

Judicial Process and Punishment in the Indigenous Conflict Resolution Mechanisms of the Konso people

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ABSTRACT

This article focuses on the judicial process and punishment in the indigenous conflict resolution mechanisms of the Konso people. The main objective is to analyze the jurisdiction process and punishment system in the indigenous conflict resolution mechanisms of the Konso people. The study was carried out in some of the villages registered by UNESCO, such as Gamoole, Dekato, Burjjo, Mecheke, Mechelo, Gelabo, and Darra, in October 2023. Elders who are more familiar with the indigenous Konso culture in general and the indigenous jurisdiction procedure in particular provided the data. The study collected and analyzed data using qualitative methods. The paper makes the case that the conflict resolution mechanism adheres to a number of jurisdictional procedures. It starts with submitting complaints and concludes with reconciliation. The type of offense and the response of the offender determine the level of punishment, ranging from simple verbal warnings to the death penalty. When cases are difficult to provide witnesses for, supernatural intervention through oath-making and curses is applied. The paper also identifies current threats to these indigenous judicial processes and punishment mechanisms, such as the influence of the modern legal system, the reluctance of the younger generation, the spread of Christianity, and the erosion of traditional values.

Keywords: Indigenous, Conflict, Jurisdiction, Punishment, Supernatural intervention

1. INTRODUCTION

Conflict is found everywhere in human society, both within and between groups (Roberts, 2013). It is an inevitable human experience that results in social change that could be either positive or negative in its effect (Mir, 2006). Although conflict is a universal phenomenon, social theorists dealing with the issue differ profoundly over its nature and significance. Some realize that conflicts are destructive, while others see them as an integral and inevitable part of life in any community

(Roberts, 2013). Still, others view conflict as neither inherently bad nor good, but the manner in which it is handled determines its nature (Deutsch & Coleman, 2000).

Conflict is defined as a struggle over conflicting values and competing claims to limited status, power, and resources, in which the goal of the parties involved is to neutralize, harm, or eliminate their adversaries (Oтите & Albert, 2001). It is a scenario in which two or more principles, perspectives, and beliefs are at odds or incompatible, often arising from fear, uncertainty, or a lack of achievement (Omoluabi, 2001).

Despite the inevitability of conflict, no society exists permanently in a state of conflict. Thus, if it happens, it is essential to resolve it to restore peace and stability for the proper functioning of society (Mir, 2006) and maintain a peaceful and stable community (Fisher et al., 2000) through the mechanisms established to resolve it (Poku, 2008) despite the variability of the approaches to conflict resolution (Belachew & Mersha, 2023).

African societies have experienced various forms of conflicts (Theresa & Oluwafemi, 2014), significantly impacting the lives of the communities. In response to these conflicts, various African societies have developed their own customary conflict resolution approaches (Murithi, 2008), having certain peculiar features of social traditions, norms, and beliefs (Belachew & Mersha, 2023; Waindim, 2019). Conflicts among African communities were traditionally resolved through customary systems of conflict management that are open and democratic (Waindim, 2019) and are based on the core principle of truth involving all parties taking part in the conflict, including disputants and mediators, negotiators, and adjudicators (Theresa & Oluwafemi, 2014).

There are several different ethno-linguistic groupings in Ethiopia. As an inevitable social phenomenon, various forms of inter-ethnic and intra-ethnic conflicts have also occurred in Ethiopia. Each cultural group in Ethiopia has developed its own mechanisms for resolving conflicts. Several scholars have studied the indigenous conflict resolution mechanisms among various Ethiopian societies (see Pankhurst & Getachew, 2008; Gebre *et al.*, 2011; Dejene, 2011; Gebre, 2020).

