

# Basis and practices of restorative justice: the case of Ethiopian criminal justice system

## Abstract

Ethiopian criminal justice system views crime as an offense against the state and is not allowed the participation of the victim and the community and also win-loss outcome. To fill these gaps scholars discovered Restorative justice, which views crime as a violation of a relationship among victims, offenders and community. Therefore, the purpose of this paper is to assess the legal and institutional basis and practice of restorative justice in Ethiopia.

This is qualitative research approach and descriptive research design. The population of this study were victim, offender, criminal justice system components and traditional dispute resolver. Data were collected through document review and interview of five persons, who are selected through purposive sampling techniques. Then the collected data analysed thematically. This paper shows that different governmental institution such as the house of federation, peace minister, police, court, general attorney, and reconciliation commission have legal recognition to apply restorative justice values and principles. And also traditional conflict resolution mechanisms and Alternative dispute resolution mechanisms have defacto recognition to resolve criminal cases. Finally, the models of restorative justice in Ethiopia are compromise, withdrawal of charge, probation, pardon, amnesty, plea bargaining, shuttle diplomacy, suspect rehabilitation and reconciliation based on different laws. Therefore; the house of people representative should enact a comprehensive law on restorative justice. The police and general attorney should create awareness about restorative justice.

**Keywords:** access to justice, restorative justice, retributive system, victim participation

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## Introduction

Conflict is fact of human existence because resources are limited but human wants are unlimited. By its nature conflict is neither destructive nor constructive, but its mechanism of management determined. That is when it is resolved by force, it will escalate into violence (crime) and war became destructives. But, when it is resolved by formal criminal justice system and informal conflict resolution mechanisms, it promotes development, peace and democracy.

The criminal justice system (CJS) is process of investigation of crime by police, prosecution by public prosecutor, adjudication of this case by court and enforcement of punishment by correctional institutions. However; it excludes the participation of stockholders' and the process is adversarial and its outcome is win-loss. In order to fill these disadvantages of CJS, criminologist discovered restorative justice, which allow participatory of stockholders' and the outcome is win-win.<sup>1</sup>

As far as the writes knowledge concerned, studies conducted about restorative justices in Ethiopia were general and vague. Therefore, the writer motivated to assess the practice and models of restorative justice and mechanisms of collaboration with criminal justice system in order to ensure the right to justice. This paper is organized into four sections. The first section dealt with general overview of restorative justice. The second section explained legal and institutional framework of restorative justice in Ethiopian. The third section discussed practice of restorative justice in Ethiopia. Finally, conclusion and suggestion for the way forward.

## Methodology

This study was employed a qualitative research approach and descriptive research design. The population of this study were victim,

offender, criminal justice system components and traditional dispute resolver. Data were collected through document review and interview of five persons, who are selected through purposive sampling techniques. Then the collected data analysed thematically. Sources of data are primary & secondary sources. The scope of this study is the models of restorative justice in Ethiopia.

## General overview of restorative justice

This section deals with rational for restorative justice and the difference among ADR, Customary dispute resolution, informal conflict resolution mechanism and restorative justice.

## Rational and definition of restorative justice

Conflicts are part of social life. So before the emergency of modern government the society resolved their conflict through informal conflict resolution mechanism, which can be classified into either traditional dispute resolution or popular justice forums (alternative dispute resolution, which are discussed as follows.<sup>2</sup>

The phrase 'Traditional (indigenous) or customary dispute resolution' refers to resolution of conflict by local law and traditional judges, which is effective in most of the distinct communities because the cosmo-vision behind this communal character can be called 'indirect reciprocity', which is characterized by two elements.<sup>2</sup> Firstly, members of a community are not primarily seen as individuals, with individual rights and duties, and they are not perceived as equal citizens. Instead they belong to one category or status out of a long range of different categories of people, like being member of the same age-set, or being part of an important clan/sub-clan, or being a man or a woman or a child or an adult, etc. Secondly, for every category of members there exists the obligation to sometimes restrain from pursuing only his individual interests. Everyone on his own place in

the community is obliged in times of trouble and problems to take care for others, and for the community’s welfare in general, trusting that other members of the community will help him/her in the future in case he/she gets into trouble. Also people know what behaviour is expected from them, how a woman has to behave, how a child, how the grandfather, how the local Elder. There is not much room for personal and private interests and hobbies, to the contrary that would be disrupting the community.<sup>2</sup>

Therefore; local law of these distinct communities is more a collection of very broad, unwritten and “vague” principles but everyone obeyed it. When sometimes someone deviates it, consider as he did not respect the essence of all things, disrespecting the community and nature. How to deal with this un-orderly behaviour? Here, the central question about the suspect is not exclusively if it can be proven that he or she effectively and really did it. In determining someone’s guilt for instance it is partly also a matter of determining if a suspect is a good or bad member of the community, how in general he/she behaves morally. Therefore, doing justice is not what in the CJS would be called a purely “legal” matter but it is more like an evaluation of the totality of someone’s relations, for instance whether or not that person is a good and regular worker or whether he conforms to the morals and ways of life of the community.<sup>2</sup>

The phrase popular justice forum or Alternative Dispute Resolution(ADR) refers to non-state judicial determination include the process of negotiation between disputing parties up to the intervention of neutral third party (mediator or conciliator) to resolve dispute. Negotiation is the process of bilateral discussion between conflicting parties without the intervention of third party in order to solve their dispute.<sup>3</sup> Mediation is a voluntary, party-centered and structured negotiation process where a neutral third party facilitates negotiation process. Conciliator has the role of advisory to disputing parties, which may propose terms of compromise. The advantages of negotiation, mediation and conciliation as compared to arbitration and court litigation are cheaper, party control on initiation up to outcome, confidential, privacy, speedy, and time, win –win result. It is demerit is when if there is imbalance of power between disputing parties during dispute resolving proceeding, absence of precedent, lack of consent of a party and the problem related with the enforcement of compromise.<sup>3</sup> Black’s law dictionary (1997) defines ‘Arbitration’ as a method of legal dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding. Arbitration is not Alternative Dispute Resolution because it has adversarial procedure and win-loss award like court judgment

and unable to restore the former relationship between conflicting parties. ADR is a contract while Arbitration is a form of Adjudication, which means that arbitration recognize the principle of fair hearing such as the right to present one’s own version of the case, the right to produce evidence, to challenge opposing evidence and argument, etc. and also the outcome of arbitration is binding award almost similar to court judgment and the role of arbitrator also similar to court judge. whereas; In case of negotiation and mediation the principle of fair hearing like adversarial litigation unthinkable rather it is the process of working together to satisfy their mutual interest.<sup>3</sup>

Alternative Dispute resolution mechanism is effective in functional society, which refers to the existence of direct reciprocity usually in urban and per-urban areas where no traditional justice system previously existed and in rural areas where the traditional system has broken down. It is based on conflicting parties consent to initiate, place, law & language of the proceeding and also the outcome is win-win. ADR is created through the amendment of traditional dispute resolution mechanism and runs by non-governmental organizations<sup>2</sup>

After the emergency of modern state, the criminal justice components’ had attempted to monopolize resolution of criminal cases and also consider traditional conflict resolution mechanism as obstacle for development and national unity. Criminal justice system is only expected to strike a balance between protections of the public against criminal harm with suspects against unfair treatment along the process. However; it was criticised as being expensive, inaccessible, conflict-inducing, and disempowering for those involved, mistrust of the law, fear, intimidation, unfamiliarity of formal procedures and court atmosphere, low legal literacy, unequal power relations. On the other hand, informal conflict resolution mechanism was seen as a more accessible, flexible and efficient form of justice which allowed for the active participation of all parties and assisted in the preservation of relationships. Therefore, the rationale for the emergence of restorative justice (RJ) is to rectify the limitations associated with criminal justice system.

There is no universally accepted definition for the term restorative justice (RJ) due to the growing nature of the field. It originates in the criminal justice practices of indigenous peoples and alternative dispute resolution system around the world. State should support and control Restorative justice in order to limit its demerits. For instance; indigenous dispute resolution mechanism violates human rights of minority, child and women. So the state controls this disadvantages’. Therefore, it is defined simple in opposite to formal criminal justice system behaviors as follows; (Table 1).

**Table 1** The difference between criminal justice and restorative justice are<sup>5</sup>

Bases	Criminal justice	Restorative justice
Focus	Victims are not the primary focus of the process.	Victims and community are directly involved and play a key role in response to misbehaviour/offenses.
Actors	Offenders are defined by the misbehaviour/offense.	Offenders are defined by their capacity to take responsibility for their actions and change behaviour.
Crimes	Victim is defined by material and psychological loss.  Crimes are the result of individual choice with individual responsibility.  Crime is a violation of the law, and the state is the victim.	Victims are defined by losses and capacity to participate in the process for recovering losses and healing.  Crimes have both individual and social dimensions and are the result of individual choice and the conditions that lead to the behaviour.  Crime is a violation or harm to people and relationships

Table Continued...

