



Research Article

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## Integrating the Conflict Management Systems of the Oromo in the Formal Law of the Land

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**Abstract:** Exploring and incorporating an indigenous and ingenious knowledge of the Oromo in the formal law of the land is a crucial issue for pragmatic development of the people. Thus, it is imperative to incorporate African indigenous conflict management institutions and mechanisms into the formal conflict management institutions and mechanisms of the land. To do so the basic issues raised in this seminar are: What are the basic conflict management institutions and mechanisms of the Oromo? How the importance of conflict management institutions and mechanisms for the Oromo described? What are the basic maxim principles of incorporating an ingenious knowledge? By employing an imaginative type of descriptive qualitative research, this paper therefore specifically employed the qualitative data collected through textual data gathering methods and analyzed in the form of descriptive methods. The collected data uncovered the fact that Jarsa Arara, Shane-salge, Afarfata, Kallu and Sera Luka are among the basic conflict management institutions. To proactively protect and manage and solve conflicts crated on due process: Jarsumma, Afarfata, generation/family based fact investigations, swears, curses, and oath were employed. Likewise, incorporating different conflict management institutions and mechanisms of the Oromo into the formal conflict management institutions and mechanisms of the land helps to maintain peace and security for a long period of time; contribute in the development of our country in general and Oromo in particular in social, economic as well as political aspects. The described data on the other hands marked that theconflict management institutions and mechanisms of the Oromo fulfill the basic maxim principles of incorporation of indigenous knowledge.Although the conflict management institutions and mechanisms of the Oromo are neither imported nor transplanted, giving due attention to the valuable parts of the local indigenous knowledge helps to connect the local community with the other world communities and vice-versa.

**Keywords:** *Conflict Management, Folk Laws, Gada, Indigenous knowledge*

### 1. Introduction

This paper has three parts. The first consists of the brief information about the Oromo people and background of the study followed by statements of the problem, and significances of the research. The methodology part was treated separately because of its unique features and the need to elaborate it broadly. Part two, has

incorporated review of related literature including indigenous knowledge and folk laws.

Part three, focused on the type of the Oromo folk laws, institutions and mechanisms, models of the recognitions of the folk laws, maxims principles of the recognitions of the folk laws, the important of incorporating the

folk laws into the formal laws of the land and concluding remarks.

### 1.1. Some Information about the Oromo

The Oromo, an African indigenous people started to live in Ethiopia with their indigenous folk law since the 4<sup>th</sup> century B.C. (Feyisa, 1998). Regarding the population, “the Oromo refers to an ethnic group in east Africa counting about 35 million people. The Oromo constitutes up to half of the Ethiopian population, while about four million live in Kenya” (Servan, 2008:1).

The Oromo, being naturalist believe in Waka, the only and the creator of all things. The Oromo speak Afan Oromo, categorized as a member of the eastern high land languages of the Cushitic family. It is the third widely spoken language in Africa next to Hausa and Swahili respectively (Lewis, 1994).

Dirribi (2011:134) explains that after the proliferation of the Oromo people, different Oromo moieties were established their own socio-cultural centres for convocation and congregation under different regional Odas. Accordingly, Sabbo-Gona established a socio-cultural centre at Oda Garre (today’s Borana zone), the Rayya-Asabo at Oda Makodi (today’s south Tigray zone), the Siko-Mando at Oda Roba (today’s Bale zone), the Itu-Humbana at Oda Bultum (today’s west Hararge zone), and the Tulama-Macha Oda Nabe (today’s south west Shawa zone), Oda Nabe established in 1230 A.D for the politico-religious centre of the Tulama-Macha and after 250 years Oda Bisil was established in 1480 A.D for the Macha proper (Negaso, 2001:28).

### 1.2 Background of the Research

Folk law is parts of an indigenous knowledge that is transmitted from one generation to the next generation through oral means (Renteln & Dundes, 1995). African folk laws are genres of the orally transmitted indigenous knowledge used over centuries to maintain peace and order and stability of the traditional societies. Yet African folk laws are currently

relegated to lower status or total neglect as a functioning body of law due to oral history of their transmission and alleged inferiority to modern codified laws largely adopted from the west. Owing to these state of affairs, in recent years, there is a growing concern about the future of folk laws among an increasingly large section of African anthropologists and other researchers including folklorists, environmentalists, and sociologists (Emeagwali, 2003:2).