The Konso people of southern Ethiopia have developed indigenous systems for resolving inter-group, intra-group, and interpersonal conflicts within their communities. When conflicts arise, they are resolved through these indigenous mechanisms, which have been found to be more effective

in transforming conflicts, maintaining order, and restoring social harmony than modern judicial systems (Mulumebet *et al.*, 2024). Peace and harmony are core values in Konso society, deeply ingrained in its culture (Shako, 2004). Previous studies on indigenous conflict resolution mechanisms among the Konso include Abdulfetah (2006), Mathewos (2009), Petros (2022), Addisu (2022), and Mulumebet *et al.* (2024). However, while being crucial elements of the conflict resolution system, the processes of jurisdiction and punishment mechanisms have received little attention. Therefore, the jurisdiction procedure and punishment in the Konso community's indigenous conflict resolution systems are the main topics of this paper. Specifically, the article tries to describe the stages involved in the jurisdiction process and the supernatural agencies involved in resolving unidentified cases, and to examine various forms of punishment for offenders and to describe the threats to the indigenous jurisdiction process and punishment system. The aim is to shed light on the alternative jurisdiction process and various punishment mechanisms, with the ultimate goal of maintaining and restoring peace and social harmony in a particular society.

2. RESEARCH METHODOLOGY

An explanatory qualitative study design was utilized in this research. A qualitative approach was chosen to capture the dynamic views, opinions, attitudes, experiences, and expressions of the informants regarding the key stages of the jurisdiction process. In addition, it enables the exploration of the involvement of supernatural agencies in solving unidentified cases, the punishment methods for perpetrators, and the rituals of cleansing after bloodshed. Moreover, the qualitative approach was employed to probe the challenges faced by indigenous conflict resolution institutions, particularly the indigenous jurisdiction system and punishment mechanisms.

Purposively chosen key informants, such as clan chiefs, knowledgeable elders, and other traditional administration leaders, provided firsthand information. In-depth interviews, casual conversations, and participant observation were used to collect data relevant to the study's concerns. The primary determinants of informant selection were social status and subject-matter knowledge. The fieldwork data collection took place between October 5 and 25, 2023. Twenty-three informants participated in official interviews along with several casual discussions.

Through a survey and analysis of the literature on general indigenous dispute resolution procedures among different cultural groups, secondary data was gathered. Written reports of the Konso people were also consulted. As a result, relevant literature included books, journal articles, and master's theses. Oral consent was obtained from the informants prior to audio-recording and taking field notes. Finally, the collected data was transcribed, categorized, organized, and analyzed thematically.

3. RESULTS AND DISCUSSION

3.1. The Socio-Political System of Konso

Traditionally, the Konso people have a strong social organization, with both hereditary and non-hereditary leaders exercising socio-political roles. These institutions play an important role in the process of settling disputes and making peace. The position of the clan headship (poqalla) is the most important hereditary authority. Clan headship is inherited from father to the oldest son (Jensen, 2021; Hallpike, 1972; Kimura, 2004). Their major functions include blessing, advice, dispute settlement, and reconciliation (Shako, 1994).

The position of the drum holder (appa timbaa) is another hereditary position that rotates annually between specific families. The holder of this position is responsible for maintaining law and order in the village (Lakew, 1998; Watson, 1998; ARCCIKCL, 2008) and serves as the final authority for traditional appeals for the Konso people at the village level. In addition, there is a non-hereditary authority held by an age-grade called xela. This group acts as a police force to ensure peace in the village, maintain communication between community elders and the public, and carry out the instructions and decisions of the elders (ARCCIKCL, 2008).

There are also positions exclusively reserved for certain villages and families that play a conciliatory and mediating role by preventing fights within and between the community (Kimura, 2004; Mathewas, 2009). This position is considered sacred (dawra) and remains neutral in conflicts.

Furthermore, all Konso males who are thought to be skilled in giving advice are eligible for non-restricted posts (Kimura, 2004). The most important position of this type is the council of elders. This authority is held by wise men identified for their relatively high knowledge of traditions,

oratory quality, capability to make sound arguments, intelligence, decency, capacity to make fair judgments, courage, and honesty (ARCCIKCL, 2008).

Respect for seniority and elders is a highly valued principle among the Konso (Kimura, 2004; Hallpike, 1972). Hallpike adds that elders are respected for the personal qualities of wisdom and restraint they have developed, serving as the repository of morality and right conduct. In Konso, elders preside and determine punishments (Kimura, 2004). Therefore, elders play an invaluable role in the conflict resolution process among the Konso. Each of the above-explained positions is strictly forbidden to exercise their authorities arbitrarily. The Konso people have strong values that reject arbitrary authority (Hallpike, 1972). According to the tradition of the Konso people, justice is fairly rendered to individuals regardless of their personal status. Hence, no one is favored or exploited.