Bases	Criminal justice	Restorative justice
Problem	defined narrowly,	defined relationally,
	abstractly( a legal fiction, only legal variables relevant, state as victim	as a violation of people, overall context relevant, people as victims
participant (who)	state is active and but offender passive	victim and offender primary, along with community and state
	adversarial, authoritarian, technical, impersonal	participatory, maximizing information, dialogue and mutual agreement
Process (how)	focus - guilt/blame neutralizing strategies, encouraged	focus -needs and obligations empathy and responsibility encouraged
	The process of justice is a conflict between adversaries in which the offender is pitted against state rules; intentions outweigh outcomes and one side wins while the other loses.	The process involves victims, offenders and the community in an effort to identify obligations and solutions, maximizing the exchange of information (dialogue, mutual agreement) between them.
Outcome	Pain and suffering harm by offender balanced by harm to offender oriented to past	making things right by identifying needs and obligations, healing, problem-solving harm by offender balanced by making right oriented to future
	The aim of justice is to establish blame (guilt) and administer pain (punishment)	The aim of justice is to identify obligations, to meet needs and to promote healing.

Therefore, for the purpose of this paper, Restorative Justice refers to the defacto or de juries recognition of traditional dispute resolution and alternative dispute resolution by state to resolve criminal matter in collaboration with state criminal justice system. This is sharing of sovereign resolution of criminal matter to non-state institutions. RJ provides much greater degree of participation of stockholders', offers ample opportunity for apologies, forgiveness, reduced fear and angry, strength future relationship. It can proceed in a court room proceeding such as might employ pre-trial diversion, dismissing charge after institution and also in more serious cases prison sentence may proceed in other restitution. It can also proceed in the community such as concerned community meet with all parties to assess the experience and impact of the crime.

### Principles of restorative justice

The values of restorative justice are respect for the dignity of the individual in the context of the administration of criminal justice and the participation of victims and offenders in the process of conflict resolution in order to compensate the harm caused by offender. The three basic assumptions of restorative justice are crime is viewed as a violation of people and relationships, violations give rise to obligations and finally, the resulting obligation is to put wrongs right.<sup>1</sup> Based on these assumptions, the principles of restorative justice are; First, every stakeholders have right to participate through the conflict resolution process. Secondly, the procedure is voluntary, cooperative and flexible. Thirdly, the community disapproval of wrong doing accompanied by acts to reintegrate the offender back into the community of law abiding citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant. Finally, repairing to the harms by imposing obligations on the offender and the communities for restitution, or performance of community services, making apology by the offender and showing sincere remorse in a way that he/she acknowledges his wrongful acts.<sup>4</sup>

### Models of restorative justice

RJ is a new concept but its influence has spread around the world at a amazing speed through innovation and integration of restorative justice values and principles into their justice systems. This programs or model do not exhibit uniform structure and form because the essence of restorative justice is not the adoption of one form or process; rather it is the adoption of any form or process which fill limitations' of criminal justice system. Hence, depending on the choice of the parties, types of conflict, and resources, different restorative justice programs are functioning in different countries.<sup>4</sup> Among these the common are:

#### Victim-offender mediation

The mediation is neutral third party to facilitate the process of negotiation between victim and offender in order to resolve their conflict. It is similar with mediation processes in civil matters, which was first trialled in Ontario, Canada then expanded throughout the United States, the United Kingdom and Europe in the early 1970s. The features of victim-offender mediation include permitting victims to meet their offenders on a voluntary basis, encouraging the offender to learn about the crime's impact & to take responsibility for the resulting harm, and providing victim and offender the opportunity to develop a plan that addresses the harm. Its outcome is win-win, give satisfaction for victims and offenders, lower fear among victims, a greater likelihood that the offender will complete a restitution obligation, and fewer offenders committing new offences than the normal court process.<sup>4</sup>

#### Family or community group conferencing

It is extension of victim-offender mediation through the collaboration among the victim, offender, and family, friends and key supporters to resolve the conflict together. The features of conferencing are giving the victim an opportunity to be directly involved in

responding to the crime, increasing the offender's awareness of the impact of his or her behaviour and providing an opportunity to take responsibility for it, engaging the offenders' support system for making amends and shaping the offender's future behaviour, and allowing the offender and the victim to connect to key community support. It was originated from Maori traditional practices in New Zealand, where it is operated out of the social services department, and was further modified in Australia for use by police. It is now in use in North America, Europe, and southern Africa.<sup>4</sup>

### Peacemaking or sentencing circles

This is a process designed to develop consensus among community members, victims, victim supporters, offenders, offender supporters, judges, prosecutors, defence counsel, police and court workers on an appropriate sentencing plan that addresses the concerns of all interested parties. It seems court annexed traditional conflict resolution mechanism, which is the court get sentence opinion from the community than public prosecutor. The goals of circles include promoting healing of all affected parties, giving the offender the opportunity to make amend, giving victims, offenders, family members and communities a voice and shared responsibility in finding constructive resolutions, addressing underlying causes of criminal behaviour, and building a sense of community around shared community values. Circles were adapted from certain Native American traditional practices, and are being used throughout North America.<sup>4</sup>

### Foundation of restorative justice in Ethiopia

The purpose of this section is to explain the basis of restorative justice in Ethiopia. Disputes and resolving it is normal. Ethiopia has more than 80 nations, nationalities and peoples, which have their own way of traditional dispute resolution mechanism such as the institutions of Gadaa among the Oromo, the Shimagelle by the Amhara, in order to resolve their conflict through traditional conflict resolution. Moreover; after the emergency of modern state, resolution of conflict is only attempted by the criminal justice system. However, due to weakness of criminal justice system, Ethiopia has legal & factual recognized to principles and values of restorative justice, which is discussed as follows:

#### FDRE constitution

It is the supreme law of Ethiopia. Federal democratic Republic of Ethiopia (FDRE) Constitution article 37(1) states that everyone has the right to bring a justifiable matter to a court of law or any other competent body with judicial power to access justice. In addition to this, article 9(1) of the constitution allows customary practice or a decision of an organ of state or a public official, which do not contravene with the constitution. The Constitution article 34(5) and 78(5) similarly, describes that adjudication of disputes relating to personal and family cases by religious or customary laws established by parliament with the consent of the parties to the dispute. The constitution articles 39 and 88(2) also explain that government shall respect the identity of Nations, Nationalities and Peoples and duty to strengthen ties of equality, unity and fraternity among them. It means that everybody has the right to access justice from criminal justice system or restorative justice system. The government has the duty to respect, fulfil and protect the right to access to justice.

#### House of federation

The House of Federation is the upper house of the parliament, which is the representative body of the nations, nationalities and

peoples of Ethiopia. It is vested with the constitutional mandate to manage conflicts, find solutions to disputes that may arise between states or the Federal and the State governments as enshrined in the FDRE Constitution under Article 48 and 62(6). Specifically proclamation No. 251/2001 articles 32 and 33 states that it shall request the parties to resolve their conflict by peaceful means and discussion where their misunderstanding is other than border disputes. This means that the first means of conflict resolution between states is negotiation. The House of Federation shall also attempt to abridge their difference, if the concerned parties could not resolve their misunderstandings through discussion, strive to find a solution in any mechanism possible through traditional as well as modern ways of conflict prevention and resolving mechanisms. Therefore, House of Federation has the responsibility to facilitate the resolution of conflict through criminal justice system and restorative justice.<sup>5</sup>

#### Peace minster

This minister was established based on Proclamation No. 1097/2018 Articles 9(1) and 13(g) (p) (q), which is responsible to identify factors serving as causes of conflicts among communities, submit a study proposing recommendations to keep communities away from conflicts and instability, and implement same upon approval. It also facilitate the resolution of disputes arising between Regional States, devise and implement sustainable solutions to disputes and conflicts that may arise within Regional States. This minister has different department to discharge these responsibilities' such as conflict prevention and peace building, reconciliation commission and federal police.

#### Ethiopian reconciliation commission

It was established based on proclamation number 1102/2018, which has the following responsibilities to reconcile based on truth and justice the disagreement that developed among peoples of Ethiopia for years because of different societal and political conflict; to identify and ascertain the nature, Cause and dimension of the repeated gross violation of human rights so as to fully respect and Implement basic human rights, providing victims of gross human rights abuses in different time and historical event with a forum to be heard and perpetrators to disclose and confess their actions as a way of reconciliation and to achieve lasting peace; to establish free and independent institution that inquire and disclose the truth of the sources, causes and extent of conflicts and that takes appropriate measures and initiate recommendation that enable for the lasting peace and to prevent the future occurrence of such conflict. For instances, the commission chair person in 2020 press conference stated that identifying the root causes of various conflicts will be the focus of the Commission over the coming three years. It is making preparation to discharge the responsibilities that the people and government of Ethiopia entrusted to it including setting up its administrative structure and preparing budget proposal as well as held consultations with stakeholders.

#### Peace committee or forum

The peace minister has policy and strategy to establish conflict management institutions hierarchically at federal and regional government levels throughout the country. There are also attempts, at State and local government levels, to create inter-governmental committees designed to manage inter-ethnic conflicts and related issues in the common borders of the States or between different ethnic groups of a State. Some neighboring States have established Peace Committees at various levels of administrative hierarchies which meet regularly to monitor the peace and security of their localities

and resolve any issues of ethnic conflicts that may arise. For instance, Afar National Regional State has established Peace Committees at neighbouring Kebeles, Woredas and Zones with National Regional States of Tigray, Amhara and Oromia and also at the inter-state level. The federal government and regional states are conducted several forums and councils in order to resolve mutual problems include a Joint House Speakers Forum, the Forums of Dialogue between the House of Federation and each Regional State, the Five Eastern Adjoining Regional States Joint Forum, the Oromia and Somali Regional States Joint Cooperation Forum, Afar and Tigray, and Afar and Amhara Cooperation Forums, Amhara and Benishangul Gumuz Joint Cooperation Forum.

### The FDRE criminal justice policy

Ethiopia has introduced a new criminal justice policy in September 2015. According to this policy the general principles guiding the referral of criminal cases to the informal dispute resolution mechanisms are taking into account the type of crime; the character of the accused, and the circumstances of the commission of the crime; if it is believed that the interests of the public and the victims are better protected by the use of customary dispute resolution mechanisms than the regular court system; If the accused or the offender is youth (juvenile), female, disabled, elderly, non-recidivist criminal, and he/she is accused of crimes punishable with simple imprisonment and a reconciliatory agreement is reached between the accused and the victim.<sup>6</sup>

It also provides the following specific conditions, which must be fulfilled to refer the criminal case to informal dispute resolution mechanisms that include the accused person must willfully admit all ingredients of the crime and sincerely express his repentance in writing after receiving sufficient legal advice to that effect; the accused person must ask for an apology to the victim, and must express his/her readiness to retribute or compensate the damage caused; and the accused person should be informed in advance that he/she has the right to refuse the referral of the case to customary dispute resolution mechanisms, all of which are the basic elements in a restorative justice ideal.

Based on the above general principles and specific conditions, the police, prosecutors, and judges are given discretionary power to refer the criminal case any time to informal dispute resolution mechanisms.

### Ethiopian criminal law (substantive & procedural)

In order to implement Ethiopian criminal justice policy, the substantive and procedural criminal laws are enacted. First, the Ethiopian Criminal Procedure Code Article 223 states that the *atbia dagnia* has jurisdiction to mediate minor offenses such as insult, assault, petty damage to property or petty theft where the value of the property stolen does not exceed five Ethiopian Birr. Where unable to achieve a compromise it may sitting with two assessors adjudicate on such offenses and on conviction impose a fine not exceeding 15 Ethiopian Birr and also it shall cause a record to be kept which, among others, shall show the opinion of the assessors. Secondly, Accusation is a rule to set justice in motion but complaint is an exception crimes which are punishable up on complaint required the prior consent of the victim because public interests are not at stake as the offence does not endanger the society at large and the institution of proceedings against the will of the injured party might often be more harmful to him than the commission of an offence. For instance, Articles of the Criminal Code of 212 with 380(2), 399, 556 (1), 559(3), 560, 580, 581, 583, 593, 603, 606, 613, 625, 643(2), 646(2), 652, 658, 664, 667, 679, 678,

680, 685, 686 (1), 700, 704, 705, 717-719, 725, and 726 are phrased as "...is punishable upon complaint with ..." or "...proceeding shall be instituted only upon complaint by the injured party...". When these offences are committed, it is up to the injured or related person to set justice in motion. The police, prosecutor and court first tries to mediate them based on Criminal procedure code Article 151. If the reconciliation is effected, it will be recorded by the court to have the effect of a judgment. However, if the reconciliation has not been made, the court continues to hear the case as ordinary prosecution, and all the rules and procedures of ordinary trial are followed. So if the public prosecutor refuses to institute a criminal charge due to insufficiency of evidence to justify conviction for crimes that are punishable only upon formal complaint. Thirdly, the FDRE General Attorney also enacted a directive number 14/2015 for the mediation of criminal matters, which states that crime punishable upon compliant case committed by non-recidivist and it is non- concurrent crime the police or the public prosecutor should try to mediate the conflicting parties .

### Practice of restorative justice in Ethiopia

It refers to the application of traditional conflict resolution and Alternative dispute resolution mechanism for criminal case resolution. The state also support it through recognition and enforcement of their compromise, technical and budget support and also control it is human right violation and procedural unfairness. Therefore, restorative justice for the purpose of this paper refers to is the use of negotiation, mediation, conciliation, arbitration, and customary dispute resolution mechanism for criminal case in Ethiopia, which are discussed as follows;

#### Compromise

The outcome of negotiation and mediation process is compromise or contract, which is law for contracting parties. Conflict is part of life, the victim and offender may resolve it through negotiation and mediation especially crime punishable upon complaint (minor crime). When it is approved by competent authority, it has *res judicata* effect. It is similar with victim-offender mediation model of restorative justice. Therefore; for crime punishable upon compliant in Ethiopia the victim has the option to resolve the case through negotiation or may refer it to mediation or may institute private prosecution.

#### Withdraws of charge

Proclamation No.943/2016 article 6(3)(e) states that the General Attorney has the responsibility to institutes criminal case charges by representing the federal government, withdraws charge when found necessary in the interest of the public, resumes withdrew charge based on directive enacted with consultation of the Prime Minister(emphases added).For instances, the General Attorney conducted press conference on February 25/2020, which states that the government suspended charge of 63 suspects of corruption and human right violation in consultation with the prime minister in order to promote democracy and national unity in Ethiopia. Additionally, the General Attorney conducted press conference on March 25/2020 states that the government suspended charge of 39 suspects of low participation in identity violence.

#### Probation

It is a release of a convicted offender under the supervision of a probation officer subject to revocation upon default of the conditions attached to his/her release pursuant to Articles 190-199 FDRE criminal code. The first form of probation is the court may postpone

the imposition of sentence for specific period of time pursuant to Art 191 of Criminal Code, which states as:

When the criminal has no previous conviction and does not appear dangerous and where his crime is punishable with fine (Art. 90), compulsory labour (Arts. 103 and 104) or simple imprisonment for not more than three years (Art. 106), the Court, after having convicted the criminal, may suspend sentence and place the criminal on probation, where it is of the opinion that such decision will lead to the reform of the criminal.

The second form of probation is courts impose the sentence and order the suspension of its enforcement based on Article 192 and 194, which states as:

When the Court considers that the criminal whether previously sentenced or not (Art 194), shall receive a warning, it shall enter a conviction and pass sentence but may order that the enforcement of the sentence be suspended for a specified period of probation. It shall not be allowed where the criminal has previously already undergone a sentence of rigorous imprisonment or a sentence of simple imprisonment for a term exceeding three years and where he is sentenced again to one of these penalties for the crime for which he is tried without prejudice to the provisions regarding recidivism.

Regarding probation one informant told as:

Mr. John and madam Aster had concluded marriage and born two children. One day conflict rose between, then Mr. John became angry and bit her teeth by stone then all her teeth are broken. When she shout the police arrived and taken him in police station. After investigation of the case the public prosecutor charged him for serious body injury while madam Aster ask the court the withdrawal of charge of her husband because he is the only means of income for the family and her children's are facing hunger. Therefore; the judge decided sentences for 5 years imprisonment and released him on probation for the sack of his family.

### Parole

It is granted by the pardon committee after receiving recommendations from prison administration and having into consideration of the behavioural reform of the criminal. The Criminal Code (Art. 202) states as:

The requirements that must be fulfilled to allow parole are the prisoner has to serve two-thirds of a sentence of imprisonment or twenty years in case of life imprisonment, the prisoner or the management of the institution must submit a petition and recommendation respectively, the criminal should present a tangible proof of behavioural reform during the period of imprisonment, the prisoner must repair or agreed with the victim or his/her families to repair the harm caused, and that the character of the prisoner warrant the assumption that he/she will be of good conduct when released.

From this article, one of the requirements to release in parole the prisoner must repair or agreed with the victim or his/her families to repair the harm caused, which is one principle of restorative justice. For instance; the Ethiopian government has released to over 18,000 prisoners after the outbreak of COVID-19 pandemic in 2020. The General Attorney indicated that the decision to release the prisoners is made to reduce the number of casualties in case corona virus outbreaks in the prisons. Women with children, those who demonstrated good behaviour, older people and those who are suffering from serious illness are also selected to benefit from it. Meanwhile if the prisoners

released are found to be engaged in crimes again, the Office of Attorney General has the right to cancel its pardon and bring them back to prison.

### Amnesty

It is given by the legislative organ of government to a group or class of persons, usually for a political offense (Black's law dictionary, 1992). FDRE Criminal Code Article 230 states that an amnesty may be granted in respect of certain crimes or certain classes of criminals, either absolutely or subject to certain conditions or obligations, by the appropriate competent authority, when circumstances seem to indicate that such a measure is expedient. The implementation of amnesty proclamation was ratified by the House of Peoples Representatives on July 20, 2018, which benefits individuals and groups who were detained for breaking and committing crimes that violated the annulled terrorism law and uplifted state of emergency, which will not include prisoners who are imprisoned for killing, corruption, and rape. It also quit on-going court process and removes any criminal list of suspected individuals. Specially, this move will benefit all citizens in country and abroad for crimes committed until May 7/2018. The amnesty committee will certify beneficiary individuals, said attorney general.