Consequently, linguists and anthropologists have recently started to engage themselves in multi-purpose linguistic and culture documentation aimed not only at salvaging vanishing languages and at cultures, but also preserving indigenous wisdom and legal practice embodied in them including folk laws. Thus, there is a need for preservation of these cultural elements. In the same vine, exploration and description of indigenous knowledge of African societies including folk laws are currently given due attention (Idowu, 2006 & Mapaire, 2011).

Different writers, for instance, Driberg (1934); Hartland (1924); and Paget (1951) as cited in Idowu (2006:61) argue, “Africans have little or no system of law before the arrival of Europeans”. Similarly, according to Hartland (1924), there is the problem of substance in the ascription and description of the qualities of African folk laws. For Hartland, primitive law is the custom of the tribe that is inefficient to solve independently the problem of African peoples. However, the misconceived conclusion of Europeans writers about African folk laws were emanating without a thorough examination of the nature and contents of African legal wisdom. In addition to the misunderstandings, the successive leaders of African governments have also defectively imported foreign laws that did not contextualize knowledge, norm, sex, age, and language of African societies (Abera, 1998 & Getachew, 2007).

The reason for African leaders failed to recognize African indigenous laws, Muradu & Gebreyesus (2009:85) stress that “they are

thinking as African traditional laws are backward and uncivilized; thus they failed to give a place to African folk law". This reveals, African folk laws are disappearing not only by the influence of foreigners, but also by African leaders themselves. The Ethiopian folk laws in general and the Macha Oromo folk laws in particular are influenced by those factors. However, the Oromo folk law, being one of the indigenous African folk laws has not been given sufficient attention in the past regimes of the Ethiopia states to preserve as well as to incorporate it into the legal system of the country. In this regard, Ullendorff (1965) shows his contempt in his words; the Oromo Gada institution of law and government classifies the Oromo as stateless society and denies the existence of any form of permanent and stable government for maintaining law and order.

The view is interpreted as, Ullendorff rejects the role of the Oromo Gada institution in general and the Oromo folk laws in particular in the formation of a democratic polity and its contribution to the development of Ethiopia. He also denies the Oromo legal philosophy and material sacrament without any evidence and comparative research. Such misperceived conception seems to have discouraged the inclusion of the folk laws into the codified legal system of Ethiopia.

The main concern of this paper, therefore, is to explore the folk laws of the Oromo with a view to salvage them from extinction and pave the way for the possible incorporation of their elements into the codified legal system of Oromia Regional State and the country at large. It is believable that exploring, describing, and incorporating the folk law into the formal law of the land is useful to solve normative, social, economic, and political problems of the studied society.

### 1.3 Research Statements

Even though African folk laws are crucial in solving different issues of African societies, they are highly exposed to multiple forms of endangerment. Mapaire (2011:149) stresses,

“even though Africa has an important role to play in the globalised world, most of its value systems and legal heritages are getting weather-beaten as African governments are thrown in the towel to force the western civilization and globalization”. The statement clearly shows the place of African indigenous knowledge and its contribution to the globalized world.

As indicated above, “Ethiopia enjoys a rich cultural heritage of folk law largely attributed to its diverse cultures” (Donovan & Getachew, 2003:505). In fact, each society has to develop its own indigenous legal system to govern social, economic, and political relations at all levels. However, except for some components of folk laws of the highland Christians, none of the folk laws are explored and included in the codified legal system of the country.

Even though some parts of the legal practices traditionally used by the people have been revitalized since the adoption of the Federal Constitution of Ethiopia (1995:125), the content of the desired folk laws remain excluded from the formal court practices. One part of indigenous knowledge of the people, the Oromo laws have an important role to solve the various problems of the society where and when there was no modern legal philosophy (Jabessa, 1995), but they were neglected as indigenous knowledge. This is explained that despite its importance in solving different conflicts created among the society, the concept of the practices of folk laws have not yet been explored in any depth by Oromo writers and researchers.

The rationale of this research, therefore, is even if the folk laws are neglected and reduced at the local level, the wisdom embodied have the potential to solve conflicts in peaceful means and to provide a good source for enriching the modern legal system. This could be effective if the folk law is properly explored, described, and the folk law is incorporated into the Federal and regional laws.

## 1.4 Basic Research Questions

- What are the basic conflict management institutions and mechanisms of the Oromo?
- How is the importance of conflict management institutions and mechanisms for the Oromo described?
- What are the basic maxim principles of incorporating an ingenious knowledge in the formal laws of the land?

## 1.5 Research Methods

Research methods are procedural rules that the researcher should follow to collect relevant data. By employing an imaginative type of descriptive qualitative research, this paper therefore specifically employed the qualitative data collected through textual data gathering methods and analyzed in the form of descriptive methods. To do so describing different models and maxims principles of recognition of the folk laws is imperative.

## 2. Conceptual Literature

Related literatures related to culture, indigenous knowledge, norm, folk law, and other related issues are devoted to provide a better understanding of incorporating the folk law into the formal laws of our country.

### 2.1 Indigenous Knowledge

Indigenous knowledge is “the unique traditional local knowledge exists within the minds of the indigenous people and develops around specific conditions of a particular geographic area” (Grenier, 1998:12). Emeagwali (2003) also describes; indigenous knowledge is related to the indigenous people who have their own ontology that passes over generations through verbal and material elements. Bascom (2007:376) also describes the components of folk knowledge in the fact that

It comprehends all knowledge that are transmitted by word of mouth, all crafts and other techniques that are learned by imitation or example, as well as the products of these craft. Folklore

includes folk art, folk crafts, folk tools, folk costume, folk custom, folk belief, folk medicine, folk recipes, folk music, folk dance, folk games, folk gestures and folk speech, as well as those verbal forms of expressions which are folk literature but which are better described as verbal art.

The statements show that folk law, which is one among the folk knowledge genres emerges out of indigenous peoples’ customs, traditions and norms that is embodied in all forms of folk wisdom, including traditional belief systems, folk arts, folk narratives and etc. Thus, folk law is one of the domains that shares the above features and components of indigenous knowledge.

### 2.2 Norm

Norm is the rule of behavior and standard of conduct of peoples living in an area (Kendall, 2005). According to Kendall, there are prescriptive norms that are acceptable behaviors and proscriptive norms that are unacceptable behavior. In other words, norms are systems of social control that typically employ both for rewards and for punishments.

Strengthening the above idea, Getachew (2007:26) describes, “norms are standard of conduct as to what one ought to do or abstain from.” According to this statement, the norm what one ought to do refers to the positive conduct or norm, whereas what conduct abstains from is the wrong that is ascribed as bad conduct or unacceptable behavior. In administering these positive and negative conducts, enforcers usually apply rules that divide the universe of human behavior into two categories: the good behavior that needs reward and the bad behavior that enforces punishment (Ellickson, 1991).

The above statements have shown that norms are rules how peoples behave with their environment and control their ways of living. In order to identify good behavior from the bad, investigating norms in the context of communicative events of particular people may provide recognition as the folk law of a

people. In other words, the social life of particular people needs investigation accordingly, because the role of norms of specific society or group are highly decentralized and beyond the society or the social group, no particular individual has special authority to claim that norms (Ellickson, 1991). After some time, the society or social group recognizes and acknowledges such norm as folk law.

### 2.3 Folk Laws

Many anthropologists, jurists, folklorists, sociologists, and other writers define the meaning and the concept of folk law basing on their field of studies. For instance, Renteln and Dundes (1995:1) define, “folk law is known by a bewildering number of terms, including unwritten law, common law, indigenous law, living law, primitive law, etc.”

Regarding the formation of folk law according to Parisi (2000:6), a customary rule is generally described by the phrase *opinio iuris ac necessitatis*, which describes a widespread belief in the desirability of the norm and the general conviction that the practice represents an essential norm of social conduct. The statements encapsulate that the desirable practice of people can govern and solve the problem based on the wellbeing of the people. In so doing, norms are considered necessary for social well-being that are treated as proper legal customs and that can enter the legal system as primary sources of law.

The sources of folk law may differ from people to people, society to another society in its enactment procedures, sources, types and in legal materials use, because it emanates from the consciousness and philosophical thought of a particular people. For instance, Bederman (2010:7) describes, “[c]ustom is a source of law that is not imposed from the “top down” in an Austinian sense; but from the “bottom up” in the unique context of tribal cultures and values.” From this point of view, folk law is the product of the repeatedly practice of a people that emerges from the

interest of that people or group to accept the obligatory rule of the emerging practice without any coercion. It is also emphasized that “[t]here is no innate ‘nature’ of law, only the socially constructed essence of law, which evolves and changes as do all human constructs” (Ellsworth, 2011:135). The above statements encapsulate that folk law can be emerged from the custom of the people and recognized and enforced by that people.

### 3 The Oromo Folk Laws

Rule of nature theory sometimes called natural law theory is the oldest school of jurisprudence initially developed by the Greek philosophers preceding Socrates and Plato (Getachew, 2007). With regard to this theory, Hutton (2009:9) describes, “natural law theorists reject attempts to define law independently of morality for the purposes of philosophical or jurisprudential analysis and they see law as properly understood to be a teleological system to bring about a just people”.

According to Hutton, it is difficult to define law independently from morality, thus laws source from morality. This marks moral principles are given from God to govern every society, thus moral principles are more powerful than the formal laws. Folk laws of different societies could be given to them from God or the folk law enacted by traditional jurists or the folk laws developed through their experience. In the Oromo social life, folk laws emerge from Safu, which is a morale code prescribing what is right or wrong and shaping the way individuals should behave in a people (Bartels, 1983). The term Safuis understood similarly in different Oromo moieties. For instance, Østebø (2009:1050) explains, Safu among the Arsii Oromo is understood as Wayyu. In some of the Macha, for instance in Jawwi, it is interchangeably used with the term Hoda ‘miracle’ (Gemechu, 2005).

The Oromo say, Safu is given from Waka. The term Waka denotes two concepts: the sky and the almighty God; and the two are Safu.

Regarding this, Østebø (2009:1052) describes, God is Wayyu. Heaven is also Wayyu (Wayyu Sami). In the same source, we do not dare to speak bad things about heaven. This is because heaven is the home of God, thus it is the holiest place since it is the place of God and it is Wayyu and more importantly God is the greatest Wayyu, He is the one who created everything.

The above ideas identify that the origin of the Oromo folk law is associated with the “theory of the rule of nature” that is Safu. Alemayehu (2009) also explains, Gada law is said to have been derived from the rule of nature called Safu Waqa. Similarly, Ayalew (2008:229) adds, “Abban Sera Wakadha, meaning the source of law is almighty God, thus, serri Waka Sera biyya nimo’a, meaning ‘the commandments of God is powerful over the human law. Therefore, Safu is the principle that emanates from the rule of God that already exists in the mind of the people that is an unwritten morale code. According to WADO (2006), respecting Safu means respecting the rule of Waka; because Safu provides moral and ethical code according to which events whether at a personal, social or cosmic level takes place.

The sources of folk law and the importance of folk law are described as “religion can provide the answer to where the traditions and law of the people came from and religion is among others, a means of social control” (Eller, 2007:11). The statements substantiate that Safu is the acceptable and unacceptable norm, which plays a great role in governing and controlling social, economic, political and normative issues of the Oromo. Living according to the code of Safu is the only means to a “full and happy life (Gemechu, 1993:23).

### 3.1 Types of Folk Laws of the Oromo

The knowledge of the people about the world is classified into cultural and folk knowledge, known as Bekumsa Ada and knowledge of law, known as Bekumsa Sera (Gemechu, 1993). The ‘knowledge of law’ according to

Gemechu is further subdivided into Sera Waka the law of God’ those are immutable; and Sera Nama ‘the law of human beings’ that can be changed through consensus and democratic means. This show, Sera Waka is related to the rule of nature theory called commandments of Waka and Sera Nama is related to an “empirical theory” the laws that are made by staff through experience.

Based on their profession or experience, other writers divided the types of the Oromo folk laws into different parts. For instance, Negaso (2001:55-56) classifies the folk laws into two major parts “the modern legal system that include the sacred law and the penal law”. However, in preliterate people, it is difficult to find the folk law as classified as criminal and civil, because criminal and civil case conflicts are interwoven and are seen as a conflict, thus the classification of Negaso goes to the type of the formal law.

Jabessa (1995:69) also classifies the Oromo folk laws under “criminal cases into three parts: high, (death penalty & banishment), the medium (physical assault & robbery) and petty crime (animal theft)”. Alemayehu (2009) divides the folk law into cardinal law and supplementary law. Based on the degree of offences committed in the people, Gollo (1998) also divides the folk law into three major parts known as the cardinal (very important), ancillary and supplementary (additional) folk laws.

According to the above classifications, for instance, Negaso’s and Jabessa’s classification is similar to the classification of the modern (private or civil and public or criminal) law. However, the classifications of Alemayehu (2009) and Gollo (1998) are more related to have the general concepts of cardinal and ancillary types. What so ever their different classifications they are, the following part concentrates to discuss the components of cardinal laws that help to solve conflicts among the people.

#### 3.1.1 Cardinal Folk Laws

Cardinal folk laws are laws that help to control and judge serious offences that directly or indirectly affect the rule of Waka and that disturb public security at large (Jabessa, 1995 & Negaso, 2001). Cardinal Law has different names in different Oromo moieties. For instance, according to the Macha, cardinal law is called Safu Shanan Macha (Jabessa, 1995), whereas, according to the Tulama Oromo, the concept of cardinal law is highly attached to Safu Waka ‘law of God’, Safu Dache ‘law of earth’, Safu abbaa ‘law of paternity’ and Safu Hadha ‘law of maternity’ (Alemayehu, 2009). According to Tulama, if someone commits crime he/she is perceived as if he/she breaks Safu Waka ‘law of God’, Safu Dache ‘law of Earth’, Safu Abbaa ‘law of paternity’ and Safu Hadha ‘law of maternity’.

Ayalew (2005:3) further describes, “[i]n the Oromo social life, father is seen as a king, a judge, and a luba of the family”. As long as king, judge and luba are one of the respected organs, the father to the Oromo people also an esteemed and respected person, thus giving due honor and respect for father as well as mother is salient. The reason is that those are the tempered, softened and lovely persons; thus, they have to be respected and dignified. In addition, there are also other cardinal laws such as; trespass, arson, flogs, robbery, theft, lies, perjury, rape, etc (Alemayehu 2009; Jabessa, 1995; & Negaso, 2001) in different moieties.

### 3.1.2 Ancillary Folk Laws

Ancillary folk laws are other type of laws seen as a secondary (Alemayehu, 2009 & Gollo, 1998) laws. Most of the time, such types of laws do not affect public security at large, because more often solve crimes that are more related to personal issues.

According to the above writers, ancillary laws include law of breaching trust, refusing to greet someone, disrespecting elders and the like. In addition to the above ancillary laws, there are new changes in social, economic, political and technological developments that

have to be remolded to fit into a changing environment, technology, government law and policies seen as supplementary laws that help to control and regulate wrongs related to breaking rules and principles among different societies (Alemayehu, 2009).

### 3.2 Traditional Conflict Resolution Institutions of the Oromo

Conflict is a disagreement or a clash occurs between two parties because of economic, social, normative and political issues. It is apparent that conflict is an inevitable for any society. Schellenberg (1996) gives emphasis that conflict is one of the essential elements in any society. In the same source, the absence of interaction in any society signals unsound interaction that may result meaningless development and integrity. Durkheim in Doherty (2001:77) also shares this assumption, “a society no crime would be abnormal”.

The above statements have shown that a society without conflict means a society without social, economic and political interaction so that the society without development is judged as silent and inactive. Thus, to govern and control crimes committed in interactive societies, different governments/societies may develop different rules and procedures. While the social, political and economic conditions of the people grow, the disputes may become more complex. Thus, it is imperative to adapt or develop based on own experience and knowledge such rules and procedures accordingly. Such values and norms of these dynamic means of dispute settlement are part of the daily life of the people.

The Oromo people have their own different mechanisms exercised traditional conflict resolution institutions. Dejene (2002), Haberland (1963) and Muradu and Gebreyesus (2009) confirm that there are three major conflict resolution systems in the Oromo people: Jarsa Biyya, Kallu and traditional judicial institution called Shane. The aforementioned institutions have their own mechanisms and roles in the pragmatic

development of contemporary society. The forwarding sections explore some of the traditional institutions.

### 3.2.1 Jarsa Arara (Mediators)

Jarsa Arara plays important role in solving different disputes that are created between individuals and individuals, clan and clan and group and group in peaceful means. According to the Oromo tradition, the term Jarsa means an elder man. However, in this context, the term does not necessarily mean an elder, but elders who are diligent and intelligent persons in their reasoning and words among the people (Dejene, 2002 & Jabessa, 1995). Members of Jarsa Arara may also be female or male who are naturally gifted in their logical reasoning and plausibly can convince the disputants.

Furthermore, Muradu and Gebreyesus (2009:167) describe, “Jarsa Arara sometimes called Jarsa Biyya is the most widely used form of conflict resolution institution among the societies with some minor regional variations brought about by the interplay of culture and way of life”. The elected Jarsa Arara are expected to be the well-known and reputed for their wisdom and well versed in the traditional law and experiences of the people in solving the normative, social, economic and political issues among the people (Dejene, 2002 & Yilma, 1999). In addition, Kallu is another conflict resolution institution among the society.

### 3.2.2 Kallu Institution

The term Kallu may not be confused with the Kallicha. Kallicha is the wizard or sorcerer who has magical power and who excommunicates with Waka (Bartels, 1983 & Knutson, 1967). On the other hand, the term Kallu in the Oromo sacrament has different concepts. For one thing, Kallu is the leader of Kallu institution that blesses the new coming Gada officials sometimes called Abba Muda. For another, Kallu means a wise and diligent male. Kallu is also seen in the Oromo people as a prophet, fortune-teller and mediator, who mediates the Oromo with Waka. In this

context, Kallu is one of the Oromo traditional conflict resolution institutions (Bartels, 1983; Gemechu, 2005; & Knutson, 1967).

The views of the writers have shown that Kallu institution is one of the highest Oromo Gada leadership organs that play a great role in blessing and solving conflicts in different modes. With regard to the Kallu institution, Lewis (1994:58) describes, “Kallu court is the institution in which the respected elders attempt to resolve disputes using the same principles of Arara as courts at the lower level”. The interconnection of law and religion in the social life of the people implies law emerges from Safu Waka. In addition, Kallu as religious leader also serves as legislature in making law for the new conditions and social changes (Knutson, 1967) and performs all electoral and ritual ceremonies as well as supports the legitimate basis of the Gada institution and the transfer of power (Asmerom, 2006). Shane is another conflict resolution institution with same differences with the above institutions in their establishment and structure.

### 3.2.3 Shane

Shane institution plays a great role in preventing and solving different conflicts among the Oromo societies. The word Shane literally mean five, which implies the mediators or traditional judges are five in number, two at the left and two at the right side of the main judge. According to Ayalew (2007), most of the time, Shane solves conflicts on the date of Sunday or a Saint's day. The reason for Sunday is that Sunday according to the sacrament of the society is the holiest and day of peace.

The processes that the Shane follows to resolve conflict starts from asking the witnesses to come to solve dispute and discuss on the matter diligently (Lewis, 1994). After discussion, the Shane tries to agree the disputants on a course of reconciliation or on a reasonable solution that the Shane hopes the desire for harmony, peace and necessary to heal the breach and find reconciliation

between the disputants (Ayalew, 2008). Solving conflicts in such manner has different functions.

### 3.3 Mechanisms of Suspect Investigation in the Macha Oromo

The research data have shown that suspect investigation mechanisms in the society are performed by oral and/or material elements. The following five major modes are the common practice.

#### 3.3.1 Afarsata

Thus, afarsata means to advocate or propagate an issue to the nearby somebody or public. afarsata is a type of traditional suspect investigation mechanism in the social life of the Oromo in order to find facts publicly or at open-air discussion. In the process of afarsata, if a crime is committed, then difficult to identify the criminal(s) the victim reports to the local elders or Shane and informs the wrong done by the unknown person. Then after, the local elders or Shane climbs upon a mountain and blows clarinet or beats bass drum to inform the local community to gather and identify the wrong done. In the Oromo social life, Afarsata sometimes known as kora wamu encapsulates the view that sometimes when felonious commit wrong in secret and they are not interested to expose themselves, the Oromo has the mechanism of identifying alleges called kora wamu. On this koraa 'session', local elders or religious leaders bring material cultures such as spear and thorn and order the suspect in swear.

After the society gathered and tried to investigate the fact not yet identified, the local elders urge the society to be careful not to swear and they urge the society to identify and disclose the suspect. Still, if the suspect refuses to expose him/herself, by the order of the Kallu or one of the local elders, the suspect swears holding the severe mode of legal materials found around. Kora wamu type of fact investigation mechanism is very similar to the current community policing type of fact investigation in the society.

#### 3.3.2 Jarsumma

As further described in the above under traditional conflict resolution institutions, Jarsumma is one of the most common types of traditional conflict resolution mechanisms that strive to solve conflict with the involvement of third party. Jarsumma is an institution that strives to solve conflict more often when disputants cannot solve their conflict by themselves.

Even though mediation takes place with the intervention of third party, according to my observation, the mediators tried to facilitate let the disputants solve their conflict by themselves (self-help) without the intervention of third party. However, when disputants cannot reach on compromise, one of the victims can have the right to demurs the decision and beseech the case to the tradition tribune for litigation or for further evaluation. Refusing to solve conflict through Jarsumma leads to swear.

#### 3.3.3 Swearing

Swearing is an internal and a non-coercive force that is practiced in the customary type of suspect investigation that helps to control wrong acts among the Oromo. In the enforcement of the folk law, swearing is the most dangerous mode that is practiced either in oral or in employing legal materials when the suspect is interested. Although swear is severe, it is not easily permissible, because, dates of probation is given to the suspect to let him/them think over the issue before swear.

The reason for probation is if an alleged falsely swear, it is perceived as sad for his/her family; even his/her family becomes moron and abnormal and his/her generation becomes extinct. The informant added that right after the swearing, his/her family and the claimant's families never greet each other for ad infinitum. Swearing may not only be confined with the suspect, but also includes the family of the suspect called Sera Luka

#### 3.3.4 Sera Luka

Sera Luka is one of the fact investigation mechanisms in the enforcement of the folk law and the severe modes of investigation of suspects by calling the families of the suspect. The direct meaning of Luka in English is ‘foot’ and Sera means ‘law’. In this context, Sera Luka literally mean family based suspect investigation mechanism.

In relation to this, Dirribii (2011) explains, Sera Luka is the processes of investigation of suspects by calling the friends of the suspect in the processes of tracker. Nevertheless, I identified during my fieldworks that Sera Luka is not the law of tracker and not only the alleged friend. It is primarily high number from the nuclear family of allege and less number from the extended families are required for investigation. This could happen based on the value of the issue produced for investigation.

The number of the alleged families needed for the investigation depends on the importance of the property stolen or degree of an offence. This is more explained that if the suspect is the husband, his wife knows more often, where he spends day and night, with which he is related; thus, she may identify the special behavior of her husband more than others may. However, if the alleged is the wife, the husband is required for investigation. Next to the husband or the wife, children of the suspect are required for the investigation if they are capable.

### 3.3.5 Cursing

Cursing is the final, perhaps the most forceful and dangerous fact investigation mechanism among others. Cursing is a malevolent appeal to a supernatural being for the harm caused by unidentified suspect or criminal.

Cursing is one of the suspect investigation mechanisms performed through oral and sometimes with negative modes of legal materials. Curse is employed when either the suspect absconds to present her /himself before the traditional tribune when required or when the felonious is not yet identified.

## 3.4 Models of Recognition of Folk Laws

Various authors in the area argue that folk law should be recognized and incorporated into the modern legal system of different countries in that these laws can have a potential to solve local problems of the local people (Allott, 1995 & Bederman, 2010). In this regard, Hinz (2008) has generated different models that help to incorporate African folk laws in general and the Oromo folk laws in particular into the modern legal system.

### 3.4.1 The Model of Regulated (weak or strong) Dualism

According to this model, the government allows the incorporation of traditional governance system and folk law into the state law. Hinz (2008) notes, the overall political and legal system in such a country become plural, with the state-run system on the one side and a plurality of traditional systems on the other. In such a ruling system, traditional knowledge of the people and the modern legal system have equal legal and political status in the day-to-day activities of the people and go together in supporting one another.

For instance, folk laws are part of the national law in Ghanaian people and incorporated into judicial proceedings of the country as essential body of rights derived from customs and practices of members of the people (Kuruk, 2002). Thus, the regulated dualism model in such country helps to shape, modify and fill the lacuna of the custom of the society in communicating with different legal systems. The Ghanaian legal system represents a good example for this model (Kuruk, 2002).

### 3.4.2 The Model of Weak or Modern Monism

With regard to this model, the state takes note of the existence of traditional governance and indigenous folk law, but the local government does not acknowledge their existence by giving them semi-autonomous status (Hinz, 2008:63). Thus, the folk law does not have legal and political power on the land. As a result, people prefer to go to the regular court instead of solving their disputes at the nearby

folk tribunals, thus, are exposed to extra costs, litigation expenses and other problems.

When comes to Ethiopia, Bassi (2003) aptly indicates that though there are relevant and many functioning folk laws, particularly among the Oromo, they are not recognized by the government. A good example for this model is the case of Ethiopia and Tunisia government legal systems (Kuruk, 2002).

### 3.4.3 The Model of (strong) Traditional Monism

This model is described as “African traditional characteristics prevail at the level of the state” (Hinz, 2008:63). That means, the authority of a government in such a state emanates from tradition, and the law of the land is predominantly customary. In such a government system, the legal power is vested in the hands of the indigenous rulers. Thus, every activity of the indigenous people is resolved by the indigenous mechanisms employed by indigenous conflict resolution institutions. A good example is Swaziland.

The inferences from the above discussion indicate that African governments have different attitudes toward the recognition of African folk laws to incorporate into their national legal systems. Despite the challenges to incorporate folk laws into the national laws, it is imperative if all of the government organs show their interests to incorporate the valuable parts of folk laws into their modern legal systems.

### 3.5 Maxim Principles of the Recognition of Folk Laws

to be qualified and incorporated into the modern legal system, folk laws must be applicable; longevity, they have to be general in nature; they should not be repugnant to the natural justice; equity, or good conscience (Allott, 1995 & Woodman, 1995). They of course must be compatible with the existing legislations.

In this regard, the Oromo Gada law is a good example that can fulfill those maxims so that incorporating the valuable parts of the Oromo

folk law in general and the Macha in particular help the local government, regional states, justice institutions as well as researchers in the area.

### 3.6 The Importance of Incorporating Folk Laws into the Formal Laws

Although the importance of folk law overtones the formal one, it is imperative to give more emphasis to incorporate folk law into the formal law of the land. The importance of creating the relations and interactions of the formal court system with the traditional conflict resolution institutions in Ethiopia is recommendable in that:

We believe that here is a strong case for acknowledging the value of certain customary institution and the rights of people to make use of them in legally recognized ways. Customary dispute resolution systems can contribute through partnership and collaboration with the formal system in providing culturally acceptable and meaningful justice. (Pankhurst & Getachew, 2008:8)

According to Pankhurst and Getachew, recognizing valuable parts of folk laws helps to maintain sustainable peace and coexistence among Ethiopian community if properly explored, acknowledged and incorporated into the formal law of the country. In brief, incorporating the folk laws of the people has the following functions to the Ethiopian people in general and to the Oromo in particular.

#### 3.6.1 Social Function

One of the basic social functions of the folk law is to solve conflict of homicide (Dejene, 2002 in peaceful means so that it helps to reduce social conflict (Ayalew, 2007 & Gemechu, 2005). Muradu and Gebreyesus (2009) also describe, folk law among the Oromo people maintains sustainable peace and security, promote inter-ethnic dispute resolution including the Oromo traditions of group or individual adoption, fostering moggasa ‘naming,’ patronage and harma

hodha ‘breast sucking’ that remains an important element of maintaining peace in interethnic relations.

Ayalew (2002:38) also adds that “Guddifacha ‘adoption’ is connected to the emergency of family and property; the need for continuity of family line and heir to property evolved in the people.

### 3.6.2 Normative Function

Respecting the rule of Waka is thus practicing good norms such as respecting elders, developing norms, avoiding dependency, upholding esteem, promoting good spirit and faithfulness, creating responsible persons, respecting international and national or regional law, respecting the natural right of human beings and other animals as well.

Likewise, the importance of the folk law in its normative and ethical function Bartels (1983) explains, Safu is a moral category based on the notions of distance and respect for all things. This means, Safu plays important role in shaping and governing human mind for pragmatic values and faithfulness hence respecting Safu means respecting oneself, establishing moral standards, knowledge and identity.

### 3.6.3 Political Function

In its political function, folk law helps to create awareness as to how every citizen has to have the right to participate in the cases of its own representative election; the right to observe its own liberty (Mohammad, 1994) and the right to handle and administer its own property (Kuwee 1997). The folk law also helps to solve intra and inter conflict, maintains security, promotes good governances, develops the concept of equality and helps to respect human rights protocols and conventions ratified at national and international levels (ibid). The political and legal components of the Gada provides leadership, rules and procedures that serve the folk law among the Oromo people and safeguards their liberty against authoritarian rulers.

Furthermore, Bichaka (1996:40) explains that “the political and legal components of Gada provides for the Oromo, the respect for basic rights and liberties including freedom of speech, the right to own private and collective properties and the liberty to debate”. Similarly, the Gada political culture can serve as a useful resource for the creation and consolidation of a democratic system to create and promote good governance among the people (Lamu, 1994).

In a similar case, the Oromo indigenous practice helps to make law and regulations through elected officials (Dirribii, 2009), because the system is based on the rule of law; and opposed to despotic and authoritarian rule.

### 3.6.4 Economic Function

Another most important function of the folk laws of the Oromo is to reduce cost and time involved in resolving disputes (Giday, 2000 & Muradu & Gebreyesus, 2009). That means, incorporating the folk law helps to minimize court fees, litigant fees, filing fees and reduces spending longer time in pre, while and post litigations.

### 3.7 Conclusion

Gada law is an endogenous and indigenous wisdom where the sacrament, cosmology and ontology of the Oromo are portraying through material and oral anthologies. Declamatory attempts have been made to promote and to recognize the indigenous legal system of the people by the current Ethiopian government and by the Oromia regional state. However, still there are gaps that need to give full recognition and incorporation of the valuable parts of the indigenous legal systems into the transplanted (formal) laws of the land.

In a nutshell, the role of folk laws is very significant in the day to day activities of the Oromo. In sum, laws play significant role in governing economic, social, political and normative issues among the society. To this effect, local governments and regional states should take into account local contexts, local cultures and worldview to make the folk law

decision more commensurable and to provide more recognition into the formal legal system of the land.

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