3.2. The process of jurisdiction

The Konso community has a structured approach to resolving conflicts that helps maintain social cohesion. The process of conflict resolution among the Konso often involves a series of jurisdictional stages, with a focus on restoring peaceful life and harmony rather than punishment. Beginning with filing complaints and concluding with sincere reconciliation, these phases are interrelated. The following figure shows a few of the crucial phases:

After the elders deliver an opening speech, the complainant is given the opportunity to clearly explain the incident. Subsequently, the offender is given a chance to defend themselves. At this stage, both the complainant and the defendant are expected to tell the truth. Once the case has been thoroughly heard, the attendees discuss the matter thoroughly before reaching a decision. If the wrongdoer is identified, decisions are made by a simple majority vote, with the voice of the elders playing a crucial role in proposing the final punishment. The severity of the offense determines the level of punishment, which ranges from a simple verbal warning or advice to the death penalty at the extreme end. The finding is similar to Abdulfetah's (2006) study, which indicated that punishment may include fines, payment in kind, labor service, beating, excommunication, expulsion, or even execution.

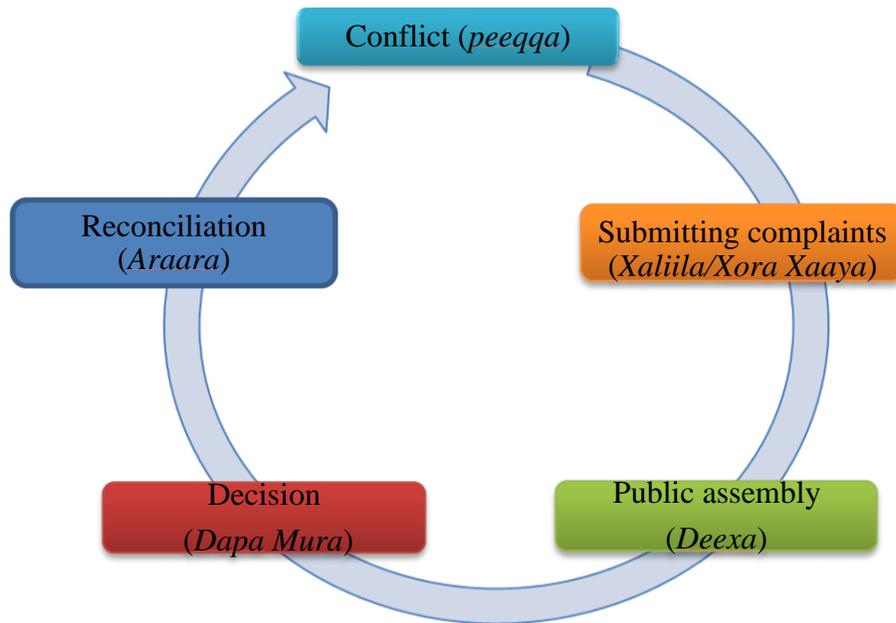


Image 1: A diagram developed by the researcher to illustrate the process of adjudication in the indigenous conflict resolution systems of the Konso community

The youth organization *Xela* is responsible for carrying out these decisions. In the event that there is harm or damage, the perpetrator must compensate the victim. The amount of the fine should consider the economic capacity of the offender and their innocent family members. Therefore, the punishment should be fair and not disrupt family life. However, the severity of the offense and the pattern of repeated wrongdoing would result in serious consequences and extreme punishment.

In the final stage of the adjudication process, the disputants engage in reconciliation, known as *araara*. This involves both parties sharing food and drink to signify normal interaction. After the reconciliation, the elders offer words of blessing, calling for peace and order in life, while also condemning disputes and chaos. The victim and offender then make an oath to move forward peacefully and prevent any further revenge and tensions.

3.3. Punishment of the perpetrator

The severity of punishment depends on the type of offense and the extent of the offender's confession. Punishment increases for perpetrators who commit serious crimes such as murder or

arson, repeatedly break rules, and refuse to accept the community's decision. Punishments range from simple warnings to complete exile from the community. The most feared punishment in the Konso community is complete ostracism and expulsion. The community excludes a criminal from social life (known as seereeta or dhufana) if he/she fails to pay fines and defends his/her behavior. Even in an emergency, the person will not receive any social support because of his/her isolation. The offender's family is also excommunicated, with a public announcement warning others to avoid contact with them. An attempt by anyone to interact with the excluded person and his/her family before the decision is lifted will also face the same consequences. Therefore, community members, including his/her close relatives, should maintain social distance from the person under such sanction.

This sanction can only be lifted if the perpetrator admits their wrongdoing and pays the fine. The fine increases over time, so it should be paid immediately on the day the decision is passed. If the perpetrator does not have the money to pay, he/she can guarantee his/her properties until he/she finds the money. However, in cases of serious or repeated offenses, such as intentionally setting a fire in a public or private house, intentional homicide, and others, the offender may be completely expelled from the community. In such cases, community members will destroy the offender's house (qittassa) and throw branches of the euphorbia plant into his/her homestead. The person and their family would then have to flee to another village. At this point, the offender has no right to appeal for reconsideration.

3.4. The Role of Supernatural agents in punishing the wrong doers

Customary institutions can employ religious or spiritual pressure by asking a suspect to speak the truth under oath, as lying under oath is believed to bring misfortune or disease (Epple, 2020). In the customary institutions of many traditional societies, there is a widespread belief that supernatural beings may intervene to punish hidden wrongdoings. According to Roberts (2013), magic, sorcery, and witchcraft are mechanisms used to identify suspicious incidents. Similarly, extra-judicial methods, such as ordeals and invoking supernatural forces, are used in various African societies to expose complicated conflicts (Theresa & Oluwafemi, 2014). A similar process exists among the Konso community, where curses (*ipeeta*) and oath-making (*xaxa*) are used as

resolution mechanisms in cases of unidentified incidents for which providing witnesses is impossible. The community believes that lying can bring sickness, death, and disaster not only to the wrongdoer but also to their closest relatives.

In cases where providing a witness (*makkitta*) is difficult, a suspected person is brought to a sacred public place (*moora*) found in every Konso village to swear an oath (*xaxa*) against oneself. Lying is strictly forbidden at these places. In this scenario, the suspect is instructed to touch the sacred stones erected in such places for this purpose. Before the suspect decides to go to the oath, he/she is given time and is carefully examined only by close family members. Because it is believed that the dangers of a false oath will reach all his/her close relatives. So the relatives tell him/her that they are willing to pay jointly if he/she is afraid of punishment. They plead with the suspect to tell the truth. The community believes that God punishes the liars by striking them with calamities. These catastrophes are evidenced through chronic sickness, death, being struck by lightning, being bitten by a snake, being carried away by a flood, falling from a tree, and other accidents. When these accidents are confirmed, the person is considered guilty, and the community then gathers again to impose punishment.

If the perpetrator cannot be identified, the local elders come to the sacred place and cast a curse (known as *ipeeta* or *peerata*). The elders speak words of curse against the offender, declaring that even if the perpetrator is hidden from the sight of people, he/she cannot hide from God. The curse is believed to bring harm to the perpetrator and his/her lineage, no matter where he/she may be. Unless the offender steps forward and confesses his/her guilt, the danger will persist and continue to affect him/her.

3.5. Cleansing Rituals

According to the Konso community, homicide and bloodshed are grave crimes that call for purification ceremonies. If blood is shed during a conflict, a ritual of cleansing is carried out. According to Mathewos (2008), the peace-making process consists of three stages: negotiation, reconciliation, and cleansing rituals. Cleansing rituals are only involved in violent conflicts where bloodshed occurs. In this process, an animal is purchased for purification and then slaughtered. Its blood is mixed with chyme and water, and leaves of a plant called *hansaap'tta* (*labiatae, ocimum suave*)

and *laakannta* (a broