



To cite this article: Aberra Degefa Nagawo, *Beyond the Individualization of Punishment: Reflections on the Borana Oromo's Collective Criminal Responsibility*, HARAMAYA LAW REVIEW 6 (2017): 29-42

BEYOND THE INDIVIDUALIZATION OF PUNISHMENT: REFLECTIONS ON THE BORANA OROMO'S COLLECTIVE CRIMINAL RESPONSIBILITY

*Aberra Degefa Nagawo**

Abstract

The article mainly looks at the role collective responsibility plays in the prevention of crime among the Borana Oromo of Ethiopia. Borana is a clan-based society where every member of a clan enjoys privileges and is given protection by his (her) clan. The clan provides support to its member when it is needed, and assumes responsibility when a member commits crime. If a member of a clan commits homicide, Guma is paid by the perpetrator's clan to the clan from which a member has been killed. The objective of this article is to examine the underlying philosophy for the principle of collective responsibility and the merits of the principle in preventing crime among the Borana. The philosophy differs from that of the formal criminal justice system, where crime is individualized and the individual is answerable for the crime he commits. The article is based on the interviews the author has made from 2012-2014 with Borana elders during fieldwork to the area and review of the relevant literature. As it is part of the cultural values of the society and suitable for the clan-based and pastoralist Borana society, the practice of collective responsibility cannot easily be dismissed by forcibly imposing individual responsibility.

Keywords: *Borana, clan, collective responsibility, crime, Guma*

I. INTRODUCTION

Social norms and disputes are as old as human society. Every human society has norms which regulates relations of its members. Long before the emergence of the modern state and its formal justice system, human society had normative rules, procedures and institutions through which they resolved all their disputes. In the process of resolving disputes, the main parties involved were the disputants and the community within which wrongs have been committed. Previously, states had no role in settlement of disputes including crime. Dispute settlement was the property of the society which the state has stolen at a certain point in human history.¹

* Aberra Degefa (PhD) is an Assistant Professor at School of Law, Addis Ababa University. He has LLB, LLM and PhD from Addis Ababa University. He has Post-Graduate Diploma from ISS, The Hague. His areas of research interest include Constitutional law, Legal Pluralism and Indigenous Justice System.

¹ Nill Christie, *Conflicts as Property*, 17(1) BRITISH JOURNAL OF CRIMINOLOGY (1977) 1-15.

With the emergence of the modern state and its formal criminal justice system, the stakeholders lost their control over the justice process and the outcome. Under the formal state criminal justice system, the earlier authority and roles of the society in the settlements of criminal dispute disappeared and replaced by the state. But even if states have taken the monopoly of settling criminal disputes, in significant parts of the world, some indigenous societies have continued to settle their own disputes informally based on their own customary laws.²

In many parts of Africa and the world, these informal justice systems and their corresponding dispute resolution processes are still operating along the formal justice systems.³ The norms regulating the dispute processes are rooted in the communal values of the people. When a certain wrong is committed, it is not only personal relationship but also community harmony that is disrupted.⁴ For this reason, dispute resolution aims at restoring the communal relationships disrupted by the wrongful act.⁵ As religion, law and culture are interwoven, it is quite difficult to separately look at the law.⁶ In order to know the African approach to criminal dispute resolution system, one needs to understand the peoples' worldview and the social setting within which each African society is placed and interact.

Worldview is described as “mental lenses that are entrenched ways of perceiving the world.”⁷ African people have their own indigenous worldviews that shape their perception of the world and human relationships. What gave rise to these indigenous worldviews are their close relationships and interactions with their environment. Since the assumptions, decisions and modes of problem solving in a given society are influenced by their worldviews, any study concerning a community would require proper understanding of the target community's worldview.⁸ Without proper understanding of the worldview of a certain people, the judgment we make about the practices among a certain people will not be sound.

African indigenous worldviews are holistic, local and oral in their characteristics. Africans view knowledge itself as holistic, cyclic, and dependent upon relationships and connections to living and non-living beings and entities.⁹ In many indigenous communities, harmony and peace are looked at not only as harmony between human beings but it extends to harmony with nature. In Africa, family ties, kinship relation and community networking are constantly respected,

² Ewa Wojkowska, *Doing Justice: How Informal justice can Contribute*, UNDP-Oslo, Governance Centre, 2006.

³ PENAL REFORM INTERNATIONAL, *ACCESS TO JUSTICE IN SUB SAHARAN AFRICA: THE ROLE OF TRADITIONAL AND INFORMAL JUSTICE SYSTEMS*, London. Astron Printers (2000).

⁴ H Driberg, *The African Conception of law*, JOURNAL OF COMPARATIVE LEGISLATION AND INTERNATIONAL LAW, Third Series 16(4) (1934) Retrieved on November 10, 2014 from <http://www.jstor.org/stable/753856>

⁵ R.B.G. Choudree, *Traditions of Conflict Resolution in South Africa*, AFRICA JOURNAL ON CONFLICT RESOLUTION, 1:1 (1999).

⁶ L. A. Ayinia, *African Philosophy of Law: A Critique*, 6 JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, 147 (2002)

⁷ Michael Anthony Hart, *Indigenous Worlds Views, Knowledge and research: The Development of an Indigenous research paradigm*, JOURNAL OF INDIGENOUS VOICES IN SOCIAL WORK, 1(1) 2010, at 2.