The Attorney General indicated that the proclamation will help individuals who are accused of committing various political crimes and participating in public violence that may have put the constitution in danger such as criminal code articles 238, 241, 247, 249, 252, 256, 257, 288, 486 and terrorism proclamation article 622/2001. Those who participated in activities that may have put the constitution in danger and violated constitutional ethics of both the Federal and Regional government will also be benefited from the proclamation. Individuals and groups, who are suspected in committing crimes by using weapons, will be exempted. It includes those who participated in forcing government officials, religion leaders, and individual for economic and political gains. In the amnesty proclamation, suspected individuals will have the right not to be registered on the criminal list. Moreover, their court case will be terminated and they could be accused for the same crime again. For instance; in 2019 Ethiopian government said that the amnesty was made to promote national reconciliation and to enhance democracy move. Over 13,000 people have been pardoned under Ethiopia's amnesty law including lift designations of terrorism from organizations such as the Oromo Liberation Front (OLF), Patriotic Ginbot 7 (PG7) and the Ogaden National Liberation Front (ONLF), which are all classified by Ethiopian parliament as terrorist organizations. In Ethiopia it is common to grant an amnesty for thousands of prisoners on the occasion of celebrated its New Year and Ethiopian Christmas.

### Pardon

Pardon is defined in general terms as an executive action that mitigates or sets aside punishment for a crime. It releases offender from entire punishment prescribed for offence and from disabilities consequent on his convictions, it reinstates his civil liberties (Black's Law, 1992). Pardon can be granted based on the recommendations submitted by pardon boards usually for public interest. FDRE constitution Article 71(7) and 299 of the Criminal Code states that a sentence may be remitted in whole or in part or commuted into a penalty of lesser nature or gravity by an act of pardon president of the country. Moreover; the conditions of pardon shall be governed by pardon procedure Proclamation No. 840/2014, which shall not cancel the entry sentence of which shall remain in the judgment register of

the criminal and continues to produce its other effects. For instance; on 12 February, 2020 Ethiopian pardon board office head said that for the last six months they had received 2934 prisoner application for pardon. Then the board approved 1270 pardon application and released them. He added that in especial situation seriously illness person, aged and foreigner prisoners were beneficiary for this pardon. Similarly, on April 2/2020 Ethiopian government has released to thousands of suspect and prisoners after the outbreak of COVID-19 pandemic to reduce the number of casualties in case corona virus outbreaks in the prisons. The criteria to give pardon were person sentenced with simple imprisonment and prisoner left one year to release on parole.

### Plea bargaining

Plea bargaining can be defined as a form of negotiation between the state and the defendant whereby the latter agrees to plead guilty in return to charge or sentence concessions (Black's Law, 2004). It involves charge bargaining and sentence bargaining. The FDRE Criminal Justice Policy of Ethiopia (2011) article 4.5.4 states that the benefits of Plea bargaining are to enhances the efficiency of the criminal justice system, promotes remorse and rehabilitation of offenders and also it helps avoid the trauma of trial for defendants and victims. The Attorney General has the power to plea bargain and decides alternative actions to be taken, follows the implementation based on Proclamation n o . 691/2010 a n d Proclamation No.943/2016 Article 6(3)(d). It also recognized by Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants

Proclamation No. 909/2015 article 23 states that:

Any person who involves in the crimes of trafficking in persons or smuggling of migrants and who, before the case is taken to the court, provides substantial evidence as to the offence and other suspects, may be fully or partially set free from prosecution upon the decision given by the Minister. When the victim dies, his organ is removed or if he is exposed to incurable disease, the suspect shall not be set free from prosecution; provided however, that depending on his participation and the usefulness of the evidence provided, his punishment shall be reduced.

Anti-Terrorism Proclamation No. 652/2009 article 33 entitled "Assisting Judicial Proceedings" states as:

The court may mitigate the punishment, upon a request made by the public prosecutor where the defendant repents about his act of committing any of the crimes mentioned under this Proclamation and cooperates in elaborating in detail the manner of the commission of the crime or discloses the identities of the persons who participated in the commission of the crime.

Ethiopian anti-corruption Proclamation No. 881/2015 article 8 provides that immunity to a co-offender who discloses substantial evidence concerning another co-offender by anti-corruption commission or the appropriate organ. Based on this article and to promote national consensus Ethiopian government pardon corruption suspect person and negotiate with corrupter to return people's property.

### Community policing

Community Policing is a philosophy, management style, and organizational design that promotes proactive problem solving and police community partnership to address the causes of crime, fear and other community issues (Dmelash, 2012). Ethiopian Federal police proclamation No 207/2000 Article 22 (4) also states that the activity of the police shall be based on the participation of the public. The

police have established community police partnership with different level of community structure such as school, religious and social institution in order to resolve the problem together. Therefore; in Ethiopia community policing has been practicing since 2010, which is community policing structure established from federal government up to family level and has been resolving their problem. Informants also added that community policing officer support traditional conflict resolution mechanisms to resolve local conflict. Moreover, some time the community policing officer also act as mediator and arbitrator for criminal cases. This means that the community policing act as a meeting point between the formal and informal conflict resolution mechanism.

### Afarsata

It refers to the participation the community for crime investigation. Whenever a person or a group of persons reported to the local chief the commission of crime, the local chief would call on all male members of the community in that locality to assemble in assemble in a fixed place on a given date. A person who failed to attend such gathering would be liable to a payment of a fine. In the assembly, the elders would call upon each person to tell whom he suspected. Every person would declare the identity of the person he suspected or what had been told to him by the "singing bird". The person who would testify as to the identity of the criminal under oath was kept secret and referred to as "bird". The person thus identified as the offender responsible for compensation of the victim. If the people failed to identify any person responsible for the alleged crime, the entire community would be liable to make the damage good. Later on, a circular letter was issued by the Ministry of Interior that required the attendance of a policeman in all such meetings. This is similar with family conference and sentence circle models of restorative justice.

### Shuttle diplomacy

An International Crisis Group report dated 17 June 2008 shows that in July 2007, the result of 2005 national election was created violence and the government arrested opposition political party of Coalition for Unity and Democracy (CUD) members' in Ethiopia. Professor Ephrem Isaac, Haile Gebresilassie and Ambassador Bekele were attempted to mediate to get CUD leaders released from jail. The mediators presented a document for signature by the CUD leaders, which reads 'We apologize for Ethiopians, the government and the mediators for the acts, which were outside of the constitution, committed by some of our members and supporters following elections 2005'. The detained were called from their respective cells whenever the mediators appear and asked to make decisions on the spot with the presence of the mediators. These made arrested politicians are in weaker position and they were pardoned after signing documents admitting responsibility for the violence.

### Suspect rehabilitation

Article 35 OF FDRE criminal code states as:

Where two or more persons commit a crime in concert such as conspiracy or brawl is committed by a group of persons, the person whose presence in the group is proved shall be exempt from punishment only if he proves that he has taken no part in the commission of the crime.

This article states that in case of conspiracy or brawl crime the burden of proof is on the suspect person to proof its innocence. Therefore; if this crime were committed, participant are presumed to

be guilty until they prove their innocence. For instance; In October 2015, the government declared a state of emergency based on FDRE constitution article 93 that suspends the due process right. But in November 2015, anti-government protests escalated to pose a threat to the government. Then the governments conduct mass arrest and send to military camps without due process of law. About 24,000 people had been detained for over a month and released. But the master mind of this violence sent to formal criminal justice system. Similarly, in September 12-17 2018, following the welcome program of opposition political parties to Ethiopia, their support were disagree on which flag is painting and hosting on the main road of Addis Ababa, which created violence. In order to control it police were arrested 1,100 youth and give month training then released them.

## Reconciliation

It refers to values of forgiveness for the past, lasting love, solidarity and mutual understanding by identifying reasons of conflict, animosity that are occurred due to conflicts, misapprehension, developed disagreement and revenge pursuant to Ethiopian proclamation number 1102 /2018 article 2(3). After mass violence, reconciliation is seen as a political imperative, an obliged passage for the survival of the society in such a context, reconciliation does not necessarily lead to improved relationships, but it is about the connecting up with others. In other word, reconciliation is the outcome of traditional conflict resolution mechanism (TCRM). Ethiopia has more than 80 different ethnic groups with their own form TCRM, which has legal recognition to resolve personal and family cases. Moreover; the criminal justice system often relies on it to solve less serious cases like identity conflict, to bring criminals to courts, to ensure that verdicts are upheld and to achieve reconciliation after cases are concluded. Donovan et al.<sup>7</sup> stated that the criminal system governs the lives of the townspeople and the highlander farmers only, but nomadic pastoralist and rural society are governed by their TCRM. Moreover, in Ethiopia there is ethnic and religion based conflict, which result damage on human, their property and internal displace person. In order to resolve it the government use traditional conflict resolution mechanism.

## Conclusion

The formal criminal justice system is unable to ensure public security and created dissatisfaction with its process and outcome. This led to the emergency of restorative justice, which focuses on the

healing of the harm caused to the victim and restoring the personal and social relationship disrupted by criminal act. The finding of this paper shows that the house of federation, peace minister, court, general attorney, and reconciliation commission have legal recognition to apply restorative justice values and principles. And also customary conflict resolution mechanisms have defacto recognition to resolve criminal cases especially identity based conflict. The common models of restorative justice in Ethiopia are mediation, withdrawal of charge, probation, pardon, amnesty, plea bargaining, shuttle diplomacy, suspect rehabilitation and reconciliation based on different laws. Therefore; the house of people representative should enact a comprehensive law on restorative justice. The general attorney should create awareness about restorative justice.

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## Conflicts of interest

Author declares that there is no conflict of interest.

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