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Social Reintegration of Offenders under Ethiopian Criminal Justice System: The Case of North Gondar Zone in Amhara Regional State

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Social Reintegration of Offenders under Ethiopian Criminal Justice System: The Case of North Gondar Zone in Amhara Regional State

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May, 2021

Bahir Dar, Ethiopia

Social Reintegration of Offenders under Ethiopian Criminal Justice System: The Case of North Gondar Zone in Amhara Regional State

Thesis

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Laws (LLM) in the study of criminal justice and human rights at the School of Law, Bahir Dar University.

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Thesis approval

The thesis titled “*Social Reintegration of Offenders under Ethiopian Criminal Justice System*” by Gashaw Molla degree of Master of Laws (LLM) is my original work and I used any other materials by duly acknowledging through rule of citation.

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Declaration

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can also evoke criminal sanction from the State and civil action from the sources which have not been properly cited or acknowledged.

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Date

Acknowledgment

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Abstract

The Social reintegration of offenders is one of the most critical objectives of criminal justice system. To achieve this objective different approaches are practiced in different countries. According to the UN office of drugs and crimes there are three approaches prison based rehabilitation and reformation programs, aftercare reintegration programs (community intervention) and non custodial measures. Among non-custodial measures alternative dispute resolution mechanisms are accepted as a best mechanism for offenders in western countries and historical dispute resolution mechanism in African states. In the contemporary world a new paradigm of criminal justice system called restorative justice system is accepted as the best mechanism for offender reintegration. In this new paradigm all stakeholders are participate to solve the dispute and redress the harm on the crime victim and reintegrate the offenders through healing ceremonies of customary dispute resolution mechanisms. Under the Ethiopian criminal justice system informal dispute resolution mechanisms applied in parallel to formal criminal justice system in remote area and used to reintegrate the offender by reconciliation of disputing parties through customary rituals. Customary dispute resolution mechanisms also used to restore the previous relationship and maintain a future peaceful relationship between the conflicting parties and the communities by preventing a culture of revenge and recidivism by reintegrating the offender into the community. But, this customarily accepted peaceful dispute resolution mechanism not recognized in the formal criminal justice system .This thesis examines the place of social reintegration programs under the Ethiopian criminal justice system and the compatibility of customary dispute resolution mechanisms for the reintegration of offenders by comparing and contrasting the formal criminal justice system with the informal criminal justice system based on the practice in the study area, concepts in the literatures and trends in other countries. The study used interview, legislative analysis and relevant literature analysis. The finding shows the Ethiopian criminal justice system focuses only in punishing the offender and Crime preventing and reintegrating non-custodial measures like customary dispute resolution mechanisms used to reintegrate the offenders are not recognized clearly. Although the criminal law and criminal procedure code incorporate some concepts about reintegration of offenders such as parole, probation and private prosecution, there is no established and effective organs for supervising and assist the parole and probation in Ethiopia according to the criminal code .Therefore , the study shows recognition of non-custodial measures used to reintegrate the offender in some selected crimes based on future studies.

Keywords: offender, social reintegration, Ethiopian criminal justice system, restorative justice system, customary dispute resolution mechanisms.

Abbreviations

| | |
|--------------|---|
| ADR | Alternative Dispute Resolution |
| CDRM | Customary Dispute Resolution Mechanism |
| CJS | Criminal Justice System |
| CRF | Community Residential Facilities |
| CSC | Correctional Service of Canada |
| FDRE | Federal Democratic Republic of Ethiopia |
| FGC | Family Group Conference |
| SC | Sentencing Circles |
| VOM | Victim Offender Mediation |
| UNODC | United Nations Office of Drug and Crime |

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CHAPTER ONE: Introduction

1.1 Background of the study

Rehabilitation of offenders and their successful social reintegration into society are among the basic objectives of criminal justice systems according to international and domestic standards and norms. Conventionally, most criminal justice systems acknowledge the intervention to support the social reintegration of offenders as a means of correcting criminal behavior and preventing further crime and thereby protecting society.¹

Reintegration of offender refers to “the incorporation of the offenders into a normative moral order of pro-social values and practices”.² Social reintegration also refers to the process of integrating socially and psychologically into one’s social environment.³ Reintegration has two elements physical element, physical return of the offenders to community and symbolic element (moral inclusion) which includes forgiveness, acceptance, redemption and reconciliation to the offender through restorative justice principles and models exercised by the community.⁴ According to Maruna’s idea cited by the Andrews, argued that reintegration is distinct from re-entry and re-settlement both re-entry and re-settlement acknowledges that the physical movement from incarceration to the community that all released offenders must undergo; although, they say nothing about the process involved in this movement.⁵

¹ United nations office on drugs and crime , introductory handbook on the prevention of recidivism and the social reintegration of offenders, criminal justice handbook series , Vienna , 2018 (unpublished) p 3 [herein after UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders] available at <https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf > accessed on 10/28/2019

² Rossner Meredith and Bruce Jasmine, Community participation in restorative justice: rituals, reintegration, and quasi-professionalization,2016,p6 available at <[http://eprints.lse.ac.uk/65067/1/Rossner Community Participation in Restorative justice.pdf](http://eprints.lse.ac.uk/65067/1/Rossner_Community_Participation_in_Restorative_justice.pdf) > accessed on March 20, 2020

³ UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders, p5

⁴ Catherine Andrews, “*Community Attitudes Toward the Reintegration of Ex-Prisoners*”, Doctoral Dissertation, Deakin University, Faculty of Psychology (forensic) May 2015 pp.72-73 [here in after Andrews Community Attitudes towards the reintegration of ex-prisoners] Available at <<http://dro.deakin.edu.au/eserv/DU:30079007/andrews-communityattitudes-2015A.pdf> > accessed on August 25/2019

⁵ Andrews Community Attitudes towards the reintegration of ex-prisoners, p73

Reintegration can be defined in narrow definition only focuses on supporting the prisoners upon their release from prison and the broad definition the term reintegration includes “the complete process an offender will embark upon immediately the following arrest”.⁶ For the purpose of this study, the above two category of reintegration applied to know the place of social reintegration of offenders under Ethiopian criminal justice system.

Countries used different offender reintegration programs for example in Canada prison based reintegration system excelled based on the UN minimum standard rules of treatment of prisoners by offering concrete assistance such as housing and employment support and active involvement of the community in the parole and probation supervision ‘to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens’.⁷ “(...) offenders conditionally released from custody, they fall under the responsibility of CSC (corrective service Canada) parole and probation officers supervise the compliance of the correctional plan established during the offender’s intake procedure”.⁸

In the Ethiopian criminal justice system some mechanisms for reintegration of offenders are listed under FDRE criminal code and criminal procedure code. Hence, according to criminal code, courts can conditionally suspend penalties when conditions specified in the criminal code are fulfilled accordingly.⁹ Such cumulative conditions are, if a convicted offender has not been convicted previously, does not appear dangerous to society, and when his crime is punishable with fine, compulsory labor, or simple imprisonment of no more than three years.¹⁰ In addition, the convicted offender is required to enter into an undertaking to be of good conduct, to meet the

⁶ Sylvia Brand, “*Lived Experiences of Reintegration: A study of how former prisoners experienced reintegration in a local context*”, Submitted in Fulfillment of the Requirements for the Award of Doctor of Philosophy, to Dublin Institute of Technology, p36 (Here in after Sylvia Brand, lived experience of reintegration a study of how former prisoners experienced reintegration in a local context) available at < <https://www.semanticscholar.org/paper/Lived-Experiences-of-Reintegration%3A-A-Study-of-How-Brand/2b0cd8fc9b1e77445a0f15f131c9bcf8407b1f>> accessed on March 20, 2020

⁷ Gisler et al, *Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned*, April 2018, Working Paper 2018–5, UNresearch institute for social development [here in after Gisler et al, Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned] available at < [www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/.../gisler-et-al.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/.../gisler-et-al.pdf)> accessed on August 16 / 2019 p26

⁸ Gisler et al, *Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned*, p25

⁹ FDRE criminal code, 2004, Federal Negarit Gazzeta, Proc. No. 414/2004 Article 190 and following articles[herein after 2004 FDRE criminal code]

¹⁰Ibid article 191 and 192

conditions or rules of conduct attached to the probation, and to repair the damage caused by the crime or pay compensation to the injured person in order to be placed under probation.¹¹ Upon granting probation, the court places the offender under the supervision of a protector, guardian, or probation officer who shall keep in touch with the offender and reports on his situation.¹²

According to the study conditional suspension of penalty by probation under Ethiopian criminal code indicates that courts in its decision does not list conditions, rules of conduct to offenders after release from prison and the suspension of the penalties given without giving a justification.¹³ Therefore, in the absence effective supervisory body and without specifying conditions, conditional suspension of parole and probation cannot be effective in the reintegration of offenders into the community and after release the parolee and probationer may engage in similar and/or different crimes. In this instance number of recidivists and prison population also increased.

Historically before the coming into the implementation of the modern and institutionalized criminal justice system communities solve all their disagreements by using their customary rules, procedures and institutions. In this respect the crime victim, the offenders and the community involved in the conflict resolution process.¹⁴ This customary justice system aimed at restoring the broken relationship between the crime victim, offender and concerned community through customary dispute resolution mechanisms.¹⁵

Ethiopia as an old and independent nation is rich in Customary Dispute Resolution Mechanisms (Here-in- after CDRM). In different parts of the country CDRM is common to mediate the conflicting parties and their respective families that retribute wrongdoings and maintain their

¹¹ Ibid article 201

¹² Ibid article 203

¹³ Berhane Gebregziher, "Conditional Suspension of Penalty under the Ethiopian Criminal Code: What is missing?" ,*Mekelle University law Journal*, 2017, Vol. 5(1) , p72 available at http://www.mu.edu.et/mulj/files/V5N1/3_Conditional_50-77.pdf accessed on August 23/ 2019 [here in after Berhane Gebregziher, Conditional Suspension of Penalty]

¹⁴ Aberra Degefa, *the impact on offenders of rivalry between the formal criminal justice system and the indigenous justice system, experience among Borana Oromo in relation to the crime of Homicide*, Research paper, the Danish institute for human rights (Denmark national human rights institution) ,2013, p6 [herein after Aberra Degefa, *experience among Borana Oromo in relation to the crime of Homicide*] available at <https://www.humanrights.dk/files/media/.../4127_60s_aberra_ifm.pdf>

¹⁵ Aberra Degefa, *experience among Borana Oromo in relation to the crime of Homicide*, p6

future peaceful relationships by circumventing the culture of revenge.¹⁶In African states the traditional justice system has undergone and the dual justice systems come into effect by the reason of colonialisms of states by its colonizers with the exceptions Ethiopia and Liberia.¹⁷

Particularly, in the Ethiopian context the importation of western legal systems takes place without colonization to introduce modernity and change to the country between 1950 and 1960s, customary dispute resolution mechanisms discontinued because the drafter of the modern codes at that time is a foreign lawyer who is ignorant of indigenous customary practices applied in different parts of the country. In doing so, the customary practices accepted by the community was excluded and changed by ill transplanted European laws.¹⁸

Studies indicated that the procedural and substantive laws of Ethiopia, including the Constitution itself, exclude the application of indigenous CDRM in criminal matters.¹⁹ It is also critiqued that the modern law codification process that produced the famous six codes in the 1960s did not adequately include the values, norms and traditions of conflict resolutions in civil and criminal matters in Ethiopia.²⁰

Hence it can be tentatively hypothesized that currently the Ethiopian criminal justice system focuses on punishing the offenders by the formal criminal justice system in an adversarial litigation process.²¹ The reintegration of offenders is not explicitly listed as an objective under current Ethiopian criminal law and criminal procedure law. Prison based rehabilitation and reformation of the wrong doers are the main objective of the Ethiopian criminal justice system which is taken from the “western model of a court-based criminal justice system offers a specific notion of justice as a response to rule breaking”.²²

¹⁶ Endalew Lijalem, “*Ethiopian customary dispute resolution mechanisms : forms of restorative justice*”, (unpublished) [herein after Endalew Lijalem, Ethiopian customary dispute resolution mechanisms] p148 available at <<https://www.ajol.info/index.php/ajcr/article/viewFile/108898/98688>> accessed on 6/8/2019

¹⁷ UN human rights office of the high commissioner, “human rights and traditional justice in Africa”, New work and Geneva,2016 , p23[here in UN human rights and traditional justice in Africa] after available at <https://www.ohchr.org/.../HR_PUB_16_2_HR_and_Traditional_Justice_Sy...> accessed on August 16/2019

¹⁸ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms, p138

¹⁹ Ibid p126

²⁰ Ibid p138-139

²¹ 2004 FDRE criminal code article 1

²² Susan Njoki Wairei , *the role of restorative justice in the social reintegration of offenders in Kenya* , LLB thesis Strathmore University law school, 2017,(unpublished) p2[herein after Susan the role of restorative justice in the social reintegration of offenders in Kenya] available at <<https://suplus.strathmore.edu/handle/11071/5249>> accessed on August 19/2019

As pursuant to the Australian criminologist John Braithwaite, punishments given by formal criminal justice system is not used for reintegrative shaming the offender rather it is disintegrative shaming , offenders treated as bad person and unforgiving to their wrong doings and left with the stigmatized permanently by the community.²³

In parallel to formal justice system, customary dispute resolution mechanisms are accepted as justice machinery in solving civil and criminal matters by the community in rural area even if it hasn't legal recognition.²⁴ The same is true in Ethiopia customary dispute resolution mechanisms applied to solve criminal matters parallel to the criminal justice system. And this customary dispute resolution mechanisms are also fulfills the principles of new criminal justice paradigm called restorative justice system which is crime victims satisfied by reparation, stakeholder's for criminal justices system involve in crime prevention and mend the broken relation of both the offenders, crime victims and concerned community by using models or component of customary dispute resolution mechanisms. These customary dispute resolution mechanisms prevent the offenders from reoffending by its reintegrative shaming customary rituals and healing processes.²⁵ Therefore, without the involvement of the concerned community criminal justice objective of successful reintegration of the offenders cannot be achieved effectively.²⁶

Hence to achieve its objectives additional works such as well established prison- based and after-care assistance is in addition to the present practice such as psychological treatments, vocational training and educations about code of conduct in prison more needed to establish successful rehabilitation and reintegration system. Therefore, the researcher is interested to study the significance of ADR and CDRM for the reintegration of offenders in the criminal justice system by avoiding cultural practice of revenge and established community safety which is the formal criminal justice system cannot solve according to the researcher work experience in judicial organ in the study area.

²³ John Braithwaite , reintegrative shaming , Australian National University , 2000, p1[herein after John Braithwaite reintegrative shaming, 2000] available at <http://johnbraithwaite.com/wp-content/uploads/2016/05/2000_Reintegrative-Shaming.pdf> accessed on Sept 18/2019

²⁴ Ibid p127

²⁵ Ibid p145

²⁶ Susan , *the role of restorative justice in the social reintegration of offenders in Kenya* p5

Both the formal and informal criminal justice system applied in parallel ways in the study area. The study area North Gondar Zone is found in the Northern part of Gondar and its division is takes place in the recent time. Hence, the former North Gondar Zone is divided into three parts that is North Gondar, Central Gondar and west Gondar Zone. It contains seven woreda's its boundary in the Northern Tigray Region, South Central Gondar, and West Central Gondar and by the East Waghmra Zone. The writer selected this new zone based on its accessibility because the researcher works in this zone and data's can be easily collected from different informants by the writer work experience in the study zone.

As pursuant to the practice in the study area formal criminal justice systems focuses on pushing the wrong doer and send to prison for the purpose of rehabilitation of offenders in stay in prison by the activities like vocational training, educations and the like. In rear cases some offenders released by conditional suspension of penalties. Prisoners also released by parole by prison administration organs before the full execution of sentences by fulfilling a certain conditions.

On the other hand customary dispute resolution mechanisms such as mediation and reconciliation also used to solve the criminal cases in addition to formal criminal justice system or after formal criminal justice system. According to practices in the study area some prisoners which are released by parole and by execution of sentence reconvicted again two or three times. But, offenders solve their disputes by alternative dispute resolution mechanisms do not reconvicted according to the practice in the study area. Even in the serious case reconciled parties lived in peaceful ways and revenge is avoided by their customary rules.

Based on this the researcher tried to evaluating the place of social reintegration of offenders under the Ethiopian criminal justice system by taking the case of north Gondar zone in Amhara region and to indicate CDRM and ADR used to fulfill the criminal justice system limitations to reintegrate offenders into the community based on the evidences found in the study area

1.2 Statement of the problem

Social reintegration of offenders is the most important objective of the criminal justice system to protect the offenders from reoffending and to make the offenders law abiding citizens. There are at least ... factors that initiate the researcher to write the research on social reintegration of offenders under Ethiopian criminal justice system.

The first factor the researcher motivated to write in reintegration of offenders under Ethiopian criminal justice system is that, its view about crime and punishment. In Ethiopian criminal justice system community participation has no place to solve crime events and prevention of crime. But, the practice is different; communities have its own customary dispute resolution mechanism which is an indigenous conflict resolution mechanisms used to allow community participation in the justice system totally not recognized in criminal justice system. Because crime is viewed primarily an offence committed against the state interest rather an offense against the violation of the relationship between the crime victims, offenders and the community. Giving justice and prevention of crime is the state sole responsibility through the mechanism of retributive punishment.²⁷

Hence it is clearly indicated in the Federal Democratic Republic of Ethiopia (Here-in-after FDRE) criminal code article 1 paragraph 2, the code aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others or by providing for their reform and measures to prevent the commission of further crimes.²⁸

Therefore, the criminal justice system of Ethiopia like others criminal justice system emphasized on punishment is taken as a tool for preventing the commission of further crimes and to rehabilitate the offenders. However, mere imposition of punishment is not effective to rehabilitate and reintegrate the offender rather it encourages criminal behavior from other inmates in the stay of prison. In retributive justice system according to the theory of Braithwaite imposition of punishment is disintegrative shaming, offenders treated as bad person and unforgiving to their wrong doings and left with the stigmatized permanently.²⁹

According to researchers in long-term incarceration will be outweighed by the costs under any analysis, given that it serves no deterrence purpose, increases societal costs, and leaves offenders

²⁷ Endalew Lijalem, “*a move towards restorative justice in Ethiopia: accommodating customary dispute resolution mechanisms with the criminal justice system*”, Master’s Thesis in Peace and Conflict Transformation Faculty of Humanities, Social Sciences and Education University of Tromsø, Spring 2013, [here in after Endalew Lijalem, a move towards restorative justice in Ethiopia](unpublished) p2 available at <<https://pdfs.semanticscholar.org/a8a2/62f54b25ca1cbd55f9233795a67d9e1ff19c.pdf> > accessed on Sept19/ 2019

²⁸ 2004 FDRE criminal code article 1

²⁹ John Braithwaite , reintegrative shaming ,2000 p1

who might otherwise be productive members of society without that ability.³⁰ Formal justice system is inaccessible, expensive, time consuming and complex.³¹

In Ethiopia customary dispute resolution mechanisms applied to solve criminal matters parallel to the criminal justice system in those remote and peripheral areas communities use their customary dispute resolution mechanisms and even after cases seen by court. Based on these to reconcile the gaps in the two systems and to indicate best solutions for the limitation of the criminal justice system more research is needed.

The researcher work experience in justice system also the second motivating factor to write on this research topic because among convicted offenders some offenders are reconvicted after released from the prison by the execution of the sentence they commit similar and/or different crimes and sentenced two or three times. This recycling process increases the overcrowding of the prisoners in the prison administration and increase societal cost and indication of the failure of the criminal justice system in its rehabilitation and social reintegration of offenders. In doing so, Searching factors that affect the reintegration of the offenders must be answered and its best solution also identified by studies is important to establish successful criminal justice system in relation to offender social reintegration. The researcher is so interested to study on this area and to contribute some inputs for creating successful reintegration system of the offenders.

Thirdly, the tendency of international community to use restorative justice as complement to current criminal justice system also the other core factor to study in this area, in 2002, the United Nations Economic and Social Council adopted a resolution containing a set of Basic Principles on the Use of Restorative Justice Programs in Criminal Matters. These principles offer important guidance for policy makers, community organizations and criminal justice officials involved in the development of restorative justice response to crime in their society.³² This basic principle encourages the significance of ADR and CDRM for reintegration of the offenders by complementing the current criminal justice system in light of prevention of culture of revenges

³⁰ Zvi D. Gabbay, “*Justifying Restorative Justice: A Theoretical Justification for the Use of Restorative Justice Practices*”, journal of dispute resolution,2005, Vol.2005,issue 2 Article 4, p354 [Here in after Gabbay, Justifying Restorative Justice 2005]available at <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1495&context=jdr> > accessed on December 26,2019

³¹ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis) p3

³² UN office on drug and crimes, handbook on restorative justice programs p2

by participating the crime victims, offenders and the community. By UN programs majority countries in the world used restorative justice system by reforming their criminal justice system. Generally the above three factors the researcher motivated to study on social reintegration of offenders under Ethiopian criminal justice system and to indicate mean of successful reintegration of offenders by compare and contrast the formal state based justice system and informal community based practices to solve disputes through CDRM and ADR which is practiced in study area.

1.3 Objective of the study

The main objective of this research is to examine the place of social reintegration of offenders under the Ethiopian criminal justice system taking the case of North Gondar Zone of Amhara Regional State.

1.3.1 Specific Objectives

To realize the main objectives of the topic the following specific objectives are listed accordingly.

- Explore the conceptual and theoretical basis of social reintegration of offenders in the criminal justice system.
- Examine the place of social reintegration of offenders under the Ethiopian criminal justice system.
- Analyze the practice of social reintegration of offenders performed by the criminal justice system and the community in the study area.
- Explore the legal gaps of Ethiopian criminal justice system in relation to social reintegration of offenders.
- Explore the experience of other countries in the social reintegration of offenders that Ethiopia could take a lesson.

1.4 Research questions

In line with the research problems and objectives stated in above, the research questions of this study are the following:

- How social reintegration of offenders does conceptually and theoretically evolved in the criminal justice system?
- Does the social reintegration of offenders get an adequate space under the Ethiopian criminal justice system?
- What is the experience of social reintegration of offenders in the criminal justice system and the community in the study area?
- What are the legal gaps of Ethiopian criminal justice system in relation to social reintegration of the offender?
- What experiences of other countries could Ethiopia take a lesson with respect to the social reintegration of offenders?

1.5 Significance of the study

In the Ethiopian criminal justice system investigation of crime and its adjudication is tried by the formal justice system by the police, the prosecutor and the court by the assumption that crime is committed against the state. But, crime victims are neglected, the role of the community participation in solving conflicts is also neglected. On the other hand customary dispute resolution mechanisms in civil and criminal matters run by community elders are accessible in rural area and legitimate to resolve disputes by participating the crime victims, offenders and interested stakeholders and according to different researches customary dispute resolution mechanisms used for social reintegration of offenders and to reduce recidivism.

Based on this, the study aims to indicate the place of social reintegration of offender under Ethiopian criminal justice system and its experience in reintegration of offenders in the study area. Therefore, this study aims to show customary dispute resolution mechanisms is important for social reintegration of offenders as complementary of the formal justice system in restoring the previous relationship and preventing future crimes by satisfying the interested parties based

on different theories in addition to formal state based rehabilitation and reintegration system during in the stay in prison.

Hence all in all this study aims to indicate for policy makers, legislative organs and governments in general about the importance of indigenous customary dispute resolution mechanisms for social reintegration of offenders if recognized by the formal criminal justice system and used as complementary to fulfill the limitation of the current criminal justice system in relation to social reintegration of offenders.

1.6 Review of Literatures

“The origins of reintegration can be traced to criminological theories in the late 20th century”.³³ Reintegration is best credited by John Braithwaite on his theory of reintegrative shaming, reintegrative shaming is focused on the processes that occur post-punishment that support the offender reintegration and desistance from crime.³⁴

According to theory of John Braithwaite reintegrative shaming is communicate shame to the wrongdoer in a way that encourages him or her to desist from crime, respecting the offender and treated as a good person who has done a bad deed. If the offender is treated as a bad person, disrespectful, unforgiving ceremonies to certify deviance result stigmatizing shaming create criminal subculture.³⁵ According to Braithwaite the reintegrative shaming is exercised in the African societies through its own indigenous dispute resolution mechanisms like reconciliation of the crime victims, the offender and the community and on the other hand Western societies used stigmatize shaming we compared to Africa and Asia.³⁶

According to this theory state based criminal justice system is create disintegrative shaming on the offender, which means the offenders labeled as an outsider to the community and creates its own subculture against the community to defend the stigma of the retributive justice system. But, this theory totally excluded the importance of the formal criminal justice system for reintegration

³³ Andrews Community Attitudes towards the reintegration of ex-prisoners p50

³⁴ Ibid p51

³⁵ John Braithwaite, *Reintegrative shaming*, Australia National University, 1989, p13-14 [hereinafter John Braithwaite reintegrative shaming, 1989] available at <http://johnbraithwaite.com/wp-content/uploads/2016/05/2000_Reintegrative-Shaming.pdf> accessed on September 18/2019

³⁶ John Braithwaite, reintegrative shaming, p5

of offenders because by prison-based criminal justice system in developed countries used established successful reintegration system by community participation like Canada and Japan and in some circumstances by its nature like serious crimes, tax evasion and types of person such as recidivist, customary dispute resolution mechanisms cannot be taken as a good mechanism. In doing so, customary dispute resolution mechanisms or restorative justice and formal criminal justice system complement each other to avoid each limitation and create successful criminal justice system.³⁷

According to Maruna “reintegration is distinct from re-entry and resettlement, both re-entry and re-settlement acknowledge the physical movement from incarceration to community that all released offenders must undergo”.³⁸ (...) “[T]rue reintegration goes one step further, in recognizing that this process involves interaction between the ex-prisoner and his or her community.”³⁹ But, the state plays an important role of offenders’ reintegration in guiding and responding to public perceptions and attitudes about reintegration, desistance and recidivism by establishing policy through societal services, organizational funding and legislation.⁴⁰

In Ethiopia context, reintegration of offenders is a new area, there is no sufficient literature found in the area of social reintegration of offenders under Ethiopian criminal justice system. But, different writers write on the importance of customary dispute resolution mechanisms to solve the criminal matters and they indicate customary dispute resolution mechanisms used complement to the formal criminal justice system as a gap filling.

Among Ethiopian lawyer Endalew Lijalem On his master’s thesis argued that in formal criminal justice system the community see the offenders permanently criminal with bad personality and may consequently segregate and by this act the offender may also increase the likelihood of subsequent deviant behavior and the offender may view him / her hated and out casted by the community. Such perception of the community and self view of the offender may lead him/her to feel revenge and reoffend or withdraw himself from the community, which eventually lead to the disconnection of his / her social bond offender from the community.⁴¹

³⁷ Endalew Lijalem, a move towards restorative justice in Ethiopia, p35

³⁸ Andrews, Community Attitudes towards the reintegration of ex-offenders, p72

³⁹ Ibid

⁴⁰ Ibid p73

⁴¹ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms p145

According to him, this form of rituals manifests the stigmatic and disintegrative nature of the formal criminal justice system. Based on these failures the best solution indicated to avoid the criminal justice system limitations including for successful reintegration of offenders into the community by accommodating using restorative justice system components like customary dispute resolution mechanisms. So, traditional dispute resolution mechanisms have the role in reintegrating the conflicting parties through customary rituals.⁴²

Hence, the above writers concluded that offenders are can be easily reintegrated in to the community through customary dispute resolution mechanisms. But, methodologically the above writer's analysis based on the theories by using the principle of the restorative justice and interviewing the lawyers, elders. But, direct informants such as crime victims and offenders are not part of his study. The writer also does not include prison based activities done in prison that is used to social reintegration of offender.

On the other hand according to united nation office of drug and crime (UNDOC) introductory hand book on prevention of recidivism and social reintegration of offender ⁴³, indicated that reintegration of offenders can be achieved through three main program categories. Firstly, Prison-based rehabilitation programs, on this intervention aimed at facilitating their post-release adjustment of offenders in the period of before release. Such prison-based rehabilitation programs are the UN standard minimum rules treatment of prisoners (Nelson Mandela rules) and countries like Canada, Norway, Japan and Malaysia.⁴⁴ Norway according to the study “met all minimum standards for welfare, rehabilitation and reintegration as stated in the Nelson Mandela Rules.”⁴⁵

The second program according to the document is reintegration and after care programs, which is supported by the intervention of the government to reintegrate the offenders. According to Griffiths et al such interventions for social reintegration ex-prisoners into the community and to

⁴² Nigussie Angessa, The reintegrating role that can be played by a traditional conflict resolving mechanism in the eastern Hararghe zone of Oromiya regional state, Ethiopia, Senior Essay (unpublished) p30,available at

⁴³ UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders p19,49 and 70

⁴⁴ Ibid p5

⁴⁵ Griffiths et al, “ the social reintegration of offenders and crime prevention ” international centre for criminal law reform and criminal justice , Canada, April 2007 (unpublished) p28 [herein after Griffiths et al, social reintegration of offenders and crime prevention] available at

“<https://pdfs.semanticscholar.org/4b72/c0cac0ed2fc50bb24894dc245826e2bc537d.pdf>” accessed on October 28/ 2019

reduce crime rates of reoffending, efforts such as securing legal employment, finding suitable accommodation, addressing substance abuse issues and identifying family and community assets.⁴⁶ The third program is non-custodial community based programs an alternative to imprisonment for reintegration of offenders in the community decided by courts based on its appropriateness such as community service orders, economic sanctions and monetary penalties, probation and judicial supervision and conditional discharge are some of non custodial sanctions according Tokyo rules.⁴⁷ But, non custodial measures such as case referral to customary dispute resolution mechanisms in restorative ways also included for the success of offenders reintegration.

Based on the above literatures reintegration of the offenders can be achieved by different mechanisms. According to the theory reintegrative shaming reintegration of offenders can be accomplished through the symbolic reintegration mechanisms like respecting, forgiveness and apology. This type of process can be takes placed by restorative justice values and principles. On the other hand reintegration of the offenders can be achieved by retributive justice system through prison-based programs given during the stay in prison and after post release of the prisoners. The theory of John Braithwaite of reintegrative shaming and argument raised by the writer Maruna about the role of states for social reintegration similar to the UN non-custodial programs (Tokyo rules) because non custodial rules are not exhaustively listed selection of non custodial measures takes place based on the established criteria the nature and gravity of the offence and personality, background of the offenders, the purpose of the sentence and the rights of the victims.⁴⁸It may includes the participation of the concerned parties, therefore non-custodial programs indicated in the Tokyo rules also similar to theory of reintegrative shaming and other alternative remedies given the communities to the offenders in the ways of reintegrating shaming.

Therefore, for the success of reintegration of the offenders in criminal justice system reintegrative shaming theory exercised by the community and state based practices shall be recognized by the state. For developing countries prison based programs and after care service for offender reintegration needs additional costs in addition to prison administration costs such as

⁴⁶ Ibid p58

⁴⁷ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)[Here in after The Tokyo Rules for non custodial measures] Adopted by General Assembly resolution 45/110 of 14 December 1990 rule 5-9

⁴⁸ The Tokyo Rules for non custodial measures, rule 3

investigation and adjudication costs of recidivists and its through care and after care reintegration costs.

But, to reduce recidivisms and overcrowding of prisoners customary dispute resolutions more appropriate to avoid the above limitations which include the interest of offenders, crime victims and affected community based on the consent of the concerned parties. To reduce overcrowding and recidivisms, in some selected cases based on studies, case referral to legally organized bodies shall be legally recognized accordingly.

On the other hand state intervention for social reintegration of the offenders by prison-based rehabilitation programs and post release reintegration programs also important when other customary dispute resolution mechanisms failed to solve the dispute restoratively.

Hence accommodating the CDRM and ADR with state based reintegration programs according to the studies used to establish successful reintegration of the offenders under criminal justice system. But, the above literatures are theoretical ideas the practice performed in the study area not included by the writer and the study focuses about the importance of accommodating customary dispute resolution mechanism in Ethiopia. A study about the importance customary dispute resolution mechanisms for reintegration of offenders is necessary in particular and system of offenders reintegration in general and its practice, its legal framework, limitations and factors not identified by the studies in Ethiopia. Therefore, this study aims to the criminal justice system by indicating means of successful reintegration systems of the offenders based on facts on the ground in the study area and by including current practices of some selected countries experiences, international standards and basic principles of criminal justice systems.

1.7 Methodology of the Research

The two dominant approaches commonly used in the social science researches are the qualitative and quantitative approaches. The aims of qualitative research method is to search the meaning of the people's experiences, the meaning of people's culture, and the people view about a particular issue or case. On the other hand, quantitative research is to examine the relationship between

variables, such as the dependent, independent variables, and extraneous.⁴⁹ Quantitative research method is a method of research that relies on measuring variables by using numerical system, measurement by statistical models⁵⁰. Contrast to qualitative research quantitative research method deals with data that are numerical that can be easily converted into number through appropriate research designs. To study in the field of social science qualitative research method mostly preferred to study human behavior empirically. For example, study human behaviors in relation to why ex-prisoners are reconvicted and how the community treat the ex-prisoner and other related human behaviors are can be search by qualitative method.

Based on this, the researcher used a qualitative method which is used to understand social reintegration of offenders in Ethiopian criminal justice system through collecting of different available empirical data's by the researcher work experience in the judiciary in the Ethiopian criminal justice system.

Qualitative method uses the data collection methods like participant observation, structured, semi-structure and unstructured interviewing, focus groups and qualitative examinations of texts. In addition to the above primary and secondary data's the researcher used other primary sources such as legislations like criminal code , criminal procedure code, Ethiopian federal democratic republic constitution and draft legislation of the criminal code and criminal justice policy of Ethiopia and primary data's like court decisions (documents) , interviews and focus group discussions. The study also used secondary sources such as books, journal articles, official documents and other online documents.

Interviews used according Kvale and Brinkmann cited by the writer Endalew Lijalem: 'If you want to know how people understand their world and their lives, why not talk with them?'⁵¹ "They indicate that interviews are proper methods to know about people`s opinion, feelings, and

⁴⁹ Hassan H. Elkatawneh, Comparing Qualitative and Quantitative Approaches, Walden University; University of the Rockies, 2016 , p3 available at <https://www.researchgate.net/publication/315029674_Comparing_Qualitative_and_Quantitative_Approaches > accessed on December 21/2019

⁵⁰ Debra Lucas-Alfieri ,*marketing plan research and assessment* , paral ,2015, available at <https://www.sciencedirect.com/topics/social-sciences/quantitative-research> accessed on December 21/2019

⁵¹ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis) p14

experiences with regard to a certain issue”.⁵² There are three most commonly used sampling methods in qualitative research: purposive sampling, quota sampling, and snowball sampling.⁵³ Among those sampling methods, the researcher used purposive sampling to interview judges, prison staffs, prosecutors and investigating police officers are selected based on their experience on the study area. Because judges, prison staffs, prosecutors and investigating police officers are selected based on their experience on the study area, they are more closed to know the place social reintegration of offenders under Ethiopian criminal justice system and the means of reintegration of offenders in the criminal justice system. Snowball sampling technique also used to identify the appropriate ex-offenders by their friends in the study area.

In addition to the above informants the researcher also used community elders selected by the community to reconciled criminal cases including homicide by their own customary rules and they are named in Amharic dem adreq (dryer of the blood) through the focused group discussion mechanisms of data collection to know the understanding of the community about social reintegration of offenders and the practice of community for reintegrate the offenders and to identify the treatment of prisoners released from prison by the communities. The researcher used snowball⁵⁴ methods of data collection to accessed released offenders from prison by different ways. Semi structured and open ended interviews with in depth interviews are employed to participants of the study to find the accurate and sufficient data on the research problem. The researcher selected 20 appropriate informants from the judiciary, public prosecutors, prison administration staffs, investigating police staffs and from communities in the study area (includes offenders and elders).

⁵² Ibid

⁵³ Ibid

⁵⁴ According to Timothy P. Johnson, snowball sampling technique is used “to identify numerous special populations, including: homeless adolescents, homosexuals, minority community leaders, cancer survivors [10], drug users, current and former smoker and women planning to use artificial insemination techniques. Snowball sampling is also a commonly used method for the identification of social networks in socio metric research [3] and in qualitative studies [5]. Snowball sampling may also be used to generate control groups for program evaluations by asking program participants to identify persons similar to themselves who are not participating in the program”. < https://www.researchgate.net/profile/Timothy_Johnson2/publication/316414208_Snowball_Sampling_Introduction/links/5d5ae33d4585152102521e98/Snowball-Sampling-Introduction?origin=publication_detail> accessed on December 23/ 2020

“In qualitative research, the validity of the information from the interview can be tested using different methods such as triangulation”.⁵⁵ Triangulation refers to ‘the attempt to get a `true` fix on a situation by combining different ways of looking at it or different findings.’⁵⁶ Based on this concepts my research analysis’s ideas taken from different informants helps us to compare data’s obtained from different informants each other and it can be cross-checked with other research works and documents like books, articles and other documents. Therefore, the validity of the data collected by interview is examined in relation to other research works, national legislatives, policy documents, international standards and norms about the issue or related issues.

1.8 Ethical considerations

In social science research data is collected from selected participants and needs collection of data scientifically without bias of the researcher. The researcher collect data’s and used honestly by giving credit pursuant to the rule of citation of the academic. Based on this, the researcher try to show the findings based on accurate, sufficient sources of the both primary and secondary data, without plagiarism, fabrication and falsification. Hence the writer knows the risk of plagiarism, fabrication and falsification of data’s has a criminal responsibility in addition to academic dismissal. Therefore, this research is accomplished according to the convention of the citation.

1.9 Scope of the study

Social reintegration of offenders can be takes place through different mechanisms some of them are treatment of offenders by welfare and rehabilitation programs during in the stay of prison and offenders reintegration programs after release of offenders from prison by removing challenges like social , economical and other challenges of the offenders. In addition to prison-based programs offenders can be reintegrated in to the community through other alternative non-custodial reintegrating means like reconciliation, mediation and arbitration methods by giving legal recognition in the criminal justice system. In this study the issue covers that, the conceptual and theoretical basis of social reintegration of offenders in the criminal justice system in general and the place of social reintegration of offenders under the Ethiopian criminal justice system.

⁵⁵ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis) p12

⁵⁶ Ibid

Further, the study explores the practice of social reintegration of offenders performed by the criminal justice system and the community in the study area and the experience of other countries in the social reintegration of offenders that Ethiopia could take a lesson. The issue of how to institutionalize the accepted alternative dispute resolution mechanisms and how to integrate them with the criminal justice system of Ethiopia are beyond the scope of this thesis research.

1.10 Limitation of the study

Social reintegration of offenders can be achieved by different mechanisms such as, reintegration of offenders can be achieved by using prison-based reintegration programs for each individual prisons. In addition, non custodial measures among alternative dispute resolution mechanisms taken as offender reintegration mechanism. The study examines social reintegration of offenders under Ethiopian criminal justice system in Amhara Region the case of North Gondar Zone by searching the practice in the formal and informal criminal justice system in the study area. To reach at good solution in relation to the social reintegration of offenders study should include the whole alternative dispute resolution mechanisms practice in different parts of Ethiopia. But, because of time and economic constraints this study focuses only in particular place and in some selected participants in that study area rather it cannot include the whole customary dispute resolution mechanisms which is applicable in civil and criminal matters in Ethiopia. Based on this the scope of the study is limited on the ways how offenders effectively reintegrated and protected from reoffending of the offenders and protect the community from crime by compare and contrast the state criminal justice system and alternative criminal dispute resolution mechanisms which is highly practiced in the study area. The researcher workload in the court and insufficiency literatures in relation to the social reintegration of offenders in Ethiopia is also limitation of the study. Specially to collect the data's from the informants the current world health problem called Corona virus is the main problem to perform focus group discussion in the study area. The researcher used the data collection method based on the rule of the health minister.

CHAPTER TWO

Social Reintegration Offenders and Criminal Justice System in general

2.1 Conceptualizing the criminal justice system

Criminal justice systems are institutions established to give criminal justice both in the formal (government institution) or informal ways.⁵⁷ It includes a system of law enforcement, adjudication criminal cases and corrections of the offenders. In between 1970 and 1980 the new justice system like reconciliation, mediation and arbitration gained popularity as an alternative justice to traditional justice system in western countries.⁵⁸

Formal (government institutions) as a name indicates, it is established by the state to give criminal justice through the mechanisms state criminal law and criminal procedure laws. There are state based criminal justice system described as an institutional remedies to criminal activities by the network of agencies beginning with crime prevention and crime investigation performed by the police to identify crime and the criminal, public prosecutor to prepare a charge based on the findings of the investigating polices and participate in the criminal proceedings in the trial court, courts also assigned to give decision by hearing of the two litigating parties and correctional organizations like prisons established for the enforcement of sentences such as imprisonment given to the offenders for the purpose of rehabilitate the criminal behavior and to protect the offender from re-offending.

Formal (state based) criminal justice system is established based on theory of retributive justice system to punish the offenders by the rationale of incapacitation and just desert.⁵⁹ Effective and an efficient criminal justice system used to protect the safety of the community by reducing crime rate.⁶⁰ According to the “United Nations guiding principles of the administration of penal institutions stipulate that the justifications of a sentence of imprisonment like protection of peoples from crime, can only achieved if the period of incarceration serves to assist offenders to

⁵⁷ Julie MacFarlane(Dr), “working towards restorative justice in Ethiopia : integrating traditional conflict resolution system with in formal legal system”, *Cardozo Journal of conflict resolution* Vol.8: 487, 2007, p 489[here in after Julie MacFarlane(Dr), “working towards restorative justice in Ethiopia]available at < <https://cardozojcr.com/vol8no2/487-510.pdf> > accessed on December 23/2020

⁵⁸ Awol Alemayehu Dana, Factors Deterring Enhanced Application of Alternative Dispute Resolution (ADR) in Criminal Litigation in Ethiopia, the case of Wolaita p184

⁵⁹ Brand, lived experience of reintegration a study of how former prisoners experienced reintegration in a local context p2

⁶⁰ Gabbay, Justifying Restorative Justice 2005 p353

live legitimate lives upon their return to society”.⁶¹ . In addition to assistances given to offenders in prison after care services also necessary to released offenders for the purpose of offenders reintegration and to protect the offenders from reoffending.

According to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provides the objectives of the criminal justice system under rule 4, paragraph 1 as

*The purposes of a sentence of imprisonment or similar measures deprivative of a person’s liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.*⁶²

The above direct quoted material indicates the purpose of punishment and other measures to protect the society against crime and to reduce recidivism and it can be only effective when the prison-based rehabilitation fulfills the minimum standard rule of treatment of prisoners and upon release the reintegration program can lead a law abiding and self-supporting life. In Ethiopian context, prison based rehabilitation and reintegration programs like vocational training and psychological support is not effective because of the presence of recidivists. Hence, rehabilitation and successful reintegration does not achieve only by the old paradigm of retributive justice system through punishment because the retributive justice system did not satisfy the interest of all parties affected by the crime.⁶³ Hence in the contemporary world includes the new criminal justice paradigm called paradigm of restitution (restorative justice paradigm) which crime is viewed as an offense committed against the individual interest.⁶⁴ In this new criminal justice paradigm the crime victims, the offender and their family interest satisfied. Restitution may be takes place with or without punishment.⁶⁵ According studies, the formal criminal justice system has limitations on the objective of the reduced overcrowding of the prison population, recidivism, raising crime rate.

⁶¹ Brand, lived experience of reintegration a study of how former prisoners experienced reintegration in a local context p1

⁶² UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders p4

⁶³ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis) p27

⁶⁴ Randy E. Barnett, “Restitution: A New Paradigm for Criminal Justice”, Georgetown University Law Center,1977,p 291[here in after Randy E. Barnett, Restitution: A New Paradigm for Criminal Justice] available at < <http://scholarship.law.georgetown.edu/facpub> > accessed on June 2020

⁶⁵ Randy E. Barnett, Restitution: A New Paradigm for Criminal Justice p288- 289

Based on this limitation the idea of new paradigm called restitution/ restorative justice come to effect by the view of crime is an offense committing by individual against the rights of another.⁶⁶ According to Howard Zehr called “*Changing Lenses*”, of the view of old criminal justice system about crime committed against the state interest, he ‘describes a restorative lens as the view that crime is a violation of people’s relationship. It creates obligations to make things right. Justice involves the victim, the offender and the community in a search for solutions which promote repair, reconciliation and reassurance.’⁶⁷

According to restorative justice principles and values crime victims, offenders and concerned communities participate in the restorative justice processes and this process is a traditional culture which is practiced in African countries by the mechanisms like customary dispute resolution mechanisms or traditional justice system.⁶⁸ And this customary dispute resolution mechanism fulfils the new paradigm called restorative justice system the principle of restitution or compensation of victim of crimes, reintegration of offender and participation of all concerned parties in the conflicts.

2.2 Types of criminal justice systems

2.2.1 Formal criminal justice system/ state based justice system

One of the justice systems is formal criminal justice system, which is organized by state based on the theory of retributive justice or paradigm of punishment. Hence, punishment (capital punishment and imprisonment) is the main remedy by the motive to deprive the offender the power of doing future wrongdoing and to protect from reoffending by rehabilitation.⁶⁹

As stated in the above discussion in state based criminal justice system is established to give institutional remedies to criminal activities through the network of police, prosecutor, courts and prison administration. Crime prevention and crime investigation performed by the police to identify crime facts, public prosecutor to prepare a charge based on the report of the investigating police and participate in the criminal proceedings in the trial court by representing of the state, courts also assigned to give decision and correctional organizations established for the

⁶⁶ Ibid, p287

⁶⁷ Gabbay, Justifying Restorative Justice 2005 p357

⁶⁸ UN human rights and traditional justice in Africa p18

⁶⁹ Randy E. Barnett, Restitution: A New Paradigm for Criminal Justice p280

enforcement of sentences given to the offenders for the purpose of rehabilitate criminal behavior and to protect the offender from re-offending.⁷⁰ But, facts on the ground are different, number of prison population is increased in worldwide and it creates financial burden on the government and its societies.

According to literatures the reasons for increasing the number of prison populations are, high imprisonment rate and crime trend, socio economic and political factors, obstacles and delays in access to justice , excessive pre trial detention, punitive criminal justice policies (mandatory minimum sentencing laws), inappropriate use of imprisonment ,inadequate use of alternatives to imprisonments and insufficient measures to promote social reintegration are some of the factors for overcrowding indicated in United Nations office on drugs and crime on criminal justice handbook series⁷¹. Its detail elaboration of some important factors such as mandatory minimum sentencing laws, inadequate use of alternatives to imprisonments and insufficient measures to promote social reintegration are included in the next chapters.

The other factor to increase overcrowding of prison population according to reintegrative shaming theory of John Braithwaite societies have lower crime rate if they communicate about shame effectively, in other words communicating about the shamefulness of crime that increase crime rate called stigmatization. Stigmatization means disrespectful shaming offenders are left permanently stigma and bad person it is called disintegrative shaming. Whereas reintegrative shaming is according to Braithwaite offenders are treated as a good person who has done a bad deed.⁷²

Hence pursuant to this theory stigmatization of offenders results from the theory of retributive justice to achieve the crime control approach and mandatory minimum sentencing laws by imprisonment of the offenders by the decision of the state courts. Offenders do not encouraged to take responsibility about his/her act the decision is given by court with hearing of evidences in

⁷⁰ 2004 FDRE criminal code article 1

⁷¹United Nations office on drugs and crime, handbook on strategies to reduced overcrowding in prison , criminal justice handbook series in cooperation with the international committee of the red cross, New York , 2013 (unpublished) p19-32 [here in after UNDOC handbook on strategies to reduced overcrowding in prisons , 2013] available at < https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf > accessed on 10/28/2019

⁷² John Braithwaite, reintegrative shaming, 2000, p1

adversarial proceeding and the decision is given only based on the past conducts or omissions of the offenders. Finally if the court proved the guilt of the offenders and believed that imprisonment is used to achieve the goals of the criminal justice system, in doing so, imprisonment results segregation of the offenders from the community. In this case the community named the offender and an outsider through the process of degradation ceremonies in the formal criminal justice system.⁷³

2.2.2 Informal justice system/customary dispute resolution mechanisms

In the criminal justice system, informal justice system is also one of the justice machinery to solve disputes in different countries in the contemporary world. Informal justice system has different names by different writers, those some of them are traditional institution of conflict resolution, traditional justice systems, non-state justice, customary dispute resolution mechanisms, alternative dispute resolution, popular dispute resolution mechanisms and restorative justice.⁷⁴ This different name indicates there is no an international consensus to establish representative universally agreed name to this justice system. Because the term non-state justice is inaccurate because a number of countries in Africa customary dispute resolution mechanisms are recognized as a dispute resolution mechanisms in state legal system and we can no deemed informal justice system because this justice system the base of state justice system states, non-governmental organizations (NGOs) and business associations use alternative dispute resolution mechanisms to solve disagreements.⁷⁵

According to Julie Macfarlane the classification of justice system by formal and informal does not suggest hierarchy formal justice process versus informal justice process, rather a means of

⁷³ Andrews, Community Attitudes towards the reintegration of ex-prisoners p53-54

⁷⁴ Gebreyesus Teklu Bahta, “*popular dispute resolution mechanisms in Ethiopia : trends, opportunities, challenges and prospects*”, post Doctorial fellow at institutes for dispute resolution in Africa , South Africa university Pretoria p101[here in after Gebreyesus popular dispute resolution mechanisms in Ethiopia : trends, opportunities, challenges and prospects]<https://www.google.com/search?ei=7H37XLyeOMG2gwfPjZL4BQ&q=Gebreyesus+Teklu+Bahta+popular+dispute+resolution+mechanism&oq=Gebreyesus+Teklu+Bahta+popular+dispute+resolution+mechanism&gs_l=psyab.12...33i160.8622.48937...51283...1.0..0.254.7286.0j26j12.....0....1..gswiz.....33i21.J0B8Ctom_HE> Accessed on 6/8/2019

⁷⁵ UN human rights and traditional justice in Africa p6

distinguishing between them and how their distinctive character impacts on the dispute resolution environment.⁷⁶

United Nation development program (UNDP) attempted to define the terms, according to UNDP ‘traditional and indigenous systems of justice (...) that exist at the local or community level which have not been set up by the State. (...) that usually follows customary law (...) enforced by sanctions, varying over time’.⁷⁷ According to UNDP traditional and indigenous justice systems are two distinct types of the category of customary justice system, conceptually both customary and indigenous justice system can be considered customary justice system by the reason both are based principally on the custom and practice of the community.⁷⁸ In number countries of Africa Botswana, Namibia and South Africa indigenous peoples are distinguished from traditional communities that are lead by traditional authorities.⁷⁹ And this justice system used to solve disputes in rural area and more legitimate by the community.⁸⁰

Prior to the emergence of the modern state and its formal justice system, human society had customary rules, procedures and institutions to solve disputes, particularly in criminal cases, the main participants are were victims, offenders and the community which are affected the crimes. The process of justice administration takes place mainly through reconciliation; this community based customary justice systems aimed at restoring the broken relationships by providing reparation to the victims for the harm caused to them by wrongdoings by the wrong doer. It also aimed at reintegrating offenders with the community.⁸¹ In addition the reparation awarded by the customary dispute resolution mechanisms or traditional justice system is more appropriate to the context in the ways of preserving social harmony; facilitate reconciliation and the judgments given traditional justice system less corrupt than formal court system.⁸²

Studies indicates that it is common for people to prefer to shared substantive norms to resolve problems rather than to resort to legal norms, by the reason of lack of knowledge or awareness of legal rights; but numerous studies suggest that both justice systems equally important for

⁷⁶ Julie MacFarlane(Dr), “working towards restorative justice in Ethiopia 489

⁷⁷ UN human rights and traditional justice in Africa p6

⁷⁸ Ibid

⁷⁹ UN human rights and traditional justice in Africa p8

⁸⁰ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms p127

⁸¹ Aberra Degefa, experience among Borana Oromo in relation to the crime of Homicide p6

⁸² UN human rights and traditional justice in Africa p21

social reintegration of the offender. Nowadays all faiths traditions have at some time idealized and practiced ways of justice called restorative.⁸³ Restorative justice is not a new concept indigenous people in New Zealand, Canada and Australia was practiced such approach.⁸⁴ Alternative dispute resolution mechanisms such as reconciliation, mediation and arbitration are the machinery of the restorative justice models, scholars and practitioners use the term restorative justice most frequently to describe alternative to penal prosecutions.⁸⁵

Restorative justice models such as victim offender mediation, family group conference, peacemaking circles, community reparative boards and victim impact panels.⁸⁶ Austria, Australia, Belgium, Canada, New Zealand, the United Kingdom, and the majority of states in the United States widely use restorative justice in their criminal justice systems.⁸⁷ Based on this many Western countries currently used alternative criminal prosecution, prosecutors or courts most frequently refer juvenile cases to restorative justice processes at any time before conviction and sentencing.⁸⁸

Crimes divided into private, public and private/public, based on this classification for example Kazakhstan criminal procedure code requires judges in all private cases to explain to the parties for the possibility to use reconciliation about the case.⁸⁹ In African traditional justice systems may operate out of state control, although some states recognized as a part of domestic legal order. In some traditional justice system have a competence to entertain a serious crime cases like murder.⁹⁰ The unique features of the traditional justice system (informal justice system) apart from formal courts are community leaders as a decision maker, public participation by the

⁸³ Brief of Crime, Community and Justice Subcommittee Quaker Peace & Social Witness, An introduction to restorative justice and its place in the British criminal justice system, July 2017, p4 [here in after Brief of Subcommittee on An introduction to restorative justice and its place in the British criminal justice system,2017] available at <>

⁸⁴ Brief of Subcommittee on An introduction to restorative justice and its place in the British criminal justice system,2017 p4

⁸⁵ Cynthia Alkon, “*The Increased Use of Reconciliation in Criminal Cases in Central Asia: A Sign of Restorative Justice, Reform or Cause for Concern*”, 8 Pepp. Disp. Resol. L.J. 41 (2007) p66 [here in after Cynthia Alkon, “The Increased Use of Reconciliation in Criminal Cases in Central Asia”]
Available at: <https://scholarship.law.tamu.edu/facscholar/202>

⁸⁶ Cynthia Alkon, *The Increased Use of Reconciliation in Criminal Cases in Central Asia* 2007, p66

⁸⁷ Ibid, p69

⁸⁸ Ibid, p 70

⁸⁹ Ibid, p 85

⁹⁰ UN human rights and traditional justice in Africa, p2

community members and the proceeding that aims to reach at reconciliation and maintaining harmony is among the characteristics of traditional justice systems.

The traditional justice system consequently constitutes an essential component of the justice sector to solve most disputes, in other words judgments of the formal courts are frequently interpreted as inadequate or even harmful especially in criminal context punishment deemed as an inappropriate remedy. “First, communities are concerned about the effect that incarceration would have on the defendant’s family and their ability to provide for themselves. Second, formal hearings are seen as a possible cause of division among the community”.⁹¹ Based on this some communities prefer traditional justice systems for reconciliation and working to restore social cohesion within the community by reconciling the disputing parties through customary norms.⁹²

But, when we seen the traditional justice system / informal justice system in human rights perspective some informal justice system violates human rights standards. For example, corporal punishments violate the covenant prohibition against cruel, inhuman and degrading treatment or punishment according to international covenant on civil and political rights article 7. Gender discriminations also the problem of traditional justice system, which means women and male have not equal bargaining power may elders stereotype on women and the decision may disadvantaged women and almost in every process women’s not participate as a mediator by cultural factors. In addition child and forced marriage accepted as a community custom and values.⁹³

“Under *xeer* law in Somalia, forced marriages are not uncommon: widows must marry a male relative of the deceased husband, the sister of a deceased wife must marry the widower and rape victims may be forced to marry their attacker”.⁹⁴ The same is true in Ethiopia for example in “Beni-Shangul Gumuz compensation is given in the form of bribe compensation. A girl is given as a wife to the relative of the deceased in the form of compensation on the belief that ‘life is only paid back with life’ thereby ending hostilities by creating marital relationship”.⁹⁵ Though those the above listed practices are may used to maintain sustainable peace between the two

⁹¹ Ibid , p 9

⁹² Ibid

⁹³ Ibid p66

⁹⁴ Ibid

⁹⁵ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis) p81

groups. But, it may infringe the human rights of a woman because the marriage is conducted without her consent, and she is given to the crime victims as a thing.

In addition the rights to fair and public trial by independent, impartial and competent court is also one of human right and according to human rights committee the right of independent and impartial trial by competent tribunal is an absolute rights.⁹⁶ “Traditional justice systems appear in some ways to be incompatible with these standards”.⁹⁷ Because traditional justice members rarely have a legal training in human rights standards they only based their customary norms and skills of traditional justice mechanisms.

Generally the human rights committee addressed the discriminatory treatment of women by customary law and practices in African states a violation of the covenant.⁹⁸ It is a clear violation of the convention on the elimination of all form of discrimination against women article 5 the elimination of stereotyped roles for men and women, article 15 equality before the law, article 16 elimination of discrimination against women in all matters relating to marriage and family matters.⁹⁹

In African charter on human and people’s rights and its protocol on the rights of women also incorporate similar provisions in particular, the Protocol’s articles 4 prohibition of all forms of violence against women, article 5 obligation to eliminate all harmful practices against women, article 6 prohibition of marriage without the free and full consent of both parties and fixing the minimum age of marriage for women at 18 , article 20 the right of a widow to remarry and to marry the person of her choice; widows shall not be subject to inhuman, humiliating or degrading treatment. But, it does not saying the traditional justice system has used for women in terms accessibility for access to justice very important.

⁹⁶ UN human rights and traditional justice in Africa p66

⁹⁷ Ibid, p48

⁹⁸ Ibid

⁹⁹ Convention on the elimination of all forms of discrimination against women, article 5,15 and 16 (1969)

2.2.3. Restorative Justice System

Restorative justice programs was started since in 1970s and 1980s in United states and in Canada in conjunction with a form of practices called victim offenders reconciliation program (VORP), this approach modified and renamed as restorative.¹⁰⁰The term restorative justice has not consistent and universally accepted definition different restorative scholars give their own definitions according to Tony Marshal defines restorative justice as: “*a process whereby all parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future*”.¹⁰¹

Howard Zehr has also refined Marshal`s definition as:

“*restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible*”.¹⁰²

The most comprehensive working definition of restorative justice was provided by Robert Cormier which goes:

*‘ Restorative justice is an approach to justice that focuses on repairing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by a crime – victim(s), offender and community – to identify and address their needs in the aftermath of a crime, and seek a resolution that affords healing, reparation and reintegration, and prevents future harm.’*¹⁰³

Based on the above working definitions, even though they express in different forms their definitions contains a common elements such as restorative justice is a process that needs the participating of all persons having a stake in particular crime to address the harms and needs, to

¹⁰⁰ Howard Zehr, “*A little book of restorative justice*”, Published by Good Books, Intercourse, Pennsylvania, USA, (2003) p45 [here in after Zehr A little book of restorative justice] available at <<https://www.unicef.org/tdad/littlebookrjapakaf.pdf> > accessed at August 19/2019

¹⁰¹ Tony F. Marshal, restorative justice an overview, a report by the home office research development and statistics directorate , London, (1999) p5 [Here in after Marshal, restorative justice an overview] available at <http://www.antoniocasella.eu/restorative/Marshall_1999-b.pdf > accessed on September / 2019

¹⁰² Zehr A little book of restorative justice p40

¹⁰³ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis) p 26

restore the parties into their previous relationships, to reintegrate the offenders, the crime victims and to reduce future harm by addressing the possible causes of crimes.

Hence restorative justice an alternative or complementary for criminal justice system to fulfill the lacuna of formal criminal justice system in the form of incorporating the interest of crime victims by allowing to participate in the process and repairing their damages by giving accountability the wrong doer based on the consent of the two parties. The participation of the crime victims, offenders and other stakeholders are takes place by the models and principles of restorative justice. Restorative Justice view criminal conflict as a violation of a relationship among victims, offenders and community instead of putting only a state as a sole victim.¹⁰⁴

The first principle of restorative justice is it aims to restore and reintegrate the offenders and crime victims by addressing the causes of the conflict, reparation of the harm by giving responsibility to the offenders to repair the harm of the crime victims by identifying harms and needs, restoring the previous relationship through healing processes.

Secondly, reparation of the crime victims this means offenders has a responsibility to put right the wrong done on the crime victims in the form of restitution of the property or financial payment or community service, it may also include symbolic such as giving apology, showing remorse the offender by acknowledging his/her wrongful act.¹⁰⁵ And then the crime victims give to the offender his/her forgiveness.

Restorative justice also imposes an obligation on the community to support and encourage the offenders to accomplish his/her responsibility.¹⁰⁶ The third principle of restorative justice is encounter or according to Howard Zehr engagement which means the parties such as the crime victims, the offenders and their respective families and the communities is participate in the process.

The fourth principle of restorative justice according to my list order the consent of the parties which means voluntary participation of the parties in the conflict; hence according to this principle the process is started by free will and reached an agreement without any coercion based

¹⁰⁴ Ibid, p28

¹⁰⁵ Ibid, p29

¹⁰⁶ Ibid, p30

on their free consent.¹⁰⁷ If the concerned parties are unwilling to participate in the restorative justice processes the formal criminal justice process is appropriate to solve the conflict.

Therefore, restorative justice is “neither panacea nor necessarily a replacement for the legal system.”¹⁰⁸ This means restorative justice system is not answers for all situations. Hence the emergence of this new approach is the limitation of the criminal justice system. But, restorative justice system cannot be an alternative for criminal justice system. Unless it aims to complement the state based criminal justice system, the limitation of restorative justice system is that the process started by the voluntary of the parties according to the principle of restorative justice. If the crime victim and the defendant is not voluntary to participate in the process to solve the conflict by admitted the defendant his wrongdoing and taking responsibility about the wrongdoing on the “crime victims”.¹⁰⁹

The second limitation of the restorative justice system raise from its nature in serious crimes such as torture, sexual assault and attempted murder and other form of human rights violation do not want solve by this process.¹¹⁰ There are instances restorative justice used to solve the serious human right violations during transitional countries for instance in South Africa apartheid the truth and reconciliation commission solved that gross conflicts.¹¹¹ The other limitation of restorative justice in side of the defendant it is in appropriate for some defendants such as recidivist and dangerous offenders are not allowed to participate in the restorative models and principles. In addition crimes no specific crimes victims like tax evasion and other crimes that affect the interest of the public the formal / state based criminal justice system more sound.

¹⁰⁷ Zehr, A little book of restorative justice 48

¹⁰⁸ Ibid, p10

¹⁰⁹ Crime victims need a special concern in the criminal justice system, but crime victims that are not being adequately met by the criminal justice system. Victims often feel ignored, neglected, or even abused by the justice process, such needs are the right to information about the process in each stage, the need of truth telling about the story is the part of healing, the need of empowerment about their cases and the need to restitution by the offender in kind and in terms of money payment according to Howard Zehr on his work a little book p12

¹¹⁰ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis) p30

¹¹¹ Marks S. Umbreit and et al, “*restorative justice in the twentieth first century : a social movement full of opportunity and its pitfalls*”, 2005, p265 [here in after Umbreit and et al, restorative justice in the twentieth first century] available at < www.antonioacasella.eu/restorative/Umbreit_2005.pdf > Accessed on August 19/2019

Therefore according to different studies restorative justice and state based/ formal criminal justice system are mutually inclusive and complement each other.

Based on the choice the conflicting parties, types of conflict and resources different types of the restorative justice programs or models applied in different countries those main models are victim offender mediation (Here-in-after VOM), family group conference (Here-in-after FGC) and sentencing circle.¹¹² According to the expression of Umbreit VOM is a process which interested victims primarily property crimes with the opportunity of meeting offenders in a safer and structured setting for creating accountability of the offender to provide assistance and compensation to the victim.¹¹³ According to this definition VOM is applied for crimes related to property and it may be referred by the police, public prosecutors and judges based on the trend of different countries and it has different stages from referral, preparation for mediations by the mediators and finally reached at agreements by the parties.

FGC is conceptually an extension of victim offender mediation which the community such as the family of the crime victim and defendant and investigating police officer may involved in the process. On the other hand sentencing circle is originated from aboriginal peacemaking practices in Canada chaired by respected community members to give appropriate sentences on the offenders. All in all restorative justice is a new paradigm of criminal justice system which includes the interest of the crime victims, offenders and concerned community by its models and principles used to reintegrate the offenders by dialogue the parties through reintegrative shaming.¹¹⁴

According to studies restorative justice system is similar to customary dispute resolution mechanism because customary dispute resolution mechanisms fulfilled the values and principles of restorative justice, namely encounter, inclusion, participation, restitution or compensation, and reintegration.¹¹⁵

¹¹² Zeher, A little book of restorative justice p49-53

¹¹³ Umbreit and et al, restorative justice in the twentieth first century p273

¹¹⁴ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis) p43

¹¹⁵ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms p146

2.3 Theory of criminal justice system

2.3.1 Reintegrative Shaming Theory

Reintegrative shaming theory is one of the theories of criminal justice system which formulated by an Australian criminologist John Braithwaite. According to his theory, societies have a lower crime rate if they communicate shame about crime effectively. Reintegrative shaming communicates shame to a wrongdoer in a way that encourages him or her to desist; by respect the offender as a good person who has done a bad did.¹¹⁶ Reintegrative shaming according to Braithwaite communicates shame to the wrongdoer in a way encourage him or her to desist from another crime by respecting, forgiveness and healing ceremonies because if the offenders rejected and treated a bad person then the offender creates another group called criminal subculture to defense such disrespectful practices by the community.¹¹⁷ Reintegrative shaming can be accomplished by forgiving ceremonies to the wrongdoer to certify the termination of the deviance. "Societies that are forgiving and respectful while taking crime seriously have low crime rates; societies that degrade and humiliate criminals have higher crime rates."¹¹⁸ For example he included the experience of largest Afghan ethnic group called "Nanante".¹¹⁹ According to his article as evidence Japan has low crime rate by using reintegrative shaming as an alternative to humiliating or out casting criminals and the evidence indicates a sustained decline in the crime rate over the past half century by accomplished low imprisonment rate their criminal justice system.¹²⁰ Braithwaite beliefs that one person lower criminality when he/she increase family and community contact turn to shame by the reason of family and community responsibility. Thus communitarian's societies have low crime rate like Japan than more

¹¹⁶ John Braithwaite reintegrative shaming, 2000, p1

¹¹⁷ Ibid, p8

¹¹⁸ Ibid, p2

¹¹⁹ "Nanante is a ceremony where the criminal offender brings flour and other food and kills a sheep for a community feast. Often this will be held at the victim's house, where the victim will participate in cooking the food the offender brings. At the ceremonial part of the event, the offender will not be told that he is bad and in need of reform, but rather that "You have done an injustice to this person". At the same time the offender will be assured that "you are one of us and we accept you back among us". The police and courts have virtually no presence in communities that rely on the Nanante". Taken from John Braithwaite reintegrative shaming, 2000, p2

¹²⁰ John Braithwaite reintegrative shaming, 2000, p2

individualistic, fragmented societies like U.S and other western societies.¹²¹ According to Braithwaite breakdown community ties in modern urban area crime rates are increased because of wrongdoers are not ashamed of their actions, and thus continue victimizing others without remorse.¹²²

Hence disrespecting the criminals in the criminal justice system is the cause increasing crime rate by creating criminal subculture the opposite of community values for the consequence of disrespect by the community. Therefore, respecting, forgiveness, apology to the offender and focusing on the crime seriously used to reduce crime rate and to establish reintegration of the offender. These types of ceremonies highly practiced in the culture of Africa and Australia through traditional justice system. According to Braithwaite “cultural rituals of apology and forgiveness are important instruments for ending stigmatization and play a great role to make the shaming process reintegrative”.¹²³

2.3.2 Labeling theory

Labeling theory is the other mainstream theory that has the conditions of its validity specified by the theory of reintegrative shaming. Labeling can be reduce crime when it is respectful, focused on the act rather than the person and the disapproval is terminated by the ceremony of forgiveness and apology in other words it makes thing worse when it is stigmatize, disrespect and disapproval of the offenders.¹²⁴ Labeling theory views deviance is a creations social groups rather than deviant behavior. Deviance is simply rule breaking behavior labeled as deviant by person of authority.¹²⁵ “Positions of authority’ may be formal social agencies, including the criminal justice system (CJS), but also informal agencies, including members of the public,

¹²¹ Stacey Hannem-Kish, *Crime, Shame and Reintegration*, 1989, p202 available at [here in after John Braithwaite, *Crime, Shame and Reintegration*, 2010] <<https://marisluste.files.wordpress.com/2010/11/crime-same-and-reintegration.pdf>>

¹²² Stacey Hannem-Kish , *Crime , Shame and reintegration*, 2010 , p201

¹²³ Endalew Lijalem, *Ethiopian customary dispute resolution mechanisms* p132

¹²⁴ John Braithwaite *reintegrative shaming*, 2000, p9

¹²⁵ Andrews, *Community Attitudes towards the reintegration of ex-prisoners* p51

peers, and so forth”.¹²⁶ According to the writer deviance can be classified into two primary and secondary deviances.

According to Lemert primary deviance is refers to characteristics, experiences, beliefs, or behaviors regarded as departures from social norms by the above listed authorities. Secondary deviance occurs when an individual who accepts the label of deviant as his/her identification as a deviant. Once identification with the deviant label occurs, the individual takes on this label and becomes an outsider to his or her social environment.¹²⁷

According to labeling theory, criminal justices sanctions are formal processes whereby socially regarded the judiciary apply the label of ‘offender’ to the individual. If the individual identifies with the label of offender he or she will maintain this identity post-release from prison resulting in secondary deviance. As pursuant to Wakefield cited by Catherine Andrews, “when society stigmatizes, segregates, and excludes ex-offenders; these individuals have limited opportunities to achieve mainstream lives. In response, ‘they join subculture groups of similarly stigmatized outcasts’”.¹²⁸

*Stigmatization therefore increases the attractiveness of criminal subcultures. Disrespect begets disrespect. Because you don't respect me, I won't respect you or the rules you value. I have no hope of seeking out a respected identity under your values; delinquent subcultures look more promising to me as a basis for respect.*¹²⁹

Hence de-labeling is the mechanism of transforming offender to citizen through the communication of the offender and the community by symbolic processes of redemption and forgiveness necessary.¹³⁰ According to Garfinkel formal labeling ceremonies are named status degradation ceremonies the deviant actor named as an outsider by the formal justice system through sentencing and imprisonment in the ways of segregating from the community.¹³¹

¹²⁶ Ibid p 52

¹²⁷ Ibid

¹²⁸ Ibid, p53

¹²⁹ John Braithwaite reintegrative shaming, 2000, p8

¹³⁰ Andrews, Community Attitudes towards the reintegration of ex-prisoners p53

¹³¹ Ibid, p53-54

2.3.3 Disintegrating/stigmatize shaming theory

Shame “is the ultimate deterrent against the violation of societal norms for those who have a stake in a particular community”.¹³² Reintegrative shaming is characterized by a ceremony in which the criminal act committed is denounced and community members express their disapproval of it and by respecting the person through the word of the forgiveness. African societies extensively used reintegrative shaming on the wrongdoer.¹³³ In contrary disintegrative shaming occurs when the act and the actor are deemed as unworthy in the community. He or she rejected by the community, this ways of stigma practically manifested in traditional criminal justice system by the court and sentencing process.¹³⁴ This is invisible form of punishment according to the Travis cited by Andrews which creates the separation between as law abiding, them and law breaker as a moral exclusion developed by the community’s judgment.¹³⁵ When societies treat the actor in degrading ways the actor searches a solution to the problem, i.e. may create their criminal subcultures.¹³⁶ Based on this traditional / formal criminal justice system creates the shame that is disintegrative. According to Garfinkel the process termed as ‘status degradation ceremonies’. These ceremonies happen by formal criminal justice system through the process of sentencing and imprisonment act.¹³⁷

Hence the offender is stigmatizing by his or her conviction and by separation of the offenders during stay in prison. Disintegrative shaming emphasized on the evil of the actor. But, reintegrative shaming emphasized on the evil of the act not the actor.¹³⁸ Stigmatization is disrespectful shaming of the offenders; the offender is treated as criminal even if after their execution of their judgment.

¹³² John Braithwaite, *Crime, Shame and Reintegration*,1989 p202

¹³³ John Braithwaite reintegrative shaming, 2000, p2

¹³⁴ Ibid

¹³⁵ Andrews, Community Attitudes towards the reintegration of ex-prisoners p80

¹³⁶ Ibid, p 8

¹³⁷ Andrews, Community Attitudes towards the reintegration of ex-prisoners p53-54

¹³⁸ John Braithwaite, *Crime, Shame and Reintegration*,1989 p202

2.3.4 Desistence theory

Desistence theory is a branch of criminological study used to understand why and how those formerly engaged in criminal activity change their behavior and cease offending.¹³⁹ Different criminological studies identified criminogenic factors that associated for criminality such as *Inter alia* socio-economic deprivation, early school leaving, criminal families, anti-social attitudes, anti-social peers, anti-social personality pattern, substance and alcohol abuse and low levels of involvement in anti-criminal leisure pursuits.¹⁴⁰

The Risk Need Responsivity approach (here in after RNR approach) is developed by Andrews and Bonta they attempt to integrate criminological research results from different fields into one model. They suggest that three main offender assessment principles for the successful treatment of offenders: such as risk, need and Responsivity.¹⁴¹ The *risk* principle states that the intensity of the interventions should be adjusted in accordance with the risk of the offender. According to risk principle high-risk offenders should participate in very intensive measures.¹⁴²

As pursuant to the *need* principle interventions should be addressed to criminogenic needs such as anti social behavior, addiction problem, criminal environment, lack of literacy and job skill and non-conformist behavior or attitudes factors can be addressed through specific therapeutic programmes, trainings and education for each dynamic risk factor.¹⁴³

“The *responsivity* principle integrates those findings that assert the importance of relationship and motivation, and claims that the type and style of intervention must be aligned with cognitive abilities and learning styles of the offender”.¹⁴⁴ Desistence approach assumes that only a change of attitude can lead to the end of a criminal career. For rehabilitation and reintegration in addition to addressing risk and need individual support must offered to achieve the personal goals of the offender.¹⁴⁵ Desistence theory studies factors that contribute to reform the offender from re-offending.¹⁴⁶

¹³⁹ Sylvia Brand, lived experience of reintegration a study of how former prisoners experienced reintegration in a local context p62

¹⁴⁰ Ibid

¹⁴¹ Gisler et al, Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned p9

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ Ibid

¹⁴⁵ Ibid, p10

¹⁴⁶ Andrews, Community Attitudes towards the reintegration of ex-prisoners p56

2.4 Ethiopian Criminal Justice system

Under the contemporary Ethiopian criminal justice system crime is viewed primarily as a violation of the state criminal law, rather than as a violation of relationships between the crime victim, offender and the community affected by the crime.¹⁴⁷ The Federal Democratic Republic of Ethiopia's (FDRE) Criminal Code, article 1, paragraph 2 indicated that prevention of crimes can be accomplished by giving due notice of the crime and penalties prescribed by the law and if the due notice ineffective punishment of criminals to deter the criminal from committing another crime and lesson to others. In addition, punishment also provided for to reform/ rehabilitate the offender and to prevent the offender from commission of further crimes.¹⁴⁸ The main participant in the formal criminal justice system of Ethiopian according to criminal procedure¹⁴⁹ and criminal code¹⁵⁰ are the police for investigating and arrest the suspect, the public prosecutor for prosecuting and representing the state in legal proceeding against the accused, the judiciary giving decisions by hearing litigants and the prison administration for the aimed to rehabilitate and reformation of the prisoners. In these situations, the justice system is retributive in nature and once the punishment is imposed justice is often considered done and the offenders assumed got behavioral change and restore justice by punishing the offenders in proportion to the severity of the wrongdoing. But, practically culture of revenge and recidivism did not reduce by this view rather increased from time to time creates prison overcrowding in the Ethiopian context.

In parallel different customary dispute resolution mechanisms are also used as to solve the conflicts in rural part of Ethiopia “where the formal legal system unable to penetrate because of lack of resource, infrastructure and legal personnel as well as a lack of legitimacy, for the modern law is seen as alien, imposed, and ignorant of the cultural realities on the ground”.

Currently, the Ethiopian government shows a commitment to support the establishment of institutes in peace and security study (IPSS) and at Addis Ababa University and the Ethiopian Arbitration and Conciliation Centre (EACC). Both these institutions promote the significance of

¹⁴⁷ Endalew Lijalem, “ *The space for restorative justice in the Ethiopian criminal justice system*” Bergen Journal of Criminal Law and Criminal Justice • Volume 2, Issue 2, 2014 p216 [here in after Endalew Lijalem, “ *The space for restorative justice in the Ethiopian criminal justice system*] available at < <https://boap.uib.no/index.php/BJCLCJ/article/download/710/699/>> accessed on June 2020

¹⁴⁸ 2004 FDRE criminal code article 1

¹⁴⁹ Criminal procedure code of Ethiopia , 1961, Negarit Gazzeta, proc.no.185 , published by ministry of pen , Article 22 and the following for police investigation , article 38- 48 for public prosecutors and article 123-149 court proceedings and judgment of the accused person[here in after 1961 Ethiopian criminal procedure code] .

¹⁵⁰ 2004 FDRE criminal code Article 1 Para 2

ADR (PDRMs according to Gebreeyesus Teklu) in Ethiopia.¹⁵¹ The new established organ called ministry of peace also an indication for the government to encourage the customary dispute resolution mechanisms which is used to establish peace in the country.

¹⁵¹ Gebreeyesus, popular dispute resolution mechanisms in Ethiopia : trends, opportunities, challenges and prospects, p104

Chapter Three

Social Reintegration of Offenders in the Ethiopian and other Criminal Justice Systems

3.1 Introduction

Rehabilitation and social reintegration of offender are the main objective of criminal justice process.¹⁵² Successful rehabilitation and reintegration programs used to create community safety by protecting the offenders from re-offending (recidivism) by prison based and community based interventions given to the offenders. But, to measure its successfulness is difficult. Reducing the criminal recidivism is an indicator of its success.¹⁵³ Successful reintegration of offenders in criminal justice system used as to reduce recidivism, case backlogs in the justice system; community costs (such as cost of investigation, prosecution, imprisonment and cost of prison) that means.

*‘If an ex-prisoner does not successfully reintegrate there are direct and indirect costs to the community. If prisoners reoffend after release, community safety is compromised through increased crime. There are the costs associated with policing and adjudicating these new offences plus the costs of administering new sanctions. There are far less easily quantifiable or indirect costs to society, such as those borne by the victims of these crimes, those associated with lost economic and community capacity, or through ex-prisoners relying on social services rather than contributing to society’.*¹⁵⁴

Re-offending results different costs starts from investigation to enforcement costs of the prison institutions in addition to increasing crime rates and prison overcrowding. Hence, treating and accepting offenders as a member of the community and removing the label of the offenders as an outsider to the community through degrading ceremonies of the criminal justice system a means

¹⁵² UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders p1

¹⁵³ Ibid, p9

¹⁵⁴ Ibid, p8

of creating successful social reintegration of offenders.¹⁵⁵ As research indicates that different countries take different interventions for supporting and assisting the offender's reintegration. Community participation in Canada used to reduce crime rates by reintegration of offenders.¹⁵⁶ Most federal offenders serve only part of their sentences in institutions and are then conditionally released to serve the remainder of their sentence in the community by setting a certain conditions and supervised by parole officers with community involvement in different ways, such as aftercare and re-entry assistance, family support and addressing risk factors can be taken as a mechanism for rehabilitation and successful reintegration of offenders.¹⁵⁷ The Chinese criminal justice system established a special office for reintegration resettlement assistance and education of released person in addition to aftercare and transition facilities is established. Singapore prison service has also established reintegration officer.¹⁵⁸ Non-custodial measures such as restorative justice process, community based sanctions also used to reintegrate the offenders than marginalizing and harmful effect imprisonment.¹⁵⁹

In retributive justice system the community is excluded from the criminal justice processes like in prevention of crimes, reintegration of crime victims and offender. The criminal justice system does not encourage the offender to take his/ her responsibility to right the wrong, to understand the consequences of their wrongful action on the crime victim. "The criminal justice system typically emphasizes the determination of guilt through an adversarial contest between legal professionals representing the state and the offender, and punishing the latter for his wrongdoing when a conviction is pronounced".¹⁶⁰ Punishment is taken as the mainly a means of achieving the criminal justice goals of rehabilitation and reintegration of the offender. Both the legal framework and the state institutions police, prosecutor, court and prison administration focused on punishment to prevent further crimes through networked system of criminal justice system.

¹⁵⁵ Sylvia Brand, lived experience of reintegration a study of how former prisoners experienced reintegration in a local context p54

¹⁵⁶ Gisler et al, Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned p26

¹⁵⁷ Ibid, p 28

¹⁵⁸ UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders p26

¹⁵⁹ Curt T. Griffiths and et al, "*The Social Reintegration of Offenders and Crime Prevention*" A review prepared for the policy, research and evaluation division Public Safety and Emergency Preparedness Canada The International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) April 2007 [Here in after Curt T. Griffiths and et al, *The Social Reintegration of Offenders and Crime Prevention*] available at <<https://pdfs.semanticscholar.org/4b72/c0cac0ed2fc50bb24894dc245826e2bc537d.pdf>> accessed on 10/28/2019

¹⁶⁰ Endalew Lijalem, "The space for restorative justice in the Ethiopian criminal justice system p219

According to the studies in Ethiopia conducted by Tsegaye and et al., Macfarlane, Pankhurst & Getachew, cited by Aberra Degefa sending more offenders to prison each year results increasing investment in prisons and incarceration of offenders, the formal Ethiopian criminal justice system does not seem to be improving the character of the offenders or stopping others from committing crimes.¹⁶¹

As an alternative to punishment the criminal code of Federal Democratic Republic of Ethiopia has recognized fines, community service, and conditional suspension of penalties by special circumstances. Conditional suspension of penalties has not comprehensive definition, but, from different definitions we have understood that conditional suspension of penalties means “the temporary withholding of execution of punishment before it is started. It is an act of temporarily delaying, interrupting or terminating punishment imposed on a criminal”.¹⁶² According to the United Nations Standard Minimum Rules for non-custodial measures (The Tokyo Rules) the purpose of supervision is to reduce the re-offending and to assist the offender to reintegrate.¹⁶³ Conditions given by competent authority “*shall be practical, precise and as few as possible, and be aimed at reducing the likelihood of an offender relapsing into criminal behavior and of increasing the offender's chances of social integration, taking into account the needs of the victim*”.¹⁶⁴

Generally, in this chapter the researcher assessed the practice of criminal justice system in Ethiopia, its legal and institutional frameworks to reintegrate the offenders and desistence from re-offending. The researcher used the FDRE criminal code, criminal procedure code and criminal justice policy and new draft criminal procedure code and other works which has ideas for reintegration of offenders such as conditional release and private prosecution discussed in the following sections. Legal gaps in line of restorative justice and practical gaps such as the absence of clear recognition customary dispute resolution mechanisms in Ethiopian criminal justice system to reintegrate the offender based on the practice of different part of the country and experience of other countries in light of international standard minimum rules of treatment of the prisoners and international human rights conventions also discussed in detail in this chapter.

¹⁶¹ Aberra Degefa, experience among Borana Oromo in relation to the crime of Homicide p7

¹⁶² Berhane Gebregziher, Conditional Suspension of Penalty p51

¹⁶³ The Tokyo Rules for non custodial measures Rule 10

¹⁶⁴ Ibid, Rule 12

3.2 Legal frameworks

There is a paradigm shift from retributive justice to restorative justice in criminal justice system reintegrating offenders rather than “just desert” principles. In the contemporary world, different countries used different mechanisms for reintegration of offenders to reduce prison overcrowdings and recidivisms in their criminal justice system based on international standard minimum rules for treatment of prisoners (Nelson Mandela Rules) and international conventions.

Article 10 paragraph 3 International Covenant on Civil and Political Rights states “*the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation*”. Based on these international human rights conventions UN standard minimum rules for the treatment of prisoners enacted by UN in 1955 and revised in 2015 which is universally acknowledged minimum standard for the detention of prisoners and used for as guidance for correctional laws.

This standard minimum rules for the treatment of prisoners on rule 58 provided that the purpose and justification of a sentence of imprisonment or similar measures ultimately to protect society against crime if the period of imprisonment used to ensure the offender able to lead a law abiding and self-supporting life upon his return to the society.¹⁶⁵ In addition according to rule 80 “*from the beginning of a prisoner’s sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.*”¹⁶⁶United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) are some of international norms used to as a bases for minimum standards for each countries in the world.

¹⁶⁵ Standard minimum rules for the treatment of prisoners, adopted by First UN Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955, approved by the ECOSOC by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, rule 58[here in after standard minimum rules of the treatment of prisoners]

¹⁶⁶ standard minimum rules of the treatment of prisoners rule 80

On the hand, the Vienna Declaration on Crime and Justice encouraged the ‘development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties’.¹⁶⁷

In 2002 the United Nations Economic and Social Council adopted a resolution calling upon a member states to implement the restorative justice basic principles on the use of restorative justice programmes in criminal matters (here in after the basic principles).¹⁶⁸The declaration of the Eleventh United Nations Congress on the prevention of Crime and the Treatment of Offenders in 2005 also declared that member States to recognize the importance of further developing restorative justice policies, procedures and programmes that include alternatives to prosecution.¹⁶⁹ Generally the United Nations recognizes the restorative justice programmes in the criminal justice system. In communal community restorative justice practices is not a new idea because traditional and customary practices always performed in restorative ways through the involvement of the crime victims, offenders and the concerned community.

When we see its legal frame works about recognition of mechanisms of social reintegration of offenders, such as, prison based mechanisms, community based mechanisms and non-custodial measures alternative to imprisonment, which is practiced in different part of the country discussed in the following ways.

In Ethiopia, the criminal justice policy states that, cases can be referred to the customary dispute resolution mechanisms at any stage of the criminal justice process upon the request of the public prosecutor or the accused, or upon the motion of the court’ so as to make the criminal justice system speedy and accessible.¹⁷⁰ For the effectiveness, efficient and accessibility of the criminal justice system the policy indicates that alternative dispute resolution mechanisms shall be included in the policy and legal frameworks also established according to the conditions specified in the criminal justice policy of Ethiopia. Hence the newly enacted criminal justice policy provides a fertile ground and a basis to implement social reintegration of offenders

¹⁶⁷ United Nations Office on drugs and crime (UNODC), “*Handbook on Restorative justice programmes*”, criminal justice hand book series, New York, 2006, p 1 [here in after UNDOC hand book on restorative justice programmes] available at <[https://www.unodc.org/.../criminal_justice/Handbook_on_Restorative Justi...](https://www.unodc.org/.../criminal_justice/Handbook_on_Restorative_Justi...)> accessed on August, 2019

¹⁶⁸ UNDOC hand book on restorative justice programmes, p2

¹⁶⁹ Ibid

¹⁷⁰ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis), p92

through the mechanism of alternative dispute resolution mechanisms in Ethiopia. However, since it is not a law, but rather a document merely showing the government's direction and focus on the criminal justice system and it may be used as a source of criminal law and criminal procedure laws.

Hence, a separate law on alternative dispute resolution mechanisms, which provides a detailed guideline on how to make referrals to the customary dispute resolution mechanisms and which, may regulate the discretionary power of the police, prosecutors, and judges while making referrals is required.¹⁷¹ But, directly in relation to the social reintegration of the offenders in Ethiopia the criminal justice policy does not specify its stand on detail reintegration guidelines within or out of the prison system.

The new draft criminal procedure code gives discretionary power to public prosecutors and judges to refer criminal cases to customary dispute resolution mechanisms to protect the interest of the crime victims, offender and public interest.¹⁷² Pre conditions for referring cases are, if the offender is youth (juvenile), female, disabled, elderly; or the accused or the offender is under serious physical or mental illness during the commission of a crime or the hearing; and the offender is willing and ready to compensate the victim for the harm caused due to his/her wrong.¹⁷³

According to the draft criminal procedure code the aims of diversion of criminal case to customary dispute resolution mechanisms used to easily reintegrate of the offenders into his/her community and to reduce recidivism, the offender takes his/her responsibility and show remorse for his/her wrongdoings; and to protect and give voice to the victim and communities at large".¹⁷⁴

In this case the customary dispute resolution mechanism used for reduce the cultural practice of revenge through reconciliation of the disputing parties by customary rules and procedures. When we saw the scope of draft criminal procedure code in relation to diversion of criminal cases to

¹⁷¹ Ibid, p94

¹⁷² Criminal Procedure Code of the Federal Democratic Republic of Ethiopia,2010, Draft Legislation, Ministry of Justice, Addis Ababa. Art. 165(4)

¹⁷³ Criminal Procedure Code of the Federal Democratic Republic of Ethiopia,2010, Draft Legislation, Ministry of Justice, Addis Ababa. Art. 170 (2)

¹⁷⁴ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis), p94

customary dispute resolution mechanisms, the draft code application is limited only to minor crimes and crimes punishable upon private complaint.

Based on this limitation and its softness reintegration of offenders still now not effective judges did not refer the criminal cases to customary dispute resolution mechanisms, in the opposite way they reject reconciliation agreements done by community elders because the criminal justice system framed one way justice system i.e. formal retributive criminal justice system.

Generally ADR is marginalizing in criminal matters in Ethiopian criminal justice system, therefore ADR (mediation, reconciliation and arbitration) in Ethiopian criminal justice system has no space, but, practically the community used ADR to criminal matters in Ethiopia. As the practice shows us ADR is more useful for the reintegration of the offenders. Hence for the success of reintegration of the offenders, recognition of ADR as complementary to the current criminal justice system is more needed in Ethiopia.

In criminal code and criminal procedure of Ethiopia, there is some non custodial measures incorporated, such as conditional suspensions (parole and probation), fine, community service and private prosecution. But, as we seen the practice institutional frame works are not established to supervise conditional released persons and private prosecution also practically not practiced by crime victims individually. In detail such measures discussed in the following sections. Generally legal and institutional framework of social reintegration of offenders in state based Ethiopian criminal justice system is not given special recognition.

3.3 Private prosecution

Private prosecution means as the name indicates that a litigation of criminal proceedings by individuals who is affected by the crime. As pursuant to Art 44 (1) if a public prosecutor refuses to institute the proceeding according to article 42(1) (a) by the reason of evidence insufficiency to frame a criminal charge on the suspect in crimes punishable upon complaint, he shall authorize in writing the appropriate persons mentioned under article 47 to conduct private prosecution. Persons mentioned to institute private prosecution according to article 47 of the criminal procedure code are: the injured party or his legal representative: or the husband or wife

on behalf of the spouse; or the legal representative of an incapable person; or the attorney or a body corporate.¹⁷⁵

According to the study conducted by Endalew Lijalem in case of private prosecution the court asks the parties to reconcile on the day of the hearing, before reading out and explaining the charge to the accused and before asking whether he\she pleads guilty or not, the court attempts to reconcile the parties.¹⁷⁶ “An attempt to reconcile the parties is given priority as crimes punishable only upon private complaint are involving more of private interest than public interest. If the reconciliation is effected, it will be recorded by the court to have the effect of a judgment”.¹⁷⁷ The implication of this provision, if the reconciliation has not made the court is obliged to continue the hearing process similarly as the ordinary procedure of the criminal procedure code private prosecutor act as public prosecutor.

Hence the criminal justice system in crimes instituted upon complaint, crime victims are allowed to control their cases and they can terminate the conflict through customary dispute resolution mechanisms. In this instances social reintegration of offenders indirectly achieved through the mechanism of reconciliation offenders and crime victims.

3.4 Reconciliation

The term reconciliation holds the meaning re-establishment of peace or friendships between divided people.¹⁷⁸ Hence, reconciliation is an outcome, is an improvement in the relations among parties formerly at odds with one another. Reconciliation often denotes restoration which suggests a return to the status quo ante, that is, the state of affairs before the wrong or conflict in

¹⁷⁵ Criminal Procedure Code of the Empire of Ethiopia, 1961, *Federal Negarit Gazeta*, Extraordinary Issue No. 1\1961, Addis Ababa, art 44(1) cum 47

¹⁷⁶ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis) p69

¹⁷⁷ Ibid

¹⁷⁸ Karen Brouneus, “*reconciliation: Theory and Practice in development cooperation*,” Uppsala University, SEPTEMBER 2003, p13 Available at < https://www.researchgate.net/profile/Karen-Brouneus/publication/257251588_Reconciliation_Theory_and_Practice_for_Development_Cooperation/inks/00463524bbea4d70aa000000/Reconciliation-Theory-and-Practice-for-Development-Cooperation.pdf > accessed at March 11, 2021

question.¹⁷⁹ It is an ancient practice of the peoples of the world to solve their disagreement through different processes like VOM, FGC and sentencing circle in modern approach collectively known as restorative justice system. In restorative justice system crime victim, offenders and their family and other concerned community participate and understood their need healing and this healing requires opportunities for confession, repentance, forgiveness and reconciliation based on the consent of the parties in democratic process.¹⁸⁰

3.5 Conditional release

3.5.1 Parole

“Parole is a prisoner’s conditional release under the supervision after a portion of sentences has been served”.¹⁸¹ Parole is conditional release of prisoner before the completion the term of imprisonment given by the court up on the recommendation of the prison administration.¹⁸² Under the Ethiopian law parole is governed under Articles 201-207 of the Criminal Code, which is given by the court according to the conditions specified in the criminal code are satisfied.¹⁸³ One of the requirements is, the prisoner has a duty to serve two-third of a sentence of imprisonment or twenty years in case of life imprisonment.

According to Ethiopian criminal code parole is not a right of prisoners rather it is a privilege ordered by the court when (a) there is a tangible proof from the conduct and work of the criminal that his behavior is improved during the requisite period and (b) he has repaired, as far as his capacity allows, based the agreement between the crime victims and the offender to make right about his wrong doings on the crime victim and (c) the character and behavior of the criminal warrants the assumption that he will be of good conduct when released and that the measure will be effective.¹⁸⁴

¹⁷⁹ Daniel Bar-Tal, Reconciliation as a foundation of culture of peace, handbook on building culture of peace, January 2009, PP363-377(p366)<
https://www.researchgate.net/publication/226059785_Reconciliation_as_a_Foundation_of_Culture_of_Peace>

¹⁸⁰ Marc Forget, “Reconciliation: some lessons learned in the restorative justice context,” September, 2009 p44

¹⁸¹ Berhane Gebregziher, Conditional Suspension of Penalty p54

¹⁸² 2004 FDRE criminal code art 201 1st para

¹⁸³ Ibid, art 202

¹⁸⁴ Ibid

Hence parole is recognized under Ethiopian criminal law and it used to reduce prison overcrowding and enforcement costs. It also used to for social reintegration of offenders through reparation of crime victims by the mechanisms of the customary dispute resolutions like mediation and it can easily reintegrate the offender without waiting the whole execution of the imprisonment.

3.5.2 Probation

Probation is one of the measures conditional releases ordered by the court before or after the conviction or sentence to offenders who are not dangerous and represent a little risk, if any to the society.¹⁸⁵ The reason behind conditional released to test the behaviors of the offenders by setting conditions to respect the probationers through the control of the supervisory body like probation officers established in Canada as an example. According the Ethiopian Criminal Code, the idea of probation is explicitly recognized and the court is given a discretionary power to order probation “having regard to all the circumstances of the case and if it believes that it will promote the reform and reinstatement of the criminal”.¹⁸⁶ According to the criminal code requirements of the probation are divided into two i.e. conditions of suspension of sentences and suspension of enforcement of penalty. Courts after having convicted the criminal can conditionally suspend sentences when the criminal has no previous conviction, does not appear dangerous to societies, and when his\her crime is punishable with fine, compulsory labor, or simple imprisonment for not more than three years.¹⁸⁷

Conditional suspension of enforcement of penalty also given by the court according to the criminal code in this case the court by determining conviction and sentence can suspend the enforcement when the convicted offender is required to enter into an agreement to be of good conduct, to meet the conditions or rules of conduct attached to the probation, to repair the damage caused by the crime or to put right to the injured person to the fullest extent possible and he/she agree to pay judicial costs. In addition to this conditions the convicted offender shall signed the duty guarantee to the undertaking determined by the court as to respect the conditions listed in the decision of the court.

¹⁸⁵ Ibid, art 190

¹⁸⁶ Ibid

¹⁸⁷ Ibid, art 191

According to Ethiopian researcher Berhane Gebregziher study about conditional suspension of penalty by probation under Ethiopian criminal code indicates that courts in its decision doesn't list conditions, rules of conduct to offenders after release from prison and the suspension of the penalties given without giving justifications.¹⁸⁸ Therefore, without the effective supervisory body and without respecting conditions and rules of probation, conditional suspension of penalties cannot be fruitful in reintegration of offenders into the community and cannot be an effective and efficient remedy for reducing the recidivism in Ethiopia.

When we see the similarity and the difference between parole and probation conceptually both parole and probation provide periods in which a criminal lives in the community instead of staying in a prison center, Secondly, both programs require the convicted person to be under the control of supervisory body to reform the criminal behavior. Thirdly, in both cases if the condition is respected the implementation of conditionally suspended penalty enforced.¹⁸⁹ Generally conditional suspension offenders used for the successful reintegration of offenders by avoiding the stigma of offenders by separation from the community and it is one of state based reintegration mechanisms under modern criminal justice system if the support after release by conditions adequately performed.

3.6 Legal and practical gaps for offender's reintegration

In criminal justice system there are two paradigms of justice system those are retributive justice and restorative justice system. Retributive justice system focused on punishing the offenders based on the following justifications, punishment justified by its deterrence of criminals, rehabilitation, and disability by (capital punishment and imprisonment) as a political justification.¹⁹⁰ But, different studies indicate that retributive justice system not effective to achieve its goal. In doing so, the new justice system called paradigm of restitution focusing on crime victim compensation which is ignored in the formal criminal justice system as complementary to the criminal justice system.

¹⁸⁸ Berhane Gebregziher, Conditional Suspension of Penalty p72

¹⁸⁹ Ibid, p54

¹⁹⁰ Randy E. Barnett, Restitution: A New Paradigm for Criminal Justice p280-281

When we come to Ethiopian criminal justice system, the criminal code is proclaimed to insure order, peace and the security of the state, its people and inhabitants for the public good focused on the prevention of crimes by giving due notices about crimes and its penalties. If it is ineffective the ultimate measure is punishment of wrongdoer for the purpose to deter them from committing another crime and to make them a lesson to the other.¹⁹¹ Hence according to this provision no other alternatives are allowed to solve criminal disputes. Because crime is an act prohibited by state laws and punishable by the stated law and act includes commission and omission of what is prescribed by law.¹⁹² Therefore, based on the above provision crime is viewed a sole responsibility of the state to prevent, punish and rehabilitate the wrongdoer through the mechanism of the formal criminal justice system.

In Ethiopia parallel to formal criminal justice system, customary dispute resolution mechanisms used to solve the criminal matters in the rural area and this mechanism are more strong, relevant, and accessible than imposed and top-down legal norms.¹⁹³ In addition experiences shows us in different region of the country in Ethiopia the people used customary norms even after formal court decided penalties for reconciliation to stop cultural practice of revenge.¹⁹⁴

However, the procedural and substantive criminal laws of Ethiopia, including the Constitution itself, exclude application of customary dispute resolution mechanisms in criminal matters. According to the 1994 constitution of the Federal Democratic Republic of Ethiopia (FDRE) customary and religious institutions are given a power to entertain personal and family matters if the conflicting parties give their consent for the adjudication of such institutions.¹⁹⁵

Therefore, the constitution limits the mandate of such institution to see only family and private matters by excluding the application of customary institutions in criminal matters. The constitution clearly recognizes the customary dispute resolution mechanisms only adjudication of family and private matters based on the consent of parties. So, the pertinent legislations of criminal justice system has a limitation for social reintegration of offenders and its focus is first prevention of crime and punishment is the last resort to rehabilitate the offender through imprisonment by prison based system.

¹⁹¹ 2004 FDRE criminal code Art 1

¹⁹² Ibid, Art 23

¹⁹³ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms p126

¹⁹⁴ Ibid

¹⁹⁵ FDRE constitution art 34(5)

But, imprisonment has a negative impact on the rehabilitation and social reintegration of the offenders because, (...) characteristically punishment is unpleasant, (It is inflicted on an offender because of an offense he has committed; it is deliberately imposed, not just the natural consequence of a person's action (like a hangover), and unpleasantness is essential to it, not an accompaniment to other treatment (like the pain of dentist's drill)'¹⁹⁶, offenders stigmatized by family and community they labeled as criminal behavior results reducing the ability to find jobs or housing, return to formal education or build or re-build individual and social capital.¹⁹⁷ Hence assistance of released offenders to resolve the risk factors by study individual offender's behavior in addition prison based reintegration programs more needed. Even if the code incorporates some non custodial measures such as parole and probation for reintegration of offenders, without supervisory body cannot achieved its goal.

The other legal gaps for social reintegration of offenders in Ethiopian criminal justice system, reintegration of offenders are not clearly stipulated in criminal code and criminal procedure code as an objective to the criminal justice system. Therefore, legal and practical gaps should be solved by appropriate and suitable mechanisms for social reintegration of offenders based on study.

3.7 Recidivism and Prison Overcrowdings

According to the study International Centre for Prison Studies in 2011 the world prison population is growing, placing a financial burden on the government and society. It is estimated that more than 10.1 million people held in custody including waiting trial persons.¹⁹⁸ Currently the researcher couldn't found available data about the current number of prison populations in the world in general and particularly in Ethiopia. Prison overcrowding has not international agreed standards. But, according to standard minimum to the treatment of prisoners rule "accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation".¹⁹⁹

¹⁹⁶ Randy E. Barnett, Restitution: A New Paradigm for Criminal Justice p280

¹⁹⁷ UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders p5

¹⁹⁸ UNODC handbook on strategies to reduce overcrowding in prisons, p7

¹⁹⁹ standard minimum rules of the treatment of prisoners, rule 10

Regional standard of the European Prison Rules indicates that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment considers 4 square meters per person as a minimum requirement in shared accommodation and 6 square meters for a single occupancy prison cell.²⁰⁰ But, imprisonment rate may not result overcrowding of prisoners because states may arrange based on the number of the prisoners and also low rate of imprisonment may not avoid overcrowding prisoners because it depends on the commitment and resource of the state given to prison administration. On the other hand recidivism 'refers to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.'²⁰¹

Recidivism is typically measured by criminal acts that resulted in the rearrested, reconviction and reincarceration of the offender over a specified period of time. According to studies indicated by writer's successful reintegration of offenders used to reduce the crime rate and overcrowding of prisoners, in other words failure to reintegrate the offenders result recidivism and overcrowding of prisoners in prison administration. Therefore, recidivism direct cause for overcrowding and the vise verse may not be true.

3.5 The experience of other countries

In relation to this research topic the researcher selected some countries of criminal justice system that is used to a lesson to Ethiopia by the parameters of prison based rehabilitation mechanisms and alternative dispute resolution mechanisms in China, Canada and South Africa. In Canada both prison based rehabilitation and reintegration programs and alternative dispute resolution mechanism or victim offender reconciliation programs are practiced to solve crimes. As study indicated country China by categorized lower and serious crimes, for lower crimes which is punishable lower than three years, negligent crimes punishable lower than seven years except duty related crimes, the criminal justice system allows solving disputes by reconciliation. In South Africa traditional courts established to solve civil and criminal matters legitimized by state laws and traditional dispute resolution mechanism recognized. Thus, the above activities is important for Ethiopia for establishing effective rehabilitation and reintegration systems by

²⁰⁰ UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders p10

²⁰¹ UNODC handbook on strategies to reduce overcrowding in prisons p9

effective correctional systems and alternative dispute resolutions mechanisms like Canada and case referrals for alternative dispute resolution mechanisms by recognized alternative dispute systems by countries like China and South Africa also important for establishing effective complementary criminal justice system for Ethiopia. Based on this the practice of selected countries used for Ethiopia criminal justice system as a gap filling because the practice such country suitable to use the two criminal justice programs such as state based and alternative dispute resolution mechanisms for establishing effective criminal justice system in relation to rehabilitation and reintegration of offenders. The detail discussion of each country listed in the following.

3.5.1 Canada

According to literatures the origin of new paradigm of criminal justice system called restorative justice originated in the small town of Elmira in Canada by the idea of probation officer Mark Yantzi on the two young offender case, he suggested to the court the best thing to the community the offender meet the crime victim and negotiate to compensate the crime victim known as victim offender reconciliation program.²⁰²

Then restorative justice programs like VOM used for youth and adult offenders in Canada (...) “within a community or are organized by social groups and organizations due to the belief that the existing justice system is not working well for their community.”²⁰³

“Many restorative justice programs such as victim offender mediation, family group conferencing, and a number of “circle” programs are community based although many receive funds from government agencies on a case-by-case basis.”²⁰⁴

In addition to restorative justice programs, Canada is internationally known for its extensive integration of citizens in release from the prison by parole and probation fall under the supervision of parole or probation officer who supervises the compliance of correctional plan

²⁰² Marc Forget, “**Reconciliation: some lessons learned in the restorative justice context**”, conflict logy, Num 1, September 2009

²⁰³ Larry Chartrand and Kanatase Horn , A Report on the Relationship between Restorative Justice and Indigenous Legal Traditions in Canada, Canada, October 2016,p4[here in after Larry Chartrand and Kanatase Horn restorative justice and indigenous justice in Canada] <<https://www.justice.gc.ca/eng/rp-pr/jr/rjilt-jrtja/rjilt-jrtja.pdf>> accessed on August 2019

²⁰⁴ Larry Chartrand and Kanatase Horn, restorative justice and indigenous justice in Canada, p4

during offender's intake procedure. Voluntary communities involve in the offenders supervision by creating awareness about offenders correction and reintegration and there is a link between the community and correctional service of Canada. According to the study the link is a key factor for the successful reintegration of the offenders and the community in Canada. For its successfulness the community, NGOs and the government work collaborate to assist the transition adequately. For example, community Residential Facilities (CRFs) which are owned and run by NGOs and contracted by the CSC, offer housing, counseling and supervision of offenders.

The other mechanisms used in Canada correctional service (CSC) for successful rehabilitation and reintegration CSC recognized the importance of family tie; families offer a website to get visit procedure and regulation.²⁰⁵

3.5.2 China

Traditional ways of dispute resolution mechanisms in China was reduced the private proceedings particularly mediation during the end of king dynasty in early 1900s to modernized the Chinese criminal justice system promulgate formal criminal proceeding results public confrontation. By Cultural Revolution (1966-1976) three version of criminal procedure law have been enacted (in 1979 and its revision 1996). In 1979 and its revision 1996 seems like use the trend of marginalizing form of private dispute resolution mechanisms. But, the 2012 revised criminal procedure code victim-offender mediation is recognized as a special procedure to solve two categories of public prosecution cases.²⁰⁶

*The first category refers to cases caused by disputes between civilians, falling into crimes stipulated in Chapters 4 and 5 of the 1997 Criminal Law (1997 CL), and with a maximum sentence lower than three years' imprisonment. The second category includes negligent crimes with a maximum sentence lower than seven years' imprisonment, except for duty-related crimes.*²⁰⁷

²⁰⁵ Gisler et al, Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned p27

²⁰⁶ Wei Pei , "Harmony, Law and Criminal Reconciliation in China: A Historical Perspective", August 2016 ,p 21 [here in after Wei Pei , Harmony, Law and Criminal Reconciliation in China]
<https://repub.eur.nl/pub/93245/ELR_2016_09_01_003.pdf> accessed on August / 2019

²⁰⁷ Ibid, , p22

Hence criminal reconciliation is recognized in the modern criminal justice system of China as a form of alternative dispute resolution mechanisms. It refers to a mechanism used during the administration of criminal justice that permits offenders and victims to reach a mutual understanding of a criminal act and its consequences through direct or indirect communication. It also permits parties to settle their civil disputes by means of apology, compensation and so on.²⁰⁸ After reconciliation, disputants are normally required to provide a written agreement where in the offender expresses remorse and agrees to compensation, and the crime victim agrees explicitly with the criminal justice according to CPL of China article 278 the “police can suggest that the public prosecutor treats the suspect with leniency, the public prosecutor can either drop charges for extremely minor offences or make a sentence proposal to the court, and the court can impose lenient sanctions on the defendant.”²⁰⁹ And used as a mitigating purpose for the crimes done by the defendant.

What is the lesson from this legal system to Ethiopian criminal justice system is that the recognition of the alternative dispute resolution mechanism i.e. victim offender mediation program in to the criminal justice system in some selected crimes based on studies. Since Ethiopia had historical dispute resolution mechanisms before the coming to effected of modern laws in1960s and still now used as a dispute resolution mechanisms in the country as a *de facto*. Hence recognition of customary dispute resolution mechanisms used to easily reintegrate the crime victims and offenders and to avoid culture of revenge by reconciling disputing parties.

3.5.3 South Africa

The Traditional Leadership and Governance Frame work Act adopted in 2003 legitimized traditional leaders and mandated State support for them. There are approximately 800 officially recognized traditional communities in South Africa, these traditional community have traditional court that have civil and criminal jurisdictions and this officially recognized courts apply living customary law.²¹⁰ Criminal jurisdiction of traditional courts “is very limited; they do not have

²⁰⁸ Ibid, p19

²⁰⁹ Ibid, p22-23

²¹⁰ UN human rights and traditional justice in Africa,p38

jurisdiction, for example, over serious crimes such as rape, murder and serious assault. Traditional courts cannot impose physical punishment or fines, and remedies range from restitution, service and compensation to the most severe, namely eviction from the area.”²¹¹Therefore, traditional courts used customary laws and its remedies are mostly restoration of wrongdoings, things and recognition of legal pluralism. In such case the study proves that similar traditional activities in different ethnic groups performed in Ethiopia needs a legal recognition as a part of formal legal remedy by taking lessons from South Africa.

²¹¹ Ibid, p39

Chapter Four

Social Reintegration of Offenders in North Gondar Zone of Amhara Regional State.

4.1 Introduction

The main objective of the criminal justice system of Ethiopia is prevention of crimes by giving due notice about crimes and penalties by criminal law and if the prevention of crimes ineffective punishment of offenders are the other second remedy for the deterrence and rehabilitation of offenders. Historically Ethiopian criminal justice system used different written criminal laws such as 1930, 1957 and the current enforceable 2004 FDRE criminal law. In 1950s and 1960s importation of western legal systems takes place in Ethiopia without colonization to introduce modernity and change to the country and customary dispute resolution mechanisms discontinued because the drafter of the modern codes at that time is a foreign lawyer who is ignorant of indigenous customary practices applied in different parts of the country. In doing so, the customary practices accepted by the community was excluded and changed by ill transplanted European laws.²¹²

Before the codification of codes in civil and criminal matters all dispute either crime or civil matters solved by indigenous customary dispute resolution mechanisms which is still now practiced in different parts of Ethiopia. In Amhara region customary dispute resolution mechanisms have different interchangeable named such as *Shimglina* (mediation), *Erq* (reconciliation) and *Gilgil* (negotiation) and used to solve criminal and civil matters.²¹³ But, in criminal matters this indigenous customary dispute resolution mechanism practiced by the community in the study area are not recognized by the legal system of Ethiopia, both the constitution and the criminal code could not recognized this types of justice system.

The criminal justice system only focus on the punishment of the offender to achieve the goal of crime prevention and community safety by taking punishment taken as justice and an end

²¹² Endalew Lijalem, Ethiopian customary dispute resolution mechanisms p138

²¹³ Melkamu Abate and Wibshet Shiferaw, customary dispute resolution in Amhara region : the case of Wofa Legesse in North Shawa < <https://books.openedition.org/cfee/488> >, accessed on January 2021, para 9

itself.²¹⁴ Even though the legal system did not recognize the applicability of mediation/reconciliation in criminal matters elders used customary dispute resolution mechanisms in parallel to formal criminal justice system for reconciliation of the disputing parties and reintegrate the offender. The criminal justice system only used reconciliation of the conflicting parties for mitigating circumstances, suspending parole and probation.²¹⁵ In this part the writer collect data's from different informants to evaluate the place of social reintegration of offenders under Ethiopian criminal justice system. To evaluate the criminal justice systems in relation to social reintegration of offenders the writer collects the available data from formal and informal criminal justice system. Finally the researcher try to identifying the challenges and gaps of the criminal justice system in the study area based on the data collected from the study area and literatures.

4.2 Description of the study area

A research about social reintegration of offenders in Ethiopian criminal justice system is a new study area. However, some related researches on the concepts the compatibility of customary dispute resolution mechanisms with restorative justice system and other researches on the customary dispute resolution mechanisms used to solve criminal matters in addition to the formal criminal justice system in different parts of the country adequately studied.

The study area is found in Northern part of Amhara Region, which is called new North Gondar Zone. It was created within four years ago and it is found in the Northern part of former North Gondar, since, the former North Gondar Zone is divided into three parts that is, North Gondar, Central Gondar and west Gondar Zone. Its boundary in the Northern part Tigray Region, in the South part Central Gondar Zone, and in the West part Central Gondar Zone and by the East part Waghmra Zone are its boundary. The people who live in the study area have similar custom, language and the follower of Orthodox and Muslim and their income based mainly on farming. The highest Mountain Ras dejen and Simian mountains national park found in this zone. Crime of theft, homicide, grave willful injury, common willful injury and disturbance of possession are the major crimes repeatedly committed by different offenders in this Zone.

²¹⁴ 2004 FDRE criminal code article 1

²¹⁵ 2004 FDRE criminal code Article 86, Art 197(1), Art 202(1)(b)

4.3 The practice of Social reintegration of Offenders in North Gondar Zone

Reintegration of offenders into his\her community through the process of reconciliation by community elders are the main feature of Ethiopian customary dispute resolution mechanisms.²¹⁶ The various types of customary rituals that follow reconciliation in customary dispute resolution mechanisms practiced in the community aims to restoring the previous relationship between the parties and reintegrating the offender back into the society through the performance of customary dispute resolution rituals.²¹⁷

Hence solving disputes by customary resolution mechanisms used to mend the broken relation of the crime victims, offenders and their families by focusing on reconciling the disputing parties and it results offender reintegration into the community.²¹⁸ In the study area elders terminate both civil and criminal matters by their own customary rules of dispute resolution mechanisms such as mediation and/or reconciliation. Hence, mediation and reconciliation are used by the community interchangeably in the study area. According to the informants and the writers' observation the elders and conflicting party's choice the places such as the church compound or in the shadow of the big tree and almost all disputes are solved by agreement and agreed persons are not returned to different and/or similar conflicts.²¹⁹

As pursuant to the practice in the study area reconciliation set in motion depends on the types of conflict, means it may initiated by offenders himself/herself, his/her family and they asked the well known community elders to reconcile the offender with crime victims and their relatives and then community elders will call the parties to some public place, in the case of a serious crime, community elders go to the victim's and/or his/her family's home to persuade them into resolving the matter amicably. In murder cases, according to the custom of the study area community elders go to the victim's and/or his/her family's home to persuade them after seven

²¹⁶ Endalew Lijalem, a move towards restorative justice in Ethiopia (thesis) p86

²¹⁷ Ibid

²¹⁸ Interview with Ato Adamu zewdu et al , who are the well known community elders named dem adreq in the community , *focused group discussions on the practices how they solve crimes including murder in peaceful ways and how they reduced the culture revenge ,reoffending, based on their customary dispute resolution mechanisms,* July 7, 2020

²¹⁹ Ibid

days from the death of the deceased and if the concerned crime victim gives his/ her consent the mediator / elders decided the time and place of the reconciliation.²²⁰

In murder cases according to the study area, reconciliation has two phases; the phase crime victims, their family and offenders' family meet together and accomplish reconciliation. The second phase reconciliation of crime victims and offender by using religious ceremonies including cross. Hence, the offenders hide him until final reconciliation takes place according to the culture the study area. But, in all other crimes different from murder elders can terminate the conflicts easily by their customary laws. The amount of compensation given to the crime victims determined based on the types of injuries, for example, in murder cases elders decide the amount of compensation 30,000(thirty thousand) birr up to 80,000 (eight thousand) birr in the form of blood feud in the study and this blood feud in the study area named *yedem gar* (money given in the form compensations given to the crime victims in murder cases by the offender). Compensations given to crime victims for permanent bodily injuries may be decided by elders more than 80,000 (eight thousand) birr. The rationale behind for this decision is that the injured person inability to get for his or her livelihood.²²¹ According to the informants the amount of compensation is paid by three phases and after the first payment paid elders asks the offender ask an apology to crime victim by caring stone and the crime victim also asked by the elders to give their forgiveness to the offender. Then the crime victim take the stone from the offender and put it on the land by saying “Yiqir Legiziabher” means I apologize in the name of God.²²²

The crime victims and offenders take an oath that symbolizes cessation of enmity and finally both parties and their families come together and eat together with elders with the same plate. Elders and sometimes priests give their advices used to heal the crime victims and condemn the act of the offender and the culture of revenge. According to study “... their eating together from the same plate, which otherwise is considered a taboo, signals the end of enmity, and their togetherness and pledge to live peacefully in the future”.²²³ These types of conflict resolution mechanisms also used to settle other minor crimes. According to my informants parties solve their disputes by customary dispute resolution mechanism in the study area lived in their house

²²⁰ Ibid

²²¹ Ibid

²²² Ibid

²²³ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms p145

without conflict peacefully and some conflicting parties bond their relations by marriage after they are reconciled to end the conflict.²²⁴ According to the practice reconciliation also applied for released prisoner and crime victims according customary dispute resolution mechanisms to stop their enmity. But, in some cases according to my interviewees released prisoners are not willing to reconcile by community elders.²²⁵

According to the practice alternative dispute resolution mechanisms such as reconciliation, participation in the presence of the victim, the offender, their respective families and other community members promote their active participation in the conflict resolution process and used for identifying the root cause of their conflict and the aim of discovering the whole truth about the wrongdoings through their maximum freedom to explain and narrate every detail of the conflict. Therefore, reintegration of offenders takes place by restoration of the previous relationship by mending the broken relationship of the conflicting parties through the process of reconciliation following customary rituals and this customary dispute resolution mechanisms aims at restoring the previous relationship between the conflicting parties, and reintegrating the offender back into the society.²²⁶ When we see the content of the reconciliation the defendant may be restricted from reaching some prohibited area such as the place where the deceased died. According to the informants in the focused group discussion in some kebele's family of the offenders are required to compensate the crime victims to live with his house which is named by the community *yebadma* (a compensation given to crime victims by offender relatives to stop enmity and to live in their house peacefully according to the culture of informants).²²⁷ Generally, reconciliation is respected by the parties. But, in some cases according to my informants' reconciled parties show the tendency to violate the reconciliation.²²⁸

As pursuant to my informants customary dispute resolution mechanisms had a double usage which involves the shaming of the offender, crime victims and their respective family. Hence, crime victims have a duty to stop revenge by the fear of the condemnations given by community elders, their isolations from the community members as violators of the community values and

²²⁴ Ibid

²²⁵ Ibid

²²⁶ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms, p147

²²⁷ Ibid

²²⁸ Ibid

reconciliation accepted as an order of God as religion.²²⁹ Therefore, reconciled parties respect their conciliation as a binding law.²³⁰

Generally, according to my informant's customary dispute resolution mechanisms in the study area used to mediate the conflicting parties and their respective families both in crime and civil cases. It also involves restitution, reconciliation, and aims at not only settling the conflict between the parties, it uses for restoring the previous peaceful relationship within the community as well as maintaining their future peaceful relationships by preventing the culture of revenge.²³¹

In practice this ways of dispute resolution mechanisms applied with parallel to formal criminal justice system and after the execution of sentences. Elders according to the practice of the study area asking the investigating police officers, the public prosecutors and judges to reconcile the disputing parties and even sometimes they produce agreement of the parties to terminate the criminal proceeding. But, the current criminal justice system of Ethiopia only allows to terminating the criminal proceeding of minor crimes such as crimes punishable upon complaint according to FDRE criminal code, when the law in the special part of the code or in any legislation "provides that a crime is punishable upon complaint, no charge shall be institute against the criminal unless the injured party or his legal representative institutes a complaint."²³²

For instance art 556 (1) of the criminal code simple bodily injuries other than those specified in Article 555 is crime punishable upon complaint. In this case crime victims have a choice of either alternative dispute resolution if they are asked by the mediators (elders) or formal criminal proceedings by legal representatives of the public prosecutor. According to the practice the judges and prosecutors accept reconciliation when the crime is committed according to art 556(1), but, charges as pursuant to art 556(2) is not terminated by the act of reconciliation because this provision clearly indicates crime instituted by up on accusation.²³³

But, elders in the study area used reconciliation for serious crimes including murders and used to stop revenges between the conflicting parties and their respective families in addition to formal

²²⁹ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms, p148

²³⁰ Gisler et al, Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned p27

²³¹ Ibid

²³² 2004 FDRE criminal code article 212

²³³ ibid article 556(2)

criminal justice system or separately.²³⁴ According to Ethiopian criminal law, reconciliation for serious criminal matters are not recognized and only used for mitigating circumstances of punishment to the offender if the court accepts as a general extenuating circumstance.²³⁵

Based on this in some cases elders are dissatisfied by formal criminal justice institutions because their efforts in prevention of crime and restoration of relationship which is not accepted by the formal criminal justice system and the reconciled offender deny his /her commission or omission of crimes by the fear of imprisonment given by courts.²³⁶ Because the accused person has not cleared about the penalty imposed to him/her and fear of imprisonments in prison stays all offenders not willing to tell the truth fact. Based on these factors all accused person deny the commission of crime in the court.²³⁷

In different parts of Ethiopia including the study area revenge is still now continued, killing the killer or his relatives accepted as a culture. “Since killing one’s family member is regarded as challenging the dignity of the whole family or relatives, the victim’s relatives should prove their *wondinet* (manhood), and restore their dignity by taking vengeance.”²³⁸ Similar activities and trends also performed in the study area.

Hence revenge is still now practiced even if the offender punished, because the crime victim and the offender not reintegrate through the mechanisms of reconciliation. According to the informants in two kebele’s namely Ali and Sanq in Adi Arquay woreda more than 10 persons are killed in 2020 within two months with the reason of revenge between each side and according to their custom elders not involve in the reconciliation process until equal number of person died in both sides. ²³⁹

On the other hand according to informant’s elders in different kebele which solve the problem by using the customary dispute resolution mechanism like by mediation or reconciliation and this resolution mechanism used to reduced revenge and recidivism, the conflicting parties easily reintegrated into their community. In doing so, the cultural practice performed by the elders in

²³⁴ Gisler et al, Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned p27

²³⁵ 2004 FDRE criminal code article 86

²³⁶ interview with ato Nega Sisay, North Gondar Zone public prosecutor head office, about reintegration of offenders in formal criminal justice system and informal criminal justice systems, June 22, 2020

²³⁷ Ibid

²³⁸ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms, p142

²³⁹ Gisler et al, Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned p27

the study area used to reintegrate the offender and the crime victim by their customary rituals and the majority reconciled parties not returned to crime and they are not recidivist.²⁴⁰ The customary ritual to reintegrate the offenders and crime victims in the study area is arranged by the two conflicting parties at the end of the dispute resolution. Both the crime victims and the offenders and his family drink local beer (tella) and eating food in group and it used to end enmity and create their togetherness. These customary dispute resolution mechanisms also used to pledge to live peacefully in the future without any stigma by the community by their flexible remedies. In addition to the eating and drinking together the conflicting parties shake hands after asking apology by offender and crime victim gives his/her forgiveness to the offender used to reintegrate the offenders into the community.²⁴¹ But, according practice and the available laws, the criminal justice system and its governing law focus on punishing the wrongdoer through adversarial litigation system. Crime victims are not compensated and the community no means in participating in the criminal justice system as a concerned party because the law views crime committed or omitted against the interest of the state.²⁴²

CDRM practiced without organized customary institutions and elders cannot give a binding decision. Elders selected from the community to reconcile the conflicting parties, they are not organized like Oromia gada system Oromia region, Shinasha culture in Benishangul Gumz region and Zewold and Aba gar in Raya. In addition to this customary dispute resolution mechanisms different from some customary dispute resolution mechanisms are it is not against international human rights conventions and it fulfills the principle of restorative justice system by participation of the crime victim, offender and other concerned community members, restoration of damages, reintegration of offenders through customary dispute resolution mechanisms. But, in the absence of government support the customary rules that fulfill the principle of restorative justice changed through time because according to my informants in some part of the study area offender's family are asked by elders to compensate the crime victim to live in their home and to end enmity. But, some crime victims used the compensation to buy gun for the purpose of vengeance.²⁴³

²⁴⁰ Ibid

²⁴¹ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms, p145

²⁴² Criminal code art 1

²⁴³ 220

In formal criminal justice system the institutions as provided in the criminal procedure code the criminal justice in motion when the police received an accusation or complaint and if there is flagrant offense the police can investigate the crime by arrested the suspect. But, according to the investigative police the communities are not willing to inform to the police and to be a witness about the commission /omission of crime by the fear of revenge and they are not aware about witness protection law.²⁴⁴

For instance, in some selected crimes parties to the conflict is allowed to terminate by their own informal dispute resolution mechanisms and these types of conflict resolution mechanisms used to reintegrate the offenders easily into the community.²⁴⁵In formal criminal justice system majority prisoners are not reconvicted according to my informants in the study area. Based on this data different line of arguments may be taken as the reason of not their reconvicted. First, the rehabilitation programs given by prison administration may be effective and the offender reintegrate in the community. Second, it may also argue that poor registration system of the prison administration system did not record recidivists effectively and third, offenders and the community by themselves may be reintegrated. Based on the above three reasons, the researcher convinced by the ideas offenders and the communities by themselves reintegrated.²⁴⁶ Hence, as a proof there are prisoners are recidivist indicates that they are not reformed in prison and they are not socially reintegrated into their community and for this failure different reasons may be identified by researches. According to my informant's false accusation and conviction, stigmatization by the community after the prisoner released from the community are one of the reason of recidivism and gaps of reintegration system.²⁴⁷ Prisoners imprisoned in small class and they learn a criminal behavior from other criminals and prison staffs did not give rehabilitative educations in stay in prison.²⁴⁸ In its small classes prisoners are overcrowded, sleeping accommodations are not fulfilled adequately and sometimes if more prisoners are imprisoned,

²⁴⁴ Interview with Inspector Tigabu Atinafu, investigating police and the coordinator of the investigating polices, on the practice of investigation of crimes and its challenges for offenders reintegration , June 24, 2020

²⁴⁵ See infra foot note 257, in addition to this my informant work in the criminal justice system also affirmed that more offenders who are released by probation is not return to crime.

²⁴⁶ Andrews Community Attitudes towards the reintegration of ex-prisoners

²⁴⁷ Interview with misganaw Kasie, a prisoner convicted by Adi Arquay woreda court 3 years imprisonment and 7 month by theft crime released from prison by amnesty after 20 month stay in Debark prison, interview on the activities given to him and other prisoners and communities treatment after released and other related interviews takes place, July 12, 2020

²⁴⁸ Ibid

prisoners sleep by shift and sleep by shared sleeping materials.²⁴⁹Based on this, the researcher argued that activities done by prisons for rehabilitation of the offenders like education, vocational training and psychological treatments given to the prisoner in the study area are not effective because there are recidivists in prison. Hence, the presence of recidivists indicates that the failures of the prison administration for offender's successful rehabilitation and reintegration programs.²⁵⁰ When we see the other non-custodial measures used by courts such as probations are given for rare cases and rules of conduct respected by probationers are not specified in the decision of courts.²⁵¹

In addition to rule of conduct, courts may place the criminals under the supervision of protectors, guardian, probation officer or charitable organization.²⁵² But, according to the study conditional suspension of penalty by probation under Ethiopian criminal code indicates that courts in its decision does not list conditions, rules of conduct to offenders after release from prison and the suspension of the penalties given without giving a justification.²⁵³ Hence the court did not decide the probation according to the law and in the absence of established organs to supervise the probationer in some cases the probationers fail to protect the conditions provided by the law.²⁵⁴ The purposes of probation also not clear by the community, crime victim, even by the offenders. Probation is understood by the community released offender s not guilty, released free and the offender him/herself also not aware the conditions of probation.²⁵⁵

As pursuant to the formal criminal justice system, almost all criminal cases seen by court and decided different punishments on guilty offender according to criminal law, its criminal procedure codes and send offenders to prison administration for the execution of penalty because the focus of criminal justice system punishment an end itself and taken as a measure to rehabilitate the offender. However, there are recidivists who are not rehabilitated by the decision

²⁴⁹ Ibid

²⁵⁰ Interviews with Wana Sagin Admtsew Nigussie, who is Debark prison administration registrar, interview on the treatment of prisoners and works about rehabilitation and reintegration of offenders in prisoner administrations, June 22, 2020

²⁵¹ Interview with Ato Gizachew Muche , North Gondar Zone high court president, on the reintegration of offenders in practice, June 23, 2020

²⁵² 2004 FDRE criminal code Art. 199

²⁵³ Berhane Gebregziher, Conditional Suspension of Penalty, 2017, p72

²⁵⁴ Interview with Eyob Sileshi, Adi Arquay woreda court judge who has more than ten years work experiences , on the reintegration of offenders in practice, June 25, 2020

²⁵⁵ Interview with Abebe Abera , public prosecutor in Adi Arquay woreda, on practice of social reintegration of offenders , June 10, 2020

of the court; offenders commit crimes more than two times in similar and/or different crimes.²⁵⁶ Prison administration is one of the criminal justice institution used to detain prisoner who is waiting trials or prisoners convicted by imprisonment for the purpose of deterrence and rehabilitation. To achieve those goals according to the standard minimum rules of treatments of prisoners who are waiting trial, men and women, young offender from adult offender detained by debts and civil prisoners from prisoners convicted by criminal offense shall be detained separately.²⁵⁷ According to my informants Debark prison administration which is found in the capital city of the study Zone, prisoners only separated by their sex, no other classification methods applied which means young offenders and adult offenders including recidivists and other rigorous imprisoned prisoners are imprisoned in one class up to 45 prisoners.²⁵⁸ Hence there is no individual rehabilitation system and the treatment of prisoners is not fulfilling the standard minimum rules of treatment of prisoners' category. In such cases instead of rehabilitation and reintegration of the offenders, offenders are may learn another criminal behavior and they reconvicted by similar and/or different crimes according to the informants of prison administration staffs, there are 60 recidivists criminals except 6(this six prisoners are recidivists sentenced more than three years by crime of theft) prisoners who are imprisoned less than three years are released by letter of public prosecutor advocate general of the region, more than 282 prisoners are released by the reason of corona virus in 2020.²⁵⁹

Thus, recidivisms can be taken as one of the reasons for increasing overcrowding of prison in the study area and the practices performed for reintegration of the offenders are almost none in formal criminal justice system.

²⁵⁶ 1. The litigation between plaintiff public prosecutor v defendants Misganaw Zafia, file No 0200554(2015) and file No 0200628 (2016) the defendant convicted by body injury.

2. The litigation between plaintiff public prosecutor v defendant Kinfia Tafere in Adi Arquay woreda court by file No 0200658 (2016) and file No 0200695 (2017) the defendant imprisoned two times with theft crimes.

3. The litigation between plaintiff public prosecutor vs. defendant Gashaw Lijalem in Adi Arquay woreda court by file No 0200810(2019)and 0200798 (2018) imprisoned two times with theft crimes.

4. The litigation between plaintiff public prosecutor vs. defendant Beyene Misganaw in Adi Arquay woreda court by file No 0200698(2017), by file No 0200889(2020), by file 0200890(2020), 0200854 (2019) the defendant imprisoned by four different crimes. (translation is mine)

²⁵⁷ UN standard minimum rules of the treatment of prisoners rule 11

²⁵⁸ Interviews with Wana Inspector Setechign G/Egziabhare , who is Debark prison administration justice administration department , interview on the treatment of prisoners and works about rehabilitation and reintegration of offenders in prisoner administrations

²⁵⁹ Ibid

4.4 Major Challenges in the Practice

In the study area there is a problem of rehabilitation and reintegration of offenders. The purpose of punishment of the guilt offender is not achieved according to the FDRE criminal code because of the presence of recidivists and culture of revenge. To identify the challenges of rehabilitation and reintegration of offenders the writer used interview of judges, prison administration staffs, public prosecutors, investigating polices and court decisions. Based on those data's the writer identified the following challenges.

The first challenge for reintegration of offenders in the practice is that the legal gaps, hence there is no clear provisions that distinguish the rehabilitation, incarceration and reintegration in criminal justice system. Concept of prison-based reintegration programs are also not known by the prison administration staffs. The focus of the staff is only teaching the prisoners about the code of conducts prisoners during their stay in prison.²⁶⁰ Prisoners are not treated based on their personal behavior and social reintegration of offenders not legally and institutionally recognized in the Ethiopian criminal justice system according the practice and its criminal laws. According to studies in other well known prison-based follower countries like Japan “(t)he general Japanese environment, with its declaration of “No Return to Crime, No Facilitation of a Return to Crime (Toward a Bright Society by Everyone Supporting Rehabilitation)” indicates a general awareness toward rehabilitation and reintegration efforts (MOJ 2016f)”.²⁶¹ Hence, generally according to UNRISD (United Nations research institution for social development) working paper 2018-5 study, the study on four countries (Canada, Japan, Norway and Malaysia) comparative analysis based on the scales welfare, rehabilitation and reintegration of the revised United Nations standard minimum rules of treatment of prisoners, Canada known by community involvement in released prisoner, Japan known by decreasing crime rate by adopting comprehensive crime control system and addressing the reoffending problems through community involvement in parole and probation programs , Norway also known for its strong welfare system and reintegration programs and Malaysia also identified by sufficient in reintegration offenders who released by parole and probation. But, according to the study UNRISD, all other the above three

²⁶⁰ Ibid

²⁶¹ Gisler et al, Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned, p41

countries are excelled in reintegration released offenders by parole and probation.²⁶² But, according to the practice Ethiopia prison based system of the rehabilitation program each prisoner needs and risks assessment is not identified during their prison stay and they simply released by execution of sentence or conditional release (parole and probation) without any reintegration support. Both the institutional and legal framework did not recognize the participation of community in prison based reintegration program and informal justice system to reintegrate the offenders. Generally the treatment of offenders not fulfill the UN minimum standard of treatment of prisoners (Nelson Mandela rules) we can raise different reasons economical constraints can be taken the major challenge for developing countries because the practice shown us prisoners imprisoned without categorizing the offenders based on the international minimum standard rules of treatment of prisoners. In doing so, without respecting the minimum standard rules the prison-based reintegration system is not effective as the practice shows unless the released prisoner reintegrate him/herself into the community.

The other second major challenge is the period of sentence that is determined by court for the rehabilitation of offenders is terminated by different factors, during my data collection data's prisoners who are imprisoned up to three years released from prison before execution of the sentence by order of different organs of the state by different reasons such as Corona Virus, amnesty and parole.²⁶³ As pursuant to standard minimum rules of treatment of prisoner's rule 4, paragraph 1 the purpose of imprisonment and similar measures that affects the liberty is primarily to protect society against crime and to reduced recidivism and it is achieved if the period imprisonment is used to ensure the reintegration of the persons into society upon release and make the law abiding and self supporting life.²⁶⁴

Among the released prisoners the writer knows prisoners who are engaged to crime after they released from the prison by case of Corona Virus. Hence the crime victim and the community in general not satisfied by released prisoners and they are not protected from crime. On the other hand the remedy taken by the government to prevent the transmission of the viruses from one prisoner to prisoner and to other community may be taken as necessity. But, the deterrence effect of the imprisonment to the offenders are not effective because the sentence is not executed according to the decision of the court and the lesson of the imprisonment to others also may not

²⁶² Gisler et al, Experiences with Welfare, Rehabilitation and Reintegration of Prisoners lessons learned p

²⁶³ Ibid, hence according to my interviews 285 prisoners are released by COVID. 19

²⁶⁴ See supra foot note 30

be effective, others may engage to commit crime. The interest of crime victims also not protect and may they initiated to take their own remedy such as revenge because the offender and crime victims are not reconciled after or before release of the offender.

The third major challenge to criminal justice system in the study area, according to my informant is false accusation and conviction of the offender. In doing so, prisoners choose to commit revenge instead of rehabilitating and reintegrating by the criminal justice system in the study area.²⁶⁵ This indicates arresting suspected persons arbitrary before collecting sufficient evidence affects the whole criminal justice system and the violation human rights of individuals.²⁶⁶

The fourth major challenge is the absence of institutions and legal frameworks to follow up the prisoners during in prison and after release from prison. Hence without the establishment of effect prison- based offender rehabilitation²⁶⁷ and aftercare offender reintegration support and supervision²⁶⁸ system successful offender reintegration system cannot be established. Hence released offenders by execution of punishment and conditional released offenders are challenged by unemployment, housing problems, termination their education(for students) and other related problems must be supported by the after care programs to protect the ex-offenders from reoffending. But, practically prisoners released by execution of judgment or released by parole or probation surrendered into the community without any support of their social reintegration and other community based reintegration systems have any legal recognition, offenders simply leased from prison without reconciliation with crime victims and this process may result revenge to offender by the crime victim.

The other fifth major challenge by the sum the above major challenges the formal criminal justice system cannot reducing the culture of revenge because the crime victim, offenders and the concerned community no role in the formal criminal justice system. The formal criminal justice system focuses only on punishing the guilt offender and it is taken as a justice and remedy for rehabilitation of offenders. Since the objective of the criminal justice system of Ethiopia is

²⁶⁵ See supra foot note 249, according to my interviewee the practice indicates that the investigative police did not investigate in detail to identify the wrong accusation from the truth one.

²⁶⁶ International convention on civil and political rights (ICCPR), adopted by the UN General Assembly in resolution 2200 A (XXI) of 16 December 1966 at New York, art 9

²⁶⁷ UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders p32

²⁶⁸ Ibid, p65

deterrence of the others offender and rehabilitation of offender by prison-based treatment.²⁶⁹ But, without well established prison based rehabilitation and after care reintegration programs its objective is cannot be achieved. On the other hand elders used customary dispute resolution mechanisms to solve from petty offense to serious criminal matters including murder cases informally without legal recognition²⁷⁰ and in developing countries, restorative justice practices which are applied by the community through traditional practices and customary law used complement the existing justice system has not a place in Ethiopian criminal justice system.

4.5 The Implication of Gaps and Challenges to the Criminal Justice Administration System

Reintegration of offender is the best ways of reducing crime rate by protecting offenders from reoffending. In doing so, international standards prescribed that supporting the prisoners for social reintegration is the heart of prison management strategies and policies.²⁷¹ Prison based rehabilitation programs have some disadvantages for offender, their family, the community and even to the government. For the offender during in the stay isolation and marginalization, physical or emotional abuse, poor employment or unemployment, physical and mental disability and health issues and offenders may affected by other collateral effects of incarceration such as, they may have lost their livelihood, their personal belongings, their ability to maintain house to themselves and for their family and they may contracted a serious diseases while in custody.²⁷² Thus, incarceration hampers their ability to reintegrate into society upon release. So, effective prison based programs more needed to help the offender face these multiple challenges.²⁷³ Such helps are supporting social welfare assistance, support for housing, employment and treatment for substance dependencies and mental health care needs, among others, to help people to overcome such challenges and live positive, self-supporting lives.

African societies have their own indigenous rules of dispute resolution mechanisms used to reintegrative shaming²⁷⁴ of the offender than disintegrative shaming of the formal criminal justice

²⁶⁹ 2004 FDRE criminal code Art.1

²⁷⁰ Endalew Lijalem, Ethiopian customary dispute resolution mechanisms, p139

²⁷¹ UNDOC handbook on strategies to reduced overcrowding in prisons , 2013,p 32

²⁷² UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders p32

²⁷³ Ibid p33

²⁷⁴ John Braithwaite reintegrative shaming, 2000, p2

system. Hence, reintegrative shaming can be accomplished by participation of the crime victim, offender and community through restorative justice system because restorative justice an alternative or complementary for criminal justice system to fulfill the lacuna of formal criminal justice system in the form of incorporating the interest of crime victims by allowing to participate in the process and repairing their damages by giving accountability the wrong doer based on the consent of the two parties. The participation of the crime victims, offenders and other stakeholders are takes place by the models and principles of restorative justice. Restorative Justice view criminal conflict as a violation of a relationship among victims, offenders and community instead of putting only a state as a sole victim.²⁷⁵ According to studies restorative justice system is similar to Ethiopian customary dispute resolution mechanism because customary dispute resolution mechanisms fulfilled the values and principles of restorative justice, namely encounter, inclusion, participation, restitution or compensation, and reintegration.²⁷⁶

On the other hand prison based rehabilitation programs needs trained human power and finance to work on each individual assessment of prisoner based on their criminal history for preparation of aftercare reintegration programs and it is impossible for developing countries to rehabilitate offenders based on individual assessment for each prisoner unless complemented by non custodial measures like restorative justice system.²⁷⁷

Hence failure of imprisonment in reducing the culture of revenge and recidivism implies that, imprisonment in itself is incapable of addressing the offenders' social reintegration issues.²⁷⁸ Therefore, criminal justice system must design and deliver effective social reintegration intervention programs to prevent recidivism and to stop cycle of reoffending.²⁷⁹

In relation to the limitation and gaps of the formal criminal justice system legal gaps, institutional frameworks and other practical gaps needs a review existing law, policy identify legal gaps and obstacles to rehabilitation and reintegration programs. To minimize the limitation of the formal criminal justice system sentencing laws and policies include legitimate community to reduce the culture of revenge and recidivism and customary dispute resolution mechanisms shall recognize by the criminal justice system and supported by the government. According to

²⁷⁵Endalew Lijalem, Ethiopian customary dispute resolution mechanisms p28

²⁷⁶ Ibid, 146

²⁷⁷ Ibid

²⁷⁸ UNODC introductory handbook on the prevention of recidivism and the social reintegration of offenders p7

²⁷⁹ Ibid

the practice offenders prefer reconciliation and tell the truth before the community elders selected by the conflicting parties, in this false accusation and false testimony in the formal criminal justice system terminated. Hence, the community elders know the fact by their own methods of investigation and the conflicting parties tell the truth and then finally elders by producing the remedy by win-win solution for conflicting parties.

Therefore, in addition to formal criminal justice system, informal criminal justice system also used for reducing recidivisms and crime rate in addition to formal justice system. Hence to avoid the gaps and challenges the formal and informal criminal justice system should be complementing each other. Indigenous dispute resolution mechanisms should be recognized by the criminal justice system as a part of justice machinery to reintegrate the offender with in formal justice system and/or informally out of the formal criminal justice system.

Chapter Five: Conclusion and recommendations

5.1 Conclusion

Within retributive justice system, punishment of offenders by separation of offenders from the community results stigma of the offenders by their family and the community. In this formal criminal justice system the crime victim and the community have no any saying in the process of criminal justice system because crime is viewed as an act or omission committed against the interest of the state rather than committed against the interest of relationship between the parties. In this justice system offenders are not encouraged to take responsibility and to repair the damages committed on the crime victim. The system only focuses on the past criminal commission or omission rather than focusing on making good about the future relationship between the parties by restoring the broken relationship.

On the other hand restorative justice system is advocated as an alternative criminal justice system for retributive justice systems aimed as for complementing the criminal justice system by avoiding its limitations in relation to reintegration problem of offenders. Furthermore, in restorative justice system crime is viewed a violation of relationship between the crime victim, the offenders and the community. Hence the principle of restorative justice system used to put things right through the mechanism of restorative justice values like victim offender mediation, family group conferencing and sentencing circles which is formerly practiced and shaped by the new paradigm of criminal justice called restorative justice. To that end restorative justice used for restoring the wrong to right and reintegrate the offender by identifying the cause and addressing the harms and needs of the conflicting parties namely the crime victim, the offender and the communities at large by voluntary participation of legitimate stakeholders. The participation of crime victims, offenders and concerned communities used to identify the harms and needs of the crime victims and used to reach at agreed outcome for the future relationships and to create community safety. Different restorative justice principles and values are practiced by customary dispute resolution mechanisms according to the literature. In doing so, these customary dispute resolution mechanisms are important process to end stigmatization of the offenders through customary rituals, ceremonies and reduce recidivism by reintegrating the

offenders. Hence offenders are becoming shameful when they are approached to community elders and his or her friends than judges in the formal criminal justice system.

Similarly, Ethiopian criminal justice system follow the retributive justice system mainly focuses on punishing of the guilt offender who committed and/or omission from petty property crimes to other grave crime for the purpose of deterrence and reformation of the offenders. In rare cases to reintegrate the offender judges used alternatives of imprisonment such as offenders released by probation without supervisory bodies and without setting conditions respected by offender released by probation. In addition to this the other reintegration mechanism recognized by the criminal justice system is crimes instituted by up on complaints, crime victim and offender can solve their disputes by their own customary dispute resolution mechanisms and the trial discontinued by court.

The purpose of FDRE criminal code is to ensure order, peace and securities of the state, its inhabitants for the public good and to achieve the purpose prevention of crimes by giving due notice about crimes and penalties and if the due notice ineffective punishment of criminals to deter and reform the criminal from committing another crime and lesson to others. But, punishment without removing risk factors of imprisonment affects the rehabilitation and reintegration of the offender. On the other hand offenders who are solved their disputes by alternative dispute resolution mechanisms can easily reintegrate into the community and protected from reoffending according the practice of the study area. Therefore, settling disputes by using the customary dispute resolution mechanisms such as by reconciliation is used to mend the broken relationship of the conflicting parties and concerned community by wrong conduct of the offender by focusing their future relationship between them. Hence this customary dispute resolution mechanism used to protect o the offenders from reoffending by addressing the future causes of disputes between them and by reintegrate the offender into the community according to their customary rules informal means by *de facto*.

According to the practice, in principle formal criminal justice systems only focuses on punishing the offenders, send to prison administration and then released from prison without rehabilitated and reintegrated effectively. In doing so, offenders face different challenges during in prison and after release from prison administration. Therefore, we can conclude that social reintegration of

offenders do not have adequate place for creating effective and successful social reintegration of offender under formal Ethiopian criminal justice system.

5.2 Recommendations

For the effective and successful social reintegration of offender in Ethiopian criminal justice system the researcher suggest the following recommendations based on the evidences found in the study area.

1. Both the criminal code and the current constitution of Ethiopia should be amended by concerned body to include the customary/alternative dispute resolution mechanisms as justice machinery in some selected criminal matters based on studies to protect the offender from reoffending and to reintegrate the offenders by their indigenous customary dispute resolution mechanisms as a gap filling of the formal criminal justice system. In addition to this the criminal justice policy should be functionalized by enacting the new amending criminal procedure code and criminal code based on its policy.
2. Legitimate, accessible and cheaper informal dispute resolution mechanisms for social reintegration of offenders should be legally and institutionally framed by the government to complement the formal criminal justice system in some selected crimes based on studies. Hence, for developing countries including Ethiopia, non-custodial measures are more useful than state based rehabilitation and reintegration programs in terms of finance, capacity, legitimacy and reducing overcrowding and recidivism. Because only imprisonment of offenders cannot be effective to prevent recidivism, offenders are not active participant in the process, crime victim are not compensated and its prison based system only used for disintegrative than reintegrative shaming, after their released from prison offenders may be victimized and/or reconvicted. Therefore, avoid the above gaps of the formal criminal justice system and restorative justice process should recognized by formal criminal justice system as complementary. The government should strength the community ties and support legitimate customary dispute resolution mechanisms for achieving crime reduction and reintegration of offenders into the community.

3. In addition to the above recommendation, based on the experience of other countries the prison based rehabilitation and aftercare reintegrative organs like probation officers and correctional service organs like Canada, should be established by the government for the assistance and re-settlement of the released persons according to Nelson Mandela rules.

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Interviewees

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Mr. Gizachew Muche, Amhara Regional state supreme court, North Gondar Zone high court president, June 2020

Mr. Eyob Sileshi, Amhara Regional state supreme court, North Gondar Zone Adi Arquay woreda court judge June , 2020

Mr. Abebe Abera, Amhara Regional state public prosecutor, Woreda public prosecutor work on criminal matters branch , June , 2020

Mr.Tadesse Tigabu , Amhara Regional state public prosecutor, Woreda public prosecutor work on criminal matters branch , June , 2020

Mr. Mebtu Tarekegnie , private consultant (lawyer) June , 2020

Wana Sagin Admstew Negussie, Amhara regional state prison administration, Debark prison administration registrar , June 22, 2020

Wana Inspector Setsechign Gebreeziabhair Amhara regional state prison administration, Debark prison administration, Justice administration branch coordinator , June 22, 2020

Sagin Atnkut Tsegaye , Amhara regional state prison administration, Debark prison administration, Prison release , parole, Amnesty and information expert

Sagin Zerfia Teka, Amhara regional state police commission, woreda investigating police, July 2020

Inspector Tigabu Atnafu, Amhara regional state police commission, Woreda investigating police and branch coordinator

Mr. Misganaw Kassie, prisoner(released from Debark prison by parole) June 2020

Mr. Birhanu Tesema, prisoner(released from Debark prison by parole) June 2020

Mr. Alemnew, prisoner (released from Debark prison by parole) June 2020

Mr. Adamu Zewdu , Adane Alemu, Kidia Melese , Akalie Gebremedihin and Yaqob Syum who are community elders interviewed by focus group discussion, June 2020

Appendix

Interview Questions

- A. Semi structured interviewee's questions for prison administration staffs
 - 1. How many prisoners are imprisoned from 2018- 2020 in Debarq prison administration?
 - 2. Among the prisoners how many prisoners reconvicted or recidivist?
 - 3. Is there any work performed to rehabilitate the offender during stay in prison, which type if any?
 - 4. How many prisoners are imprisoned in each class and what is the size of each class?
 - 5. What are the conditions for release the offender from prison by parole and amnesty according to your experiences who is empowered to check the conditions?
 - 6. What are the major challenges for rehabilitation and social reintegration of the offenders in your prison and what works done before and after the release of the offender to reintegrate the offenders and to protect the prisoner from reconviction?
 - 7. How the community treats the released prisoners by parole and execution of the sentences?
 - 8. How do you see the current criminal justice system in relation of achieving the objectives of the FDRE criminal code of 2004?
- B. Semi structured interviewee's questions for investigating polices
 - 1. How many crimes are terminated by reconciliation and among reconciled offenders how many offenders rearrested?
 - 2. Is there any advantage for crime victims and offenders by solving their disputes through reconciliation? What types of advantage?
 - 3. What the challenges are for investigate the crime in relation to give accurate justice in criminal justice system in your area?
 - 4. How the communities see the criminal justice system in relation accessibility, efficiency and effectiveness and its satisfaction of the crime victim, the offenders and their family with the concerned community?
- C. Semi structured interviewee's questions for judges, prosecutors and private lawyer
 - 1. What is the space of the social reintegration of the offenders under the Ethiopian criminal justice system?
 - 2. How the decisions are given on probations and community services are decided by the courts and in what conditions?
 - 3. What are the challenges for the effectiveness probation?
 - 4. How do you see the space of social reintegration of offenders under Ethiopian criminal justice system?
 - 5. Why criminals are recidivist?

D. Semi structured interviewee's questions for ex-prisoners

1. How do you see the criminal justice system in relation to your proceedings?
2. How many times imprisoned and why?
3. How do you see the stay of prison? What are the activities given to the prisoners for rehabilitation and reformation from the criminal behavior?
4. What are the challenges for rehabilitation and reformation of offenders in time of prison?
5. What about the treatment of the community after you released from prison? is it reintegrative or disintegrative?

E. Semi structured focused group discussion with community elders

1. How many times you work in the reconciliation processes and how many conflicting parties are reconciled? Which of them violate the agreement?
2. What are the customary rules for reconciliation of the disputing parties?
3. How the communities treat the released offenders?
4. Is the punishment given to the offender by current criminal justice system used for rehabilitation of offender and deterrence of other?
5. Which criminal justice system is better for offender reintegration in your area?