⁸ Idowu William, *Against the Sceptical argument and the absence thesis: African Jurisprudence and the Challenges of Positivist Historiography*, THE JOURNAL OF PHILOSOPHY, SCIENCE & LAW, 6(2): 9-24 (2006).

⁹ Carol A. Hand, Judith Hunks & Toni House. *Restorative Justice: The Indigenous justice system*, CONTEMPORARY JUSTICE REVIEW: ISSUES IN CRIMINAL, SOCIAL, AND RESTORATIVE JUSTICE, 15(4) 449-467 (2012), DOI:10.1080/10282580.2012.734576.

maintained and strengthened. This strong belief in collectiveness is an indication of the centrality of communal life with emphasis on interconnectedness and relationships.¹⁰ The attitude of togetherness and the spirit of humanity are universal values embedded in African indigenous worldviews. As stated by Steve Biko,

We [Africans] regard our living together not as an unfortunate mishap warranting endless competition among us but as a deliberate act of God to make us a community of brothers and sisters jointly involved in the quest for a composite answer to the varied problems of life. Hence, in all we do, we always place man first and hence all our action is usually joint or community-oriented action rather than the individualism which is the hallmark of capitalist approach.¹¹

According to Biko, rather than self-centered individual competition, what governs traditional African way of life is collectiveness and spirit of harmony. In their daily interactions and relationships, Africans are guided by their indigenous norms and values which is an integral part of their worldviews. Belief in consensus, dialogue, inclusion, reciprocity, fairness and mutual trust are the core values of African societies.¹²

In most traditional African societies, social relationships and harmony are given prime attention. A criminal dispute settlement process usually involves relatives of the victim, the offender and the community. The immediate objective of a criminal dispute resolution is to mend the broken or damaged relationship and repair wrongs, and restore community harmony. In Ethiopia itself, there are societies with their own indigenous justice systems settling disputes based on their own customary laws. Borana Oromo is one such society where disputes including criminal disputes are settled by indigenous justice system.¹³

The Borana have their indigenous dispute resolution system which is operating along the formal justice system without formal recognition. This has given rise to the co-existence of two competing justice systems. Because of lack of recognition and defined relationship, the two systems have uneasy relationship which is having its own impact on the people of the area. Under Borana indigenous justice system, clan members are collectively liable for the harm one of their members caused to a victim by way of paying *Gumaa* which is made in the forms of heads of cattle or sum of money. Among the Borana what applies is the principle of collective responsibility which is opposed to the dominant Western principle of criminal justice which makes only the individual offender responsible for a crime.

When looked at from the viewpoint of the formal criminal justice system, the principle applied among the Borana is considered collective punishment for a crime committed by an

¹⁰ A Melton 'Indigenous justice systems and Tribal society', Accessed 29th April 2011 from http://aidainc.net/Publications/ij_systems.htm

¹¹ STEVE BIKO, *I WRITE WHAT I LIKE: A SELECTION OF HIS WRITINGS*, Heinemann (1987), at 42.

¹² J.H. Driberg, *The African Conception of Law*, *JOURNAL OF COMPARATIVE LEGISLATION AND INTERNATIONAL LAW*, 16(4) 230-245 (1934) available at <http://www.jstor.org/stable/753856>; Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, in WANDA D. MCCASLIN, ED., *JUSTICE AS HEALING: INDIGENOUS WAYS. WRITINGS ON COMMUNITY PEACE-MAKING AND RESTORATIVE JUSTICE FROM THE NATIVE LAW CENTRE*. St. Paul, MN: Living Justice Press. (2005), at 108-120.

¹³ ALULA PANKHURST & GETACHEW ASEFFA (EDS) *GRASS ROOTS JUSTICE IN ETHIOPIA: THE CONTRIBUTION OF CUSTOMARY DISPUTE RESOLUTION*, Addis Ababa, French Center of Ethiopian Studies, (2008).

individual. Rules, institutions and systems in different societies are created by the particular societies to address their own specific problems. If such systems are user-friendly and responsive to the needs of the particular people, imposing an alien system would harm the society. This article aims at exploring the merits of the principle of collective criminal responsibility which is being used among the Borana in the context of Borana society. It tries to investigate how this system has helped in preventing crime within the Borana social setting.

To meet its aim, the study is conducted based on qualitative data gathered from Borana elders during the author's PhD field work between 2012 to 2014. The data were gathered through interviews and focus group discussions with Borana elders. In addition, interviews were conducted with individuals in the justice sector, prisoners and victims of crime. Further information was also gathered by consulting the relevant literature to deal with the merits of collective criminal responsibility as it is being practiced among the Borana.

The remaining parts of the article are organized as follows. Section II looks at Borana indigenous worldview and how the indigenous justice system works. The principle of collective criminal responsibility as applied among the Borana is presented under Section III. Finally, section IV provides conclusion and remarks on the subject.

II. BORANA WORLDVIEW AND INDIGENOUS JUSTICE SYSTEM

Borana is located in the southern part of Ethiopia in Oromia National Regional State. Although, Borana is one of the administrative zones of the National Regional State of Oromia, Borana people also inhabit other neighboring zones of the region. While Borana and Guji Oromo constitute the majority in the zone, other minorities include the Gabra, Burji and Garri.¹⁴ Borana people are largely pastoral where the livelihood of the people is based on pastoralism. In Borana social system, the entire society is divided into two exogamous moieties known as *Sabo* and *Gona*. The two moieties are further subdivided into clans and sub-clans. Among the Borana, clans share collective rights and obligations. Clan members settle their disputes peacefully at clan assemblies and help one another in times of hardship. The clan elders (*hayyus*) have the responsibility of settling disputes and imposing sanctions on those who commit wrongful act.¹⁵

A. Borana Oromo Worldview

Without proper understanding of Borana worldview that shapes the entire Borana way of life and their interactions with one another and the natural world, it is difficult to understand their philosophy as applied to problem of crime and its consequences. The defining feature of Borana worldview is harmony and solidarity between human beings, nature and God. Among the Oromo in general, there is a strong belief that human beings and the natural environment are interconnected and live together in a relationship of harmony. As they believe in the reciprocal relationships and interdependence between human beings and nature, the Borana Oromo give high respect for the cosmic order put in place by *Waaqa* (*God*). They take care of all forms of

¹⁴ TOM LEUS & CYNTHIA SALVADORI, AADAA BOORANA: A DICTIONARY OF OROMO CULTURE, Addis Ababa Shama Books, (2006)

¹⁵ MARCO BASSI, DECISION IN THE SHADE, POLITICAL AND JUDICIAL PROCESSES AMONG THE OROMO-BORANA. Asmara: The Red Sea Press, 2005.

life; they never mistreat any form of life.¹⁶ The indigenous religion of the Oromo is known as *Waaqeffanna*. This indigenous Oromo religion is centered around *Waaqa*, who among the Oromo is considered the Creator of the universe and the sustainer of all life on earth.¹⁷

According to Oromo holistic view of cosmic order, *Waaqa* has placed everything in a well-balanced order. In their view, it is only by being in harmony with each other and with nature that they get the blessing of *Waaqa*. They all believe that any human act that disturbs the cosmic and social order is an infringement of the laws of *Waaqa* which would bring danger to the wrongdoer, his relatives and the community. In the context of human relationship, Oromo holistic view plays significant role in maintaining social peace and harmony. In giving recognition to interconnectedness of lives of human beings, the worldview establishes a necessary check and balance to human relations.¹⁸

In terms of regulating human relationships, an important moral value that is an integral part of Oromo worldview is the concept of *safuu* (moral rules). *Safuu* is a moral standard that is based on Oromo notions of distance and respect for all things. It is a standard which helps to judge social taboo and deplorable habits.¹⁹ The moral and ethical obligations embodied in *safuu* are guides for the respect of the creator and all creatures (*Uma and Uumama*). Human actions or inactions are founded on *safuu* which directs everyone on the right path. The underlying philosophy of *safuu* is that everything has a role to play and natural right to exist. Oromo understanding of what is wrong and right in human interactions is drawn from their holistic and relational worldview.²⁰ The ways they deal with problems are also shaped by the same relational worldview.

One very strong moral bond that unites the Borana is the concept of *Boorantitti* reflected in “peaceful well-being, unselfishness and respect for a common law.”²¹ In Borana social life, “the ideology of *Boorantitti* demands that all conflicts between Borana should be solved peacefully and the maintenance of internal peace is a strongly expressed ideal.”²² Every Borana grows up with full awareness of the supreme value of the ideology of *Boorantittii* and *nagaa Boorana*. *Nagaa Boorana* is the governing philosophy of Borana social relations. *Nagaa Boorana* refers to the orderly running of all relations, interactions and the non-violent settlement of disputes and conflict while *Boorantittii* refers to the feeling of commonality each Borana will have for one

¹⁶ Workneh Qalbessa, *Traditional Oromo Studies towards the Environment: an Argument for Environmentally Sound development*, SOCIAL SCIENCE RESEARCH REPORT SERIES, number 19. Addis Ababa: OSSREA (2001).

¹⁷ LAMBERT BARTELS, *OROMO RELIGION: MYTHS AND RITES OF THE WESTERN OROMO OF ETHIOPIA*, Berlin, 1983

¹⁸ *Id.*

¹⁹ Gemechu Megerssa, *The Oromo Worldview*, JOURNAL OF OROMO STUDIES 12 (1&2) 68-79, 2005

²⁰ Dejene Gemechu, *Conflict and Conflict Resolution Among the Woliso Oromo of eastern Macha, with particular emphasis on the Guma*, Addis Ababa, United Printers (2007)

²¹ Gufu Oba, *Shifting Identities along Resource Borders: Becoming and continuing to be Borana Oromo* in P.T.W BAXTER, J HULTIN, AND TRIULZI (EDS.), *BEING AND BECOMING OROMO: HISTORICAL AND ANTHROPOLOGICAL ENQUIRIES*, 117-132, Asmara: Red sea Press, (1996) at 120. The Borana common law is their *Aada Seera* which is the embodiment of all their laws.

²² Johan Helland, *Institutional Erosion in the Dry Lands: The Case of the Borana Pastoralists*, EASTERN AFRICA SOCIAL SCIENCE RESEARCH REVIEW (EASSREA), 14(2): 49-73, (1998) at 64.

another. The maintenance of *nagaa Boorana* is the core value that guides the actions of both the spiritual and political institutions in Borana.²³ The duty of *Abba Gadaa* and clan elders (*hayyus*) at every level is to maintain peace and harmony among the Borana.²⁴

Nagaa is a pervasive and sustained concern in the daily life of every Borana and the daily blessings given by Borana elders are prayers of peace.²⁵ Borana conception of peace is holistic, relational and collective. Relationships of harmony among members and with the environment are central features in Borana conception of peace and justice. Among the Borana, peace is viewed as a collective value and disruption of this value will have collective harm. The Borana believe that a certain wrongful act disrupts the social harmony within a community. In their view, re-establishment of the disrupted peace would require collective response.²⁶

The Borana view their *Waaqa* as the source and guardian of peace and truth. When a wrong-doer violates Borana *aada-seera*, he does not only disrupt *nagaa Boorana* which is extremely valued by the Borana as a community, but he would also offend *Waaqa* who is the God of peace (*Waaqa mufachiise*).²⁷ The totality of Borana normative system is known as *aada-seera* referring to a sacred and profane set of laws governing behavior and maintenance of peace and order in Borana society.²⁸ Every Borana comes to know and understands *aada-seera* through his daily experience as a way of life.²⁹ A wrong-doer faces not only public condemnation but also possible punishment of *Waaqa*. This fear of possible condemnation of the community and *Waaqa*'s punishment has helped to curb crime among the Borana. The Borana have developed strong moral standards which helped them cultivate and maintain the ideology of *Boorantittii* and regulate their behavior towards one another. As an individual, in the daily interactions, every Borana should refrain from saying words that spoil relationships with others. The common saying among the Borana is, "*nageenyi fuula arrabnni abba oole oolti*."³⁰ This literally means 'peace follows our tongue': what we verbally express during our daily interactions with others. If a person makes a statement or utters a word that spoils relationship with others in the daily interaction, it will disrupt harmony.

B. Borana Indigenous Justice System

The Borana have an indigenous governance system known as Gada. The system is an all-embracing governance system which has been regulating the political, legal, juridical and

²³ ASMAROM LEGESSE, *OROMO DEMOCRACY: AN INDIGENOUS AFRICAN POLITICAL SYSTEM*, Red Sea Press, Asmara (2000).

²⁴ Borbor Bule, Interview made in Aug 1, 2013.

²⁵ Every assembly begins and ends with blessings and prayer of peace. I have observed this during the 40th Gumii Gaayyo Assembly in 2012.

²⁶ BASSI, *supra* note 15.

²⁷ Borbor Bule, Interview made August 1, 2013

²⁸ E. Watson, *Interinstitutional alliances and Conflicts in natural resources management: Preliminary Research findings from Borana, Oromia Region, Ethiopia, Marena research Project Working Paper no 4* (2001).

²⁹ There are clan elders or *Hayyus* who know all the laws. Besides, most of these laws are discussed every eight years on the Gumii Gaayyo where every participant has the opportunity to know them. Surely, it is also through intergenerational transference of knowledge.

³⁰ Jaatanii Diida, Interview made July 30, 2013.

economic aspects of the Borana people.³¹ Gada is an age-grade class system that succeeds each other every eight years in assuming economic, political and social responsibilities. One age-set rules for eight years before handing over to the next younger age-set. A complete Gada cycle consists of five age-grades. The roles and rules attached to the age-grade system is the most important element that regulates Gada system. Borana Gada governance system is built in such a way as to enable all members of the society to learn and to carry out their duties at different stages of their lives and careers.³²

Gada system has strong institutional structure with linkages from the *Abba Gada* at the top, down to the village levels. The *Abba Gada* is elected from one of the two Borana moieties with his team of advisors. The governing power under Borana Gada system is decentralized and vested in the assemblies at various levels. At the apex of all the assemblies is *Gumii Gaayyo* which is a pan-Borana assembly drawn from representatives of all Borana clans. *Gumii* refers to the general assembly and *Gaayyo* to the place where the assembly gathers. The assembly takes place every eight years mid-point within one Gada period. *Gumii Gaayyo* has supreme authority on all important matters like lawmaking and enforcement. Every eight years, the *Gumii* proclaims new laws, amend the old ones, and evaluate the *Abba Gada*. As a supreme judicial body, the *Gumii* resolves disputes referred to it which could not be resolved at lower levels. No other Borana authority can reverse decisions made by *Gumii Gaayyo*. Borana people have indigenous laws known as *aada seera* (customary laws). These laws are made by Gumi Gaayyo and amended by the same body.

The executive authority in Borana is entrusted to *Adulaa Council* elders who are six in number. Three each are drawn from *Sabo* and *Gona* moieties. As a legitimate leadership of the Borana, the *Adulaa Council* is responsible for upholding *nagaa* and *aada* (peace and custom) of Borana. The *Adulaa Council* administers all Borana affairs based on laws and customs of Borana *aada seera*, which is made and modified only by *Gumii Gaayyo*. The *Abba Gada* heads the *Adulaa Council* and with his team of council members, he is responsible for the eight year period.³³

Like most African societies, the same collectivist and holistic worldview is prevalent among the Borana Oromo of Ethiopia. Oromo indigenous worldview is an expression of Oromo values and their perception of the world. Oromo worldview is holistic and collectivist in its approach to social problems and ways of solving these problems. The Borana conception of peace (*nagaa*) goes beyond harmony between human beings and extends to harmony with nature. Their collectivist approach to problem of crime has been shaped by their holistic and collectivist worldview. This collective approach of the Borana has evolved from their local experiences and is part of their indigenous knowledge systems which makes it more suitable in addressing local problems including crimes.

³¹ ASMAROM LEGESSE, *GADA: THREE APPROACHES TO THE STUDY OF AFRICAN SOCIETY*. London: The Free Press, (1973).

³² BASSI, *supra* note 15.

³³ E. Watson, *Interinstitutional alliances and conflicts in natural resources management: Preliminary research findings from Borana, Oromia Region*, Ethiopia Maren research Project Working Paper no 4 (2001)

The Borana have their indigenous dispute resolution system which is operating along the formal justice system without formal recognition. This has given rise to the co-existence of two competing justice systems. Because of lack of recognition and defined relationship, the two systems have uneasy relationship which is having its own impact on the people of the area. Under Borana indigenous justice system, clan members are collectively liable for the harm one of their members caused to a victim by way of paying *Gumaa* which is made in the forms of heads of cattle or sum of money. Among the Borana what applies is the principle of collective responsibility which is opposed to the dominant Western principle of criminal justice which makes only the individual offender responsible for a crime.

When looked at from the viewpoint of the formal criminal justice system, the principle applied among the Borana is considered collective punishment for a crime committed by an individual. Rules, institutions and systems in different societies are created by the particular societies to address their own specific problems. If such systems are user-friendly and responsive to the needs of the particular people, imposing an alien system would harm the society. This article will try to show the relevance of this principle still being used among the Borana in their specific setting.

Borana indigenous justice system embraces the laws and institutions which serve as a framework for settlement of all disputes.³⁴ The Oromo Gada system ascribes great value to the rule of law. Under Oromo indigenous *Gada* democracy, since law is considered supreme, no one is above the law. The Borana say “*Seerri laafaaf kaa’an jabaan hinhaanqatu*” which in short means ‘everyone is equal before the law’.³⁵ In their long history of self-administration, one important value that has been maintained by the Borana is respect for the rule of law. According to Asmarom Legesse “the Oromo are one of the most orderly legalistic societies in black Africa and many of their laws are consciously crafted rules, not customarily evolved habits.”³⁶ There is a strong belief among the Borana that any act that disrupts Borana interconnectedness and harmony poses a danger to *nagaa Boorana* and erode the ideology of *Boorantitti*.³⁷

Borana indigenous justice system has indigenous dispute resolution mechanism and institutions of justice and reconciliation that are operating and coexist along the formal Ethiopian criminal justice system. Since the formal justice system has exclusive authority over criminal matters, Borana indigenous justice system handles criminal cases without formal recognition. The Borana have effective indigenous laws for the use of common range resources like wells and pasture.³⁸ The Oromo in general strongly believe that social justice and equal benefit from natural resources cannot be maintained in the absence of rule of law.³⁹

³⁴ Like in other indigenous African societies, Borana laws don’t have classification into criminal and civil laws.

³⁵ Badajaa Waariyoo, Interview made July 28, 2013.

³⁶ Asmarom, *supra* note 23, at 29.

³⁷ Kanu Jilo, Interview made on July 31, 2013.

³⁸ BASSI, *supra* note 15.

³⁹ DIRRIBI DEMISSIE, OROMO WISDOM IN BLACK CIVILISATION, Finfinnee Print. & Pub. Finfinnee (Addis Ababa) 2011.

The main objective of Borana indigenous justice system is to ensure *nagaa Boorana* through effective regulation of relations among the people.⁴⁰ The social harmony and collective identity of Borana people is ensured by their *aadaa-Seera*. Since litigation is detested, disputes are rare among the Borana.⁴¹ Besides, in view of the fact that every day greetings constitute a form of preaching peace, a “sustained feud between groups or individuals is unacceptable” in Oromo society.⁴² According to the interviews with the justice officers of Borana Zone drawn from the judiciary, public prosecutors, police and prison and corrective centers, disputes and crimes were frequent around urban areas like Yaballo, Moyale, Bule Hora and the highland areas where there is farming.⁴³

The Borana are socially tied together by kinship relations in that everyone is connected to one of the Borana clans by which he identifies himself. How the Borana behave and address their problems is determined by the kinship relationship and interconnected nature of the society. In view of the fact that Borana people are largely pastoral and significant resources are collectively used, the clan system serves as an important structure through which wealth distribution among clan members is made. Important communal activities of clans include digging, maintenance and regulation of wells and other sources of water. Clans also play a key role in ritual performance, regulation of water resources and in the election of political leaders. Within his own clan, everyone has obligations toward one another. Failing to discharge one’s obligation towards a clan or fellow Borana would spoil the mutually supportive relation established by *Boorana aada-seera*.⁴⁴

III. COLLECTIVE SANCTION (RESPONSIBILITY)

A. Collective Sanction-Exclusion from Nagaa Boorana

Collective sanction may result from two situations. One is when a Borana violates Borana *aada-seera* and fails to carry the penalty imposed on him by elders at clan and Borana levels. The other sanction is the one imposed collectively on a clan whose member has committed a crime like homicide. When a Borana defies Borana *aada-seera* and disregards decisions given by elders, the case will be brought before *Gumii Gaayyo* where his exclusion from *nagaa Boorana* will be announced.⁴⁵ *Gumii Gaayyo* is a supreme body with a supreme governing power which is

⁴⁰ Badajaa Waariyoo, Interview made July 28, 2013.

⁴¹ In an interview I have made with Borbor Bule on August 1, 2013, since land and pasture are collectively used and regulated by the community, the causes for criminal disputes between individuals are minimal. In one of my observations during my visit to Dirre district in May 2014, I have been to Dubuluq town on a big market day where there was a single police in the town who as he told me went there from Yaballo for that day. There are no police stations in the Pastoral areas.

⁴² Mamo Hebo, The Role of elders in conflict Resolution: The Case of arsi Oromo with Special reference to Dodola District and its Environments, in TAREKEGN ADEBO & HANNAH TSADIK (EDS.), MAKING PEACE IN ETHIOPIA: FIVE CASES OF TRADITIONAL MECHANISMS FOR CONFLICT RESOLUTION, pp 48-77 Addis Ababa: peace and development committee, 2008, at 48.

⁴³ Interviews were made on February, 23, 2012, Aug 23, 2012, and July 24, 2013 With the Zonal Justice Bureau Officer (T.A.), Public Prosecutor (M.G) and Police Officer (T.L).

⁴⁴ BASSI, *supra* note 15.

⁴⁵ The exclusion includes denial of greetings.

subordinate only to divine rule. It is organized every eight years and made up of all the Gada assemblies of the Borana clans. Legislative power on all matters concerning Borana is vested in the *Gumii Gaayyo*. In addition to legislative power; *Gumii Gaayyo* has political and juridical powers.⁴⁶ A person brought before the *Gumii* will lose all Borana privileges attached to *Boorantitti* which will make him defenseless.

The formal way of depriving a disruptive person his *Boorantitti* identity is by excluding him from *nagaa Borana* at *Gumii Gaayyo*. As a result of the exclusion, the law-breaker will be excommunicated from the community where every Borana will withhold greetings and blessings from him. Most importantly, the habitual offender will be deprived of all social privileges and ritual support required from the whole Borana. In their justice system, the Borana bring habitual law-breakers into line simply by withdrawing all the social privileges, benefits and ritual support required from the whole Borana including the daily greetings, blessings and the prayers of the Borana.

At the 40th *Gumii Gaayyo*, which took place in August 2012, a person who has raped a girl and defied the authority of the Gada was brought before the *Gumii* and he was cursed for the act and defiance.⁴⁷ The act of the young person was described by the *Abba Gadaa* as a detestable and disruptive of *nagaa Boorana*. He considered the act as unacceptable under Borana *aada-seera* which required the decision of the *Gumii*.⁴⁸ After hearing the case from the *Abbaa Gadaa*, *Gumii* members discussed on the issue and finally decided to exclude the young person from *nagaa Boorana*. Since, having known about his son's criminal act, the father failed to advise his son to respect the law; he was also excluded from *nagaa Boorana*. According to Borana *aada-seera*, if a person harbors a criminal or advises him not to appear before elders, his act is considered against the law for which he will be punished.

Based on the exclusion declared by the 40th *Gumii Gaayyo*, the young person and his father will not be looked for if they are lost; they will not be buried, if they die. No one will marry their daughters nor does any person give them his daughter. They will be deprived of the right to use water-wells (*eela*) belonging to Borana clans. No one should enter their houses and sit on the seats they provide. The *Gumii* declared that the exclusion will apply to any Borana who violates the exclusion imposed on the young person and his father. If any person violates the exclusion by allowing them to use a water-well, that person will also face the same exclusion. As a result of the exclusion from *nagaa Boorana*, the young person and his father have been deprived of *Boorantitti* and all the privileges and benefits derived from it. In May 2014, the young person asked for forgiveness as a result of which his Borana rights and privileges have been restored.

In Borana pastoral way of life, watering of animals, herding, sharing of goods and services and settlement of disputes dictates mutual support and collaboration.⁴⁹ In Borana social setting, where everything required for livelihood including water is collectively used and administered

⁴⁶ A Shongolo, *The Gumii Gaayyo assembly of the Boran: A traditional legislative organ and its relationship to the Ethiopian state and a modernizing worlds*, Zeschrift fur ethnologie 119 (1996).

⁴⁷ I have personally observed this.

⁴⁸ Abbaa Gadaa Guyyo Goba interview made on Aug 20, 2012

⁴⁹ Jaatanii, Interview made May 14, 2014.

through clan system, a habitual offender who may possibly be subjected to such withdrawal cannot survive. A person who violates rules having to do with the use of water resources will be punished by exclusion from using that water resource (*eela*) which is used collectively by all clan members. If a person repeatedly violates the rules, he will be deprived of access to these collectively used water resources and excluded from all vital social supports.⁵⁰ In that context, the kind of sanction imposed on the young person and his father at the 40th *Gumii Gaayo* can be considered a very severe punishment. In a pastoral society, withdrawal of social support and exclusion from access to dry season water wells means the impossibility of carrying out the traditional pastoral activity.

Among the pastoral Borana, even a basic work like the extraction of water from the deep traditional wells requires the cooperation of numerous pastoral units. That is why clans share collective rights and obligations and clan members help one another in times of hardship. Through his clan, a person can be coerced to fulfill his obligations towards his clan and fellow Borana. Each Borana clan is clustered into lineages which is an important subdivision of a clan with a considerable influence on the life of individual Borana. The social privileges, rights, duties, seniority position, and social identity of a person are rooted in the lineage. In addition to being an effective way of reaching him in Borana land, in times of crisis, a person's clan and lineage comes to his rescue.⁵¹

Among the Borana, an individual who disrupts *nagaa Boorana* by repeatedly infringing Borana *aada-seera* is considered as a person lacking the character of *Boorantitti*.⁵² If a Borana disregards his obligations towards his clan and fellow Borana by repeatedly disobeying Borana *aada-seera*, the clan will withdraw all the benefits and privileges the habitual offender enjoys. Such a person is outlawed by his clan and deprived of his status where he can no more claim clan protection. The clan to which such an offender belongs disowns him and discontinues all further responsibility for his criminal actions.⁵³

B. Gumaa - A Practice of Collective Responsibility

Borana *aada-seera* has put in place punishment (*adaba*) that is effective by way of inducing obedience and enabling members of the society to maintain a strong sense of discipline. Under Borana indigenous justice system, the clan whose member has committed serious crime like homicide will be collectively responsible for the criminal act committed by such a member. Through such collectivist sanctions, the Borana have created a mechanism of containing crime where every clan as a collective and every individual member make sure that laws are respected by way of refraining from committing crime. The system has been found to be appropriate for the kinship-based Borana pastoral way of life.⁵⁴

⁵⁰ Borbor Bule, Interview made on Aug 1, 2013.

⁵¹ Asmarom, *supra* note 23.

⁵² Jaatanii, Interview made on Aug 3, 2013.

⁵³ Gufu, *supra* note 21.

⁵⁴ P.T.W Baxter, Borana Age-Sets and Generation-Sets: Gada, A Puzzle or a Maze, in P.T.W BAXTER & URI ALMAGOR (EDS.) AGE, GENERATION AND TIME (pp. 151-182) London (1978).

The common practice among the Borana is, when homicide takes place, the killer will immediately report the incident to his near relatives and he will be kept at a certain temporary sanctuary. No Borana clan gives shelter to a culprit or a Borana who has spilled Borana blood with a view to hide him from justice. A culprit will be sheltered until the victim's relatives are approached and *araara* process begins. The *araara* process commences with the family of the offender, with the help of elders, immediately approaching the relatives of the victim and asking for *araara* so as to avoid revenge. The *araara* ritual requires that the wrong-doer verbally express his remorse to the victim's relatives. This will remove the feuds (*warra gumaa*) between the relatives of the victim and the offender thus bringing the *araara* process to its consummation.⁵⁵ '*Booranni nama ajeese gumaa oso hinbaasin of kessa hinkaa'u. Dhiginni namaa dhangala'e sun lammii sana xureessa. Kanaafu gumaa fi hooda baafachu qaba.*'⁵⁶ This means, among the Borana, a clan does not keep or hide a person who has spilt human blood and has not gone through the reconciliation ritual and paid *gumaa* since doing that would bring from God a certain misfortune to that community.

The belief among the Borana is, in case of homicide, the killer's act violates not only *Booranaa aadaa-seera* but also the law of *Waaqa*. As a consequence, the clan to which the perpetrator belongs will collectively be disposed to spiritual retribution from *Waaqa*. *Adabbi Waaqa hambisuuf nama qoffatti oso hintaane Waaqatti araaramuutu barbaachisa.*⁵⁷ This literally means, in order to escape God's punishment, you need to make reconciliation not only with man but with God as well. For this reason, the Borana consider both the payment of *gumaa* and the *araara* compulsory. From the offender's perspective, based on Borana collectivist philosophy and *aadaa-seera*, clan members enjoy privileges and benefits deriving from their membership which includes giving a member protection and coming to his rescue when a clan member is in need of support.

This indigenous principle of collective responsibility applied among the Borana may be viewed as a practice that encourages criminality. Because if one knows that his/her clan is going to be responsible for his act, he will tend to commit crime. However, the Borana argue otherwise. They say "*Gosti sodaa kaffalti yakka irra of eegee, wal'eega.*"⁵⁸ This means the clans restrain their members from committing crime for fear of paying *gumaa*. Besides, as intentional killing is not acceptable among the Borana, the payment of *Gumaa* is limited to cases where the killing is accidental (*Dagu*).⁵⁹

In case of a clan member who has intentionally killed a Borana and that is proved, the clan will not be responsible for that.⁶⁰ These days, such cases are left to the court to be dealt with.

⁵⁵ Dirribii, *supra* note 39.

⁵⁶ Waaqo Guyyo, Interview made on July 30, 2013.

⁵⁷ Jaatanii Diida, Interview made on May 14, 2014.

⁵⁸ Borbor Bule, Interview made on Aug 1, 2013.

⁵⁹ Actually, from what I have gathered from the elders, *dagu* is much broader than accidental. The elders who see the case will determine whether it is *dagu* or intentional killing.

⁶⁰ Rape, serious bodily injuries and spilling of human blood are punishable but what is paid may vary. The Borana have laws for everything and what the punishments are for the wrongs committed against another person and even horses. Accidental killing cannot be prevented but the belief and the moral restraint among the society is preventative effect.

According to Borana elders, supporting a clan member who intentionally killed a person would be encouraging killing. Since this is known, everyone refrains from intentionally committing crime. Besides, in terms of material costs, since repeated crimes will be too great a strain on the resource of a clan, every clan will see to it that all members comply with *Boorana aada-seera*. If there is a clan member who repeatedly commits crime, the clan to which the habitual offender belongs withdraws all the privileges and benefits such member enjoys and excludes him from *nagaa Boorana*.⁶¹

As violation of *aada-seera* is detested under Borana indigenous justice system, there is no room for criminals. Clans restrain their members from committing crime in fear of paying *gumaa*.⁶² As an individual, every Borana comply with Borana laws in fear of being deprived of the privileges and protection flowing from membership which in effect has made the Borana generally law-abiding. According to Asmarom, "how deep the sense of order is among the Borana can be gleaned from the fact that homicide-within their society is virtually unknown."⁶³

In Borana society, the principle of collective responsibility is serving as an effective instrument through which the individual Borana and the collective mutually ensure obedience to *Boorana aada-seera*, prevent crime and consequently avoid payment of *gumaa*. The principle has enabled the pastoral Borana to collectively control those who may possibly disrupt their social harmony (*nagaa Boorana*).⁶⁴ The formal criminal justice system has imposed itself on the Borana people and claims to be the best protector of Borana peace.⁶⁵

As a whole, the philosophy of collective responsibility among the Borana views crime as having communal character. They do not consider crime as a mere solitary act of an individual which has nothing to do with the community. The Borana look at the causes, consequences and remedies of crime in collective sense. In actual fact, the merits of a certain practice are measured by its responsiveness to the needs of the users of the system.

IV. CONCLUSION

Communal way of life is the bedrock of African indigenous worldview. Africans measure the effectiveness of their laws and sanctions by their ability to maintain communal harmony. The fact that Borana people are largely pastoralists has shaped their values, rules and institutional set up. Borana is a kinship society where a member of a clan enjoys benefits and privileges as a member of a clan. A clan will provide the necessary support and protection to a law-abiding clan member where he faces hardship and attack. But a Borana who disregards his obligations

⁶¹ Borbor Bule, Interview made on May 16, 2014.

⁶² A person who commits crime is a liability to a clan so in order to avoid this liability, clans want to make sure that every clan and clan member comply with Borana laws.

⁶³ Asmarom, *supra* note 23, at 27.

⁶⁴ The only prisons in Borana are in Yaballo and Bule Hora. In places where this practice is effectively working, there are police stations. I met a single policeman at Dubuluq on a market day.

⁶⁵ The formal justice system is inaccessible to Borana pastoral areas. They are limited to the big towns and the Zonal capital Yaballo. Besides, a Zonal police officer I have interviewed has told me that they don't have police stations in the lowland pastoral *woredas* (Interview with T. L July 24, 2013). The same thing is true of other formal justice institutions. All these gaps are filled by the Borana informal justice system.

towards his clan and fellow Borana will lose his benefits and privileges. Among the Borana, the combined use of exclusion (*abaarsa*) and principle of collective responsibility has made the Borana law-abiding. This approach has been shaped by the people's collectivist and relationship-focused worldview. Collective responsibility is one of the core values embedded in Borana worldview along with mutual survival and interdependence.

Among the Borana, crime is viewed as an act which disrupts *nagaa Boorana*. For the Borana, *nagaa* (peace) is indivisible and considered as a collective treasure which belongs to all Borana. The philosophy is that to restore *nagaa Boorana* which is collective, collective response is necessary. In other words, the maintenance of harmonious relations is a shared duty of every Borana. Collective responsibility and sense of shared destiny are necessary features of Borana way of life. The people have successful record in organizing collective action and managing conflict.

In general, so far, in terms of performance, the clan-based Borana justice system in general and its principle of collective responsibility seem to have worked well in disciplining its members. Every clan member has been kept within the bounds of the norms of the society because of the fear of being deprived of his social connection which is a severe kind of punishment. Every clan has more or less ensured that its members continued to be law-abiding in fear of paying *gumaa*. Hence, in the context of Borana clan-based and pastoral social setting, the principle of collective responsibility would still be relevant.

In the context of Ethiopia in general, where there are diverse indigenous justice systems operating, studies have to be made to determine the potential each one may have in preventing crime in the concerned societies. As they are derived from local experiences, indigenous knowledge systems of the people are more suitable in addressing local problems including crimes than the one imposed by the State. The practice of involving the community in the prevention of crime which is working among the Borana can be used by the formal justice system itself.

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