. Nader (1968) shows that this theory emphasizes both the structural sources and the structural functions of conflict. Lewellen (1983) states that the structural functionalists view society as an equilibrium system whose component parts play a role in the maintenance of the whole. Hence, as part of social life, conflicts too work towards the maintenance of the ongoing social structure and hence conflict is considered as a normal process of social life. The works of Evans-Pritchard (1940) 'The Nuer' and Gluckman's 'Custom and Conflict in Africa' (1956) are typical examples of such an approach, which dominated the period between the 1940s and 1950s in legal anthropology (Lewellen, 1983).

Furthermore, Gluckman (cited in Lewellen, 1983, p. 9) stated that rituals are not simple means of expressing feelings but also symbols that emphasise the priority of the system over the individual. By the same token, Hoebel (1966) describes that rituals are acts, which are believed to maintain the status quo or to achieve the specified ends. Turner (1969) provides powerful attributes to the anthropological emphasis upon the importance of synchronisation. His work shows what role rituals play in achieving and enhancing oneness, in his term 'communitas'. For Turner, the law is an antithesis of communitas, whereas dispute settlement is a way of restoring the oneness. This means, state legal system is unable to restore societal cohesion unlike that of the customary institutions that mainly depends on ritual ceremonies.

Ritual ceremonies for Turner (1957) are social drama that resolves crises by dramatising the advantages of cultural values and social arrangements. It is performed in response to the breach of law during times of conflicts to restore the fractured social order. Through rituals, social values are given sacred authority. According to him, the social drama of dispute settlement processes passes through four phases. First, there is the breach of peace when there are criminal acts committed by individuals during the occurrence of conflicts. Second, the crises that result from the breach in which the social cohesion and stability is fractured as a result of the violations of social norms, values, principles and sanctions. Third, there is the practice of resolving the crises with the help of customary institutions involving ritual practices. Such customary institutions have their own rules and procedures in conflict resolution, justice administration and peace-building efforts. Fourth, the re-establishment of the unity of the groups after the application of ritual ceremonies which restore the wounds of the society incurred due to conflicts.

This *Gumma* system is functional only in the intra-clan conflicts among the Oromo. They didn't have such systems for cases of inter-ethnic conflicts except for few cases. This system works for conflicts between Oromo clans and Hawiya clan (as Hawiya affiliated with the Oromo and the Oromo considered the Hawiya as one of their clans), but doesn't work for conflicts between Oromo vs Issa and Oromo vs Afar conflicts. The only way of addressing the latter types of conflicts is through the intervention of the modern system of conflict resolution, i.e. through the intervention of the federal army which is almost ineffective and not timely as the community elders pointed out. Article 34(5) of the Constitution of the Federal Democratic Republic of Ethiopia limits the mandates of customary and religious institutions issues related to private and family civil cases. They handle various issues of conflict cases ranging from civil to criminal offences that arise from intra/inter-clan and intra/inter-ethnic conflict (Meron, 2010, p. 81). *Gumma* is one of these customary institutions that has been and is currently functional in handling cases of homicide in the study area, but no roles with the conflicts between Oromo and Issa Somali and limited roles with that of Oromo and Afar.

3.5. Compensations for Different Types of Offenses in the council of elders in Gumma System

The Oromo clans in the study area have its own rule of governance for various maladjustments and happenings, particularly with conflict and conflict resolution practices. Compensation or blood money also called *Gumma* is one of the best strategies in indigenous institutions of conflict resolution mechanisms. The term *Gumma* in this research has two meanings/applications in the study area. First, it refers to compensation/blood money. *Gumma* is most often used to refer to compensation/blood money and rites of refinement and purification following a homicide and this meaning is much more common among the population. Second, it stands for an institution responsible for addressing conflict cases. The word *Gumma* used to refer to the general institution of settling blood feuds between two persons, families, groups, clans, communities, or even nations (Dibaba, 2012). According to Dejene (2002), the term *Gumma*, however, has multiple meanings when it is alone and in combination with other words in different parts of Oromia. For instance, '*Warra-Gumma*' means parties at blood feud; '*Gumma-Baasuu*' means killing for vengeance; and '*Gumma-Nyaachuu*' means getting blood price. In short, *Gumma* is an indigenous institution of settling blood feuds between parties (*Warra-Gumma*). In the study area, there are strict rules and regulations for every kind of offences with regard to compensation mechanisms of the *Gumma* customary institution though it is challenged by the impacts of modernisation. The youth group who invested less or not at all in the Gumma customary system is more reluctant for its rules and principles particularly with issues of compensations. Youth group are more influenced by the impact of globalisation and modernisation. Some of the compensations for offences are as follows:

First, if the killing of an individual happens suddenly, the amount of compensations given to the deceased family is hundred cattle. If the killing of an individual is planned and/or purposive, the amount of compensations will be increased to one hundred fifty cattle.

Second, the amount of compensations for the offence of an amputation/destruction of any of the body parts has its own specific rules and regulations by the *Gumma* customary law. For example, there are clearly identified customary laws and regulations for the amputations of arms and legs, deletions/removal of eyes, destruction of teeth, etc. to compensate the offended one.

Concerning the amputation of arms, the amount of compensations for the right and left hand is quite different for its own socio-cultural reasons. For example, if the left hand is amputated, the amount of compensation given to the offended one is sixteen cattle and if the right hand is amputated, fifteen cattle will be given (one more cattle is added for the left-hand amputation because the left hand is considered as more important than the right one because of its role in reproduction/love making and defense mechanisms).

Besides, the variation also occurs in legs amputations. If the left leg is amputated, the number of compensations given to the offended one is sixteen cattle, two oxen and one mule; while if it is the right leg, the compensation will be fifteen cattle, two oxen and one mule. Here, two oxen are given for the injured one for farming purpose and one mule for transportation as his leg is injured.

In the case of eliminations of someone's eye (s), nineteen cattle for each eyes or sometimes it is equated with a gift of few cattle and a virgin girl to look after and guide him as a wife and a form of a gift (compensation) will be given for the offended one. If the man refuses to accept her (the virgin girl) as a gift, her clan also regrets and asks why he refuses her, i.e the question of clan identity/recognition by other clan members. Compensation for women is generally smaller than men for such cases of similar offences and a man who creates the problem on a woman will be forced to marry her. If someone insults a woman/girl as blind or any other injury related insults, he will be punished seriously.

If the offended party is unable to pay the decided amount of cattle, there are enforcement mechanisms in the form of social exclusion from any social affairs in their own respective clans. Similarly, if the husband crashes one of the teeth of his wife, he will not be punished. But, if he insults her in connection to her teeth that he broke, he will pay five cattle to her family.

The third type is compensations related to rape cases. Focus group discussion participants pointed out that let alone rape cases if someone harassed a woman/girl verbally, he will be punished seriously. Several years ago, girls were not being harassed and dared by men/boys rather they were respected. In connection to their compensation, hundred cattle will be given for killings, five cattle for rape cases; rape of someone's wife involuntarily is five cattle and voluntarily is one cattle for the husband. Voluntary and involuntary rape cases are identified on the style of their sleeping whether it is by force or on peaceful means. For rape cases the compensation various from case to case. For a virgin girl it is five cattle, and for none virgin girl is three cattle.

Fourth, if someone killed somebody while he is on offensive acts, there will not be *Gumma* ceremony for that. This is justified that anyone has the right to defend himself/his family from any external enemy as a result he will not be considered as criminal according to their customary system. It is not also considered as an offensive act against someone. Finally, for looting cases if some loot one cattle, he will be forced to return back one additional cattle.

4. Conclusion

The paper tried to address the importance of cultural processes, institutions, and values that involves ritual practices in customary forms of conflict resolution and peacebuilding among the Oromo of Meios district in eastern Ethiopia through the well-established

Gumma system. The essential goal of any customary forms of conflict resolution mechanism is socio-psychological reintegration, reestablishment of community relationships and reunification of delinquents into their communities (Karbo & Mutisi, 2008) by stimulating emotional attachments of the conflict parties. This could be possible through performing ritual practices that can facilitate for the restoration of societal cracks. The council of elders in G*umma* system is, therefore, to restore the social, moral, and psychological values of the community damaged during the conflict. It is evident in the study community that most individuals, families and communities still prefer customary forms of conflict resolution processes because they are based on cultural concepts, values, and procedures that are understood and accepted by the community. People are familiar with their cultural underpinnings (norms, values, principles and sanctions) and therefore it is easier to come to compress with responsibilities that emanate from such foundations. It is in this principle that the customary courts with the guidance and operations of informal procedures, laws, rules and regulations which are more approachable and understandable by the local people at large, work efficiently and effectively. It is in this context that the principles of social cohesion, harmony, openness/transparency, participation, peaceful co-existence, respect, tolerance and humbleness, and among others, are emphasised as core issues in customary conflict resolution mechanisms among the Oromo community in Meiso area.

The customary forms of conflict resolution practices take place in a way that address the complex web of economic, social and political arenas so as to shun total societal disintegration in the aftermath of elders' decisions. In a dynamic and changing world, the challenge of customary practices in addressing conflict issues will continue in the (post) modern era. This is due to a multitude of factors including the ability of customary structures to challenge old norms and values systems that constitute the statuesque; and the extent of honesty and transparency in customary institutions to engage in reforms to accommodate new realities. Modernization that impacted on the value systems of customary institutions and creates gaps in the transfer of indigenous knowledge into successive generations will result in the dilution of the importance of customary conflict handling approaches.

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ODR:
An Islamic Jurisprudence Perspective

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Abstract: Modern Dispute resolution mechanisms have been positively influenced by the advent of the internet. Through Online Dispute Resolution (ODR), several ADR mechanisms have been adapted to for small claims, online and cross-border financial transactions. Existing ODR mechanisms seem to ignore certain underpinnings of Islamic jurisprudence in the development. This has made dispute resolution automation unattractive to shariah complaint sectors. Therefore, this paper seeks to examine the relevance of ODR under Islamic jurisprudence. The paper adopts a doctrinal method to expound principles of Islamic jurisprudence (*usul-ul-fiqh)* which supports new ways of resolving disputes using the internet. The study finds that existing Islamic law ethos such as: *sulh, maslahah, sad-ul-dhariah* among others are in agreement with the modern realities of online dispute resolution.

Keywords: ODR, conflict, resolution, Islamic, jurisprudence, Shari'ah, Sulh, Maslahah, Maqasid

Introduction

This paper examines the concept of Online Dispute Resolution (ODR) and its justifications in Islamic jurisprudence. Traditional dispute resolution mechanisms have been inefficient in the resolution of a certain form of disputes such as small claims, e-commerce, cross-border and online financial disputes. Although ODR is founded in unfamiliar legal systems, its implementation poses legal, Shari'ah and legislative challenges in Muslim countries. Therefore, this article will consider the conceptual underpinnings of ODR and its potential for access to justice in certain disputes in specialized sectors. The economic and judicial benefits of the concept shall be discussed in the light of Islamic jurisprudence principles such as *Sulh*, *Maslahah*, *and Maqasid* among others. The paper examines the application of ODR

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mechanism in existing dispute resolution processes under the Financial Ombudsman Scheme (FOS) in Malaysia. It is pertinent to note that a Shari'ah complaint ODR must necessarily comply with the underlying principles of Islamic jurisprudence. Therefore, further consideration shall be given to discussions on the relevance of Shari'ah principles. Specific concerns over dispute system design are also identified.

Online Dispute Resolution: An Overview

Online Dispute Resolution emerged in the 21st Century from developments in the field of Alternative Dispute Resolution (ADR) and its adaptability to peculiarities of the online environment (Katsh, Katsh, & Rifkin, 2001; Sami, 2008). In addition, it was primarily borne out of the need to deploy cutting-edge information technology innovation to aid access to justice. In the past decades, automation of service delivery was perceived as a threat to labour in the non-legal sectors with job cuts, due to a technological takeover of clerical jobs such as cashier, secretaries and bookkeepers (Howard & Schneider, 1988). In the justice delivery sector, experts predict a paradigm shift in the way lawyers perform their jobs and a potential for automation of the dispute resolution processes. This might be seen as threatening the ODR traditional methods of justice delivery.

ODR can also be understood from the convergence perspective, i.e., dispute resolution converges with information and communications technologies (ICT). Perhaps one of the fulfilments of Pound conference and Lord Woolf Reforms is that court systems globally have incorporated the ADR mechanisms in the administration of justice. Subsequently, amicable dispute settlement paradigms have also been adopted in regional and international legal instruments (Smith, Cingel, Devaux, & Gelberg, 2010). Without a doubt, ADR has proved to be the most suitable and cost-effective method for resolving disputes arising from commercial and financial transactions in recent years. However, new challenges to financial dispute resolution abound in electronic and online disputes. Lack of a regulatory framework for stringent management of complaint is capable of clogging the justice system with high volume small claims (Del Duca, Rule, & Rogers, 2010). Courts are often clogged with expensive, congested, long procedures and formality (Schiavetta, 2005). This results in a long delay as the decision may take even years before a judgement sees the light of the day, and the economic or even emotional costs involved can be devastating for consumers.

In the administration of justice sector, an effective ODR paradigm has the potential of automating the dispute resolution processes which expert predict may soon threaten the legal profession and change the way lawyers do their businesses (Rose, 2009). From the foregoing, the dispute resolution sector of the modern society got its fair share of innovative technology with the emergence of ODR. Richard Susskind was aptly referring to ODR and the changing role of Lawyers when he observed:

> The future of lawyers could be prosperous or disastrous...lawyers who are unwilling to change their working practices and extend their range of services

> will, in the coming decade, struggle to survive. Meanwhile, those who embrace new technologies and novel ways of sourcing legal work are likely to trade successfully for many years (Susskind, 2010, p. 269).

The incorporation of innovative ICT equipment and technology into dispute resolution mechanisms began with taking evidence via video-conferencing, case-management software and online filing applications and admitting an electronic copy of documents. This was viewed as a mere aid to the judicial process, which was easier and faster as parties can access justice at a cheaper cost; hence, the emergence of courts facilitated by ICT, where the procedural steps mimic the court systems. Cyber courts and cyber tribunals are studied differently from ODR, while the former is the adaptation of technology to court procedures the latter is the use of technology partly or wholly to ADR processes (Albornoz, 2012). However, the distinction could be blurred where courts provide ADR service, i.e., court-annexed mediation. Thomas described the situation as follows:

> Cybercourts are simply court proceedings that use exclusively (or almost exclusively) electronic communication means. They should be, and often are, considered to be part of the ODR movement, for two reasons. First, because the ODR movement emerged because of the clash between the ubiquity of the Internet and the territoriality of traditional, offline dispute resolution mechanisms. The term ODR is thus opposed to offline dispute resolution mechanisms, not to courts. Online ADR is only one part of ODR. Second, courts do not only provide litigation. As I said before, there also is court-based mediation and non-binding arbitration (Schultz, 2003, p. 32).

In essence, such feat recorded in the administration of justice system led to the integration of such technological advancement into traditional ADR mechanisms, hence the emergence of terms such as 'Online Mediation', 'Online Arbitration', etc. (Uchenna, 2012, p. 126).

Researchers have been inconsistent with the nomenclature of ODR in its early stage, as it is variously known as Electronic Dispute resolution (EDR) (Baumann, 2002, p. 1227), Internet Dispute Resolution (IDR) (Dusty, 2011, p. 337), Online Alternative Dispute Resolution (OADR) (Haloush & Malkawi, 2008, p. 330) and Technology Mediated Dispute Resolution (TMDR) (Uchenna, 2012, p. 125). However, regardless of the name used, most seem to have agreed that there is an increasing convergence between dispute resolution and ICT, which translates to a new regime for dispute resolution.

Notwithstanding the significant progress in the integration of ICT and ADR mechanisms, it is believed that ADR has not achieved its desired result where the dispute arose from transactions, which were conducted partly or wholly in the cyberspace. Where the value claim in a dispute is subject to commercial courts, the ability of the court to the hand-down decision in real time at low cost to the parties is put to the test. Traditional courts are grappling with appropriate approaches to resolve e-disputes which are mostly

small-claims but high volume. The cost of obtaining justice may well be higher than the claim (Cortes, 2011, p. 3).

Major breakthroughs in the interaction between dispute resolution and ICT occurred in the mid-1990s when the Villanova University established the Virtual Magistrate and University of Massachusetts' Online Ombuds Office. The Virtual Magistrate Project offered arbitration for rapid, interim resolution of disputes involving: system administrators, parties in an online system and those who were harmed by online postings, including files and documents (Cona, 1997, p. 975). Both the Ombuds and virtual magistrate were University sponsored pilot projects. Identifying an ODR platform depends on the nature of ICT mechanism deployed. Conley Tyler and Summer Raines observed as follows:

> Simply providing information about ADR on a website is not ODR: some dispute process must be attempted. A range of communication methods can be used, including: Email - a virtually instantaneous transfer of mainly text messages, Instant Messaging - a variant on email that allows synchronous online chat, Online Chat - a synchronous, text-based exchange of information, Threaded Discussion (also known as bulletin boards) - an asynchronous, textual exchange of information organized into specific topics, Video/Audio Streams - asynchronous transfer of recorded messages, and video-conferencing - synchronous transfer of video information (Raines & Tyler, 2006, p. 3).

ODR can be simply explained as taking dispute resolution to the cyberspace. In other words, ADR mechanisms facilitated through the use of modern ICT equipment. Therefore, multiple ADR mechanisms which have been used in traditional financial dispute resolution can be adapted to establish flexible ODR platforms.

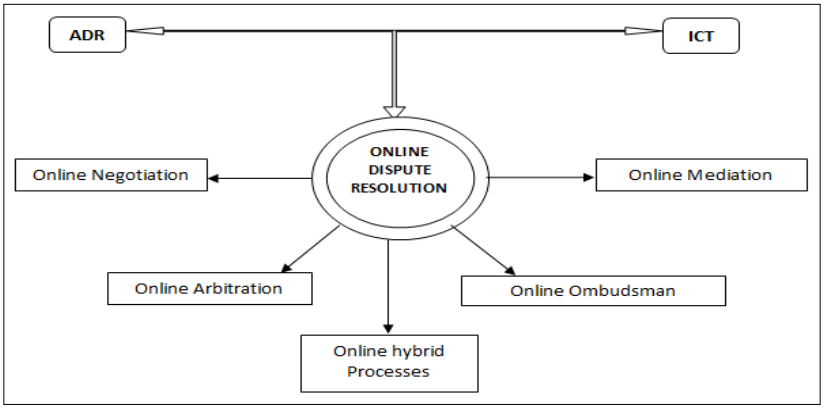

Figure 1: Possible permutations of ODR (Oseni & Omoola, 2016)

Figure 1 shows the various possible permutation of ODR, each permutation being a product of the existing ADR mechanism and innovative ICT techniques. This translates

to more ways of seeking redress from financial disputes online, without the need for travelling or being physically present at a dispute resolution institution. Each mechanism can be categorized into two broad groups based on the quantum of online procedures involved in the platform. They are: technology-based and technology-assisted (Devanesan & Aresty, 2012, p. 306).

Economic and Judicial Benefits of ODR

This section discusses the accruable benefits of ODR to the justice delivery system and the economy as observed in other jurisdictions. However, all this benefits need to be placed under the Islamic jurisprudential context.

a. Immediate access to justice for small claims

Resolution of small claim disputes is not at the core of traditional court system as monetary limits for filing commercial cases are usually provided for by rules of courts. In the same vein, the growing cost of convening arbitration or any ADR process can be daunting, where the claim is less than USD50. This limitation undermines the fundamental principles of access to justice for online consumers, who are mostly involved in small-scale transactions.

Access to justice and timely redress of consumer complaint is one of the peculiar features of an efficient ODR mechanism (Del Duca et al., 2010). The ability to seek redress irrespective of the amount of claim involved in a financial transaction gives an edge to ODR over the traditional means of seeking redress by consumers. Where claims are small and seem to be negligible, ODR helps to protect the right of consumers to seek redress online without the need of spending extra cost and time in filing complaints. Consumers with small claims on items, which cost less compared to the amount to be expended on seeking justice are guaranteed adequate protection by ODR providers who help to mediate between them and the business through an online medium.

ODR encourages fair, accessible and effective resolution of the complaint. It is, therefore, expected that with the resolution of Islamic commercial disputes through online mechanisms access to justice will be enhanced. This is incapable of eliminating the challenges posed by distance and the need to travel, thereby reducing cost and facilitating access to justice.

b. Court decongestion and small claims

In Malaysia, there have been efforts towards the decongestion the commercial courts through the creation of more divisions of courts, including small claims tribunals to cater for the excess judicial workload (Choong & Balan, 2009). This phenomenon affects both the conventional and Islamic finance industry with procedural, technical delays

and eventual abandonment of cases due to the low monetary value involved (Oseni & Omoola, 2017).

The bulk of potential financial disputes involving financial services providers and consumers are 'volume cookie cutter disputes' (Marquess, 2000). This implies disputes, which have sameness and generic in nature and amenable to similar solutions. Such disputes are small claims causes with high volumes, which are slightly above or below the monetary threshold of the civil court jurisdiction. These can be easily resolved through ODR. If left to the traditional offline dispute resolution mechanisms, they are capable of clogging the cause list and overburden the wheel of justice.

Evidence from the Islamic financial service in Malaysia shows that the electronic mode (email/online) remains the preferred mode for consumers in the financial services industry. This is an overwhelming indication that ICT enabled complaint handling processes might be highly received by financial consumers. In other words, ODR will help to increase the number of consumers who will have access to justice in the Malaysia Islamic finance industry.

However, more volumes of disputes can be resolved through the deployment of ICT backed ADR processes, which also adopt less manpower and reduce the burden on judicial manpower.

c. Consumer trust and confidence

The overall benefit, which an efficient ODR mechanism is capable of offering to the business in a B2C relationship, is trust mark from its customers (Abernethy, 2003; Ebner, 2012). The most often discussed types of trust in ODR are: user's trust in ODR, ODR as trust provider/facilitator and interpersonal trust (Abernethy, 2003; Ebner, 2012). In offline dispute resolution, trust is an essential aspect of the dispute resolution process. The Islamic finance industry is laid on the foundation of ethics, which might be eroded if disputes are not resolved fast and efficiently (Oseni & Hassan, 2011). The collaborative effect of virtual online communication between parties in ODR, which guarantees privacy, is capable of strengthening consumer confidence. This is capable of translating into high demand and confidence in the services of the business entity.

Privacy in the resolution of disputes helps to protect the reputation of the Islamic finance institutions by shutting the public out of disputes, which might have adverse effect and negative publicity on the Sharī'ah compliant business. Therefore, the overall benefit of trust mark goes to benefit both the business and electronic consumers: consumers use more e-services, while appreciating the ability to get their complaint resolved fast and painlessly (Van den Heuvel, 2000, p. 7). On the other hand, there are other business benefits, as consumers are willing to pay more when they know a fair and seamless resolution process is available to them, and future relationships are not endangered.

d. Party autonomy and privacy

ODR is absolutely party-driven, as ODR platforms are built in an environment with varieties of online dispute resolution mechanisms for disputants, beginning with negotiation and mediation, through a technology neutral. Furthermore, privacy of the dispute is enhanced through the password-protected environment provided from the initial opening of the complaint, which is stored for statistical and other purposes. The progress of the complaint can be tracked only by the complainants with assigned registration number and log-in details.

In addition, parties are allowed to suggest solutions or compromise which will be communicated promptly without delay or time-lag. The registration number ceases to be active when the dispute is closed within specific days or resolved by parties themselves. This means that disputes can be resolved by parties themselves, except in few cases where online neutrals try to facilitate the resolution through blind bidding in online mediation or online arbitration.

e. Cross-border transactions

The Malaysian Islamic finance industry is fast becoming a major hub for cross-border financial transactions (Azhar Rosly & Afandi Abu Bakar, 2003). Financial consumers all over the world seem comfortable to invest in the Islamic bonds (sukūk) in Malaysia compared to other jurisdictions. This is due in part to the enabling environment created by a regulatory body with the presence of formidable Islamic finance institutions. How to resolve disputes, which is a necessary occurrence between a Shari'ah compliant business and its offshore consumer, could pose a serious challenge to the existing dispute resolution institutions (Oseni & Omoola, 2015). One notable advantage ODR can offer for the growing number of mobile bankers is the ability to seek redress without having to travel across borders physically or face-to-face transactions. The uncertainty of dispute resolution options available to cross-border consumers is apposite to the growth of e-commerce. Confidence as to enforcement of awards and decisions in online dispute can be ascertained through international and regional frameworks for ODR.

Although there are no existing empirical data on the viability of ODR in the Islamic finance industry for obvious reasons, the Organisation For Economic Co-Operation And Development (OECD) published in 1999 a '*Guideline for Consumer Protection in the Context of Consumer Protection'.* The guideline placed special attention on cross-border transactions and encouraged businesses, government and consumer representatives to foster access to justice through ODR in the European Union (OECD, 2000). Another regional ODR initiative was proposed by the US Department of Justice to the Organisation of American States (OAS) in 2010 to facilitate cross-border ODR in the American region. Under the OAS-ODR initiative, consumers will be able to file an online cross-border complaint against a vendor in another participating state (Del Duca, Rule, & Loebl, 2012, p. 69).

Following the consumer ODR initiative in the EU, Muslim countries in Malaysia and Gulf Cooperation Countries (GCC) regions may want to consider shariah-complaint ODR platforms. Malaysia, being a foremost tourist destination attracting visitors from around the world, seeks to benefit immensely by providing frequent visitors with ODR platforms for seeking redress in the event a transaction is disputed even after such tourists return to their countries of residence. This can only be achieved through an efficient ODR platform for all forms of commercial disputes, particularly those related to Islamic finance.

f. Environmental Sustainability

In addition to the cross-border advantage, the preservation of the environmental and economic resources opportune by the ODR mechanism is unprecedented. Capital flights have been expended in accessing justice across borders; this translates to harming the environment in the emission of greenhouse gases (GHGs), which contributes to the Ozone layer depletion and global warming (Ebner & Getz, 2012). Furthermore, the huge paperwork involved in traditional dispute resolution mechanism is against the conservation of forest resources. This is a major environmental advantage which ODR has over other dispute resolution mechanisms including ADR. It is suggested that dispute resolution clauses in green building projects backed by Islamic financing facility should incorporate an appropriate ODR mechanism.

Islamic Jurisprudence and ODR Mechanisms: An Analysis

This section examines the relevance of ODR in accordance with the principles of Islamic jurisprudence. While the benefits identified in section 3 can be attributed to pure business and legal imperatives, there is the need to consider the desirability of ODR under Islamic law. Thus concepts such as Sulh, Maslahah, *Maqasid, Amanah* (trust), among others, will be discussed.

The deployment of ODR for the Islamic dispute resolution must necessarily comply with the fundamental principles of Islamic law. Therefore, some principles of Islamic jurisprudence *(usūl-al fiqh)* shall be analysed in relation to the benefits, purpose and underlying assumptions of businesses and access to justice. This will distinguish a Shari'ah complaint ODR process from the existing conventional framework in other jurisdictions. It will also unravel the basis of ODR in Islamic jurisprudence. Existing studies show that ODR can be made applicable in online payment system and transactions within the Islamic finance industry. The relevance of Islamic legal principles in the discussion lies in the need for *Shari'ah* compliance in dispute resolution procedures. In the light of these, principles such as: *Ṣulḥ, maslahah, sadd-ul-dharâi*, *Amânah* (trust) among others will be considered.

Ṣulḥ

Ṣulḥ, a term variously translated as negotiation, mediation or conciliation, can be used to describe any process which is aimed at settlement of dispute and suspension of hostilities (Othman, 2007). Other dispute resolution alternatives, which have been acknowledged in Islamic law include: compromise of action and amiable composition (Rasyid, 2013). This position attests to the inexhaustive mechanisms for settlement in Islam, which is only subject to terms that proscribe the lawful (*ḥalāl*) or permits the unlawful *(ḥarām)*.

Shariah complaint ODR, as a form of resolution facilitated through modern ICT equipment, will only be subject to disputes, which do not change the lawful to unlawful. It should be viewed as addition to the growing list of settlement options available and allowed in Islamic law. Similar to emerging technologies, which have been adjudged by the Muslim jurists as *ḥalāl*, ODR mechanisms can be easily suited to achieve the overall understanding of *Ṣulḥ* in between businesses and consumers. In the context of Islamic finance dispute resolution, there is the need for more options for the resolution of disputes. ODR is capable of adding the required option, which far exceeds the existing mechanisms in the industry.

Maṣlaḥah

In the resolution of financial disputes, the regulators usually take cognisance of the overwhelming welfare and interest of the public in order to enhance financial confidence and trust. This is in accordance with the principles of *maṣlaḥah* - a term which has been technically used to mean 'general good' or 'public interest' (Khadduri, 1979, p. 214). According to Muhammad Rashid Rida, *maṣlaḥah* is the basis of reinterpretation of the *muāmalāt* or civil aspect of the Shari'ah, which also includes commercial dealings between individuals in any given society (Muhammad Hashim Kamali, 2003, p. 285).

In line with the above, the dispute resolution landscape must be in the general good of the public. *Maṣlaḥah* should be given priority in the manner of implementation and enforcement of dispute resolution alternatives (Kamali, 2000). With the immense growth recorded in online commercial services, ODR mechanisms can be used to further enhance the protection of the public from unfair trade. This is consistent with the overreaching principles of *maṣlaḥah* in the Islamic jurisprudence.

Ṣadd-ul dhari'ah

In its juridical meaning, *ṣadd-ul dhari'ah* means 'blocking the means to evil' (Saleem, 2010, p. 300). This principle is applicable where an expected evil or harm is likely to occur, such evil must be obstructed before it escalates. Kamali, however, suggested that its meaning and application may be extended to 'opening of beneficence'. ODR serves a

means for opening abundant benefits for Muslim consumers by providing more mechanisms for resolving disputes with corporate entities and individuals.

In addition, the present dispute resolution mechanisms such as litigation and arbitration, although not inherently evil or unlawful, have been proven to possess peculiar weaknesses for business and commercial exigencies (Ghanem, 2014). Where a lawful means is expected to lead to an unlawful result or when a lawful means, which normally leads to a lawful result is used to procure an unlawful end' such means must be blocked' (Ghanem, 2014).

Contemporary litigation and arbitration with its bogus outcomes have been likened to evil and harm due to their loss of earnings, damage to relationship and bankruptcy (Rachlinski, 1996, p. 113). In particular, the ineffectiveness and virile nature of offline dispute resolution mechanisms in dealing with electronic commercial transactions laid credence to the harm, which could be visited on Muslim consumers. In addition, arbitration and other ADR processes seem to be inadequate for the peculiarities and nature of online transactions. Therefore, there is the need to close the avenue for further losses, while actively attempting to provide cost-effective remedy for the online consumers through Shariah-compliant ODR.

Maqãşid-al-Sharī'ah – Hifz al-Mãl (Property)

One of the objectives (*maqasid*) of the Shari'ah is to protect the property of all citizens (Nyazee, 2000, p. 202). According to Al Ghazali, the preservation of *mal* (wealth), '*aql* (intellect), *nasl* (progeny) and *nafs* (life) of the people is a *sine qua non* to the protection of the (din) religion. In the fulfilment of the objectives of the Shari'ah, the purposes can be divided into three, mainly, *daruriyat* (necessities), which is the primary objective. The other two are *hajiyat* (needs) and *tahsiniyat* (supplementary), which seek to establish ease and facilitate the primary objectives (Nyazee, 2000, p. 202).

In the context of Islamic finance, loss of lawful earning or usurping the savings of financial consumers is unlawful, irrespective of the amount either low or high. The protection against this loss can be considered as a primary objective of the Shariah law, while the use of easier methods to mitigate or remedy the loss can be said to facilitate the recovery.

The uncertainty created by the existing dispute resolution mechanism in Sharī'ah complaint financing has caused untold losses for the consumers. In Malaysia, for instance, the varying decisions of the civil courts on Islamic finance cases attest to this fact (Zakaria, 2013, p. 180). A proper blend of ADR and ICT, which can be found in ODR, is capable of avoiding disputes, which could result in litigation courts and loss of earnings for Shari'ah complaint business and consumers. Other areas of relevance are the preservation funds for Legal practitioners' fee, cost of travelling, accommodation for parties and the wasted time can be avoidable through the adoption of ODR. This is because

parties can negotiate, mediate or arbitrate through Shari'ah technological interface, where sentiments don't come in between the resolution process.

In addition, small claims which might be considered negligible can be filed at no additional cost to the complainant through online medium and addressed accordingly. This will guarantee the protection of the funds and property of the Muslim consumers.

Darar Yuzal or Removal of harm

Darar Yuzal is a legal maxim of Islamic jurisprudence (*al-qawaid fiqhiyyah*) extracted from the sayings of the Prophet Muhammad-Peace be upon Him (Ḥadīth) *la dharar wa la dirar fi'l-Islam* which means 'no harm shall be inflicted or reciprocated in Islam' has been the basis of defining beneficial concepts in *muāmalāt,* including *takāful* (Abdullah & Furqani, n.d., p. 17; Zarabozo, 1999). This principle is very supportive of ODR. This is partly due to the ease it facilitates for access to justice for financial consumers, it also ensures confidence and guarantees trust.

The harms, which are visited on the Muslim consumers and businesses both online and offline include fear of loss of lawful earnings, a method of submission of complaints and concerns over how to retrieve or resolve the error as soon as possible and without undue delay. Any dispute resolution mechanism such as ODR, which is capable of accelerating the removal of such harm or facilitate resolution, will be allowed under Islamic Jurisprudence.

Similar manifestation of this legal maxim is explicit in the sub-rule which states that "*ad-dararu la yuzalu bid-darar"* which means 'harm is not eliminated by harm' (Abdallah, 2010). In essence, where a consumer files a complaint against any entity, ODR seems to be the most harmless, other offline dispute process are capable of causing unnecessary difficulty to the consumers.

Sharī'ah risk, Legal Risk and Reputational risk

The use of ODR to resolve disputes emanating from Shariah complaint transactions is capable of enhancing risk management practices of Muslim businesses (Ghoul, 2011; Mansoor Khan & Ishaq Bhatti, 2008). With the adoption of ODR, there is a threefold benefit for the IFIs risk management vis-à-vis protection from Shari'ah risk, legal risk and reputational risk. Risk management, being one of the core principles in financing, can be enhanced through a viable ODR mechanism for the industry. In addition, ODR guarantees the reduction of legal risk both for the consumers and the Islamic finance institutions.

The risk of non-compliance with legal procedures for resolving disputes and complaints are resolved in real-time to avoid expensive litigation, which might dent the reputation and public sentiment against parties.

On the part of the Muslim consumers, the availability of ODR mechanisms in the Islamic businesses is a money-back guarantee for online and offline transactions, as any loss incurred is easily appraisable via online medium. This is because complaints can be submitted and dispensed with confidentially, fast and in most cases at no cost to the financial consumers.

Amãnaḥ (Trust)

In an Islamic finance contract, the contractual nature of the relationship between the consumer and financial institution is based on mutual partnership i.e., profit and loss sharing (PLS) as opposed to conventional financing, which precludes partnership with the consumer (Hassan & Lewis, 2009). In such a commercial relationship, mutual trust exists between the partners; this is in addition to the terms of the agreement. Where *amanah* (trust) ceases to exist, this could strain the financial relationship and might lead to the termination of the partnership.

Protection of the trust element between the partners can be achieved through the availability of an accessible complaint mechanism. The presence of a real-time mechanism for dispute resolution such as ODR promises to deliver fast resolution of the complaint, which can rekindle trust between two contracting parties.

Conclusion

The deployment of ODR for Shari'ah compliant transactions may be admirable, but there are few inherent challenges with regards to the appropriate element of a Shari'ah compliant. The objective of *sulh* goes beyond 'getting to yes' as it includes amicable settlement, maintenance of ties among and between parties and avoiding harm. Therefore, any dispute system design (DSD) must conform to relevant Shari'ah precepts highlighted above in order to be acceptable. Although DSD is primarily within the purview of computer algorithms for dispute resolution, the role of legal experts cannot be over emphasized.

A major challenge in the field of ODR is its design and implementation which requires technical specification to suite specific legal environment. Dispute System Design (DSD) has been developed in other jurisdictions without consideration for Islamic law principles. It must not necessarily mirror the secular dispute landscape but may adapt specific techniques which are not averse to Islamic law principles. A faith-based DSD is expected to seek inspiration in reducing harm, without sacrificing cost and culture (Bloch, 2009). In this context, 'power dynamic may be shaped to allow an interests-based approach' with a combination of culture and organizational efficiency which can form the basis of a Shari'ah based dispute system design (Kinon, 2012).

This study shows that there is a dearth of literature on Shari'ah compliant ODR with few writing on its prospects for the Islamic finance industry for financial consumers

(Oseni & Omoola, 2015). A concerted effort towards DSD for Islamic finance has not surfaced in academic research.

It is recommended that Shariah scholars and dispute resolution experts prescribe the specific requirement of ODR design based on the *Maqāṣid-al-Sharī'ah*. These requirements will serve as a guide to ICT experts and programmers in designing Shari'ah complaint ODR system. Although the expected user of the system is online customer service officials and consumers, the system must be able to preserve the principles of the Muslim faith.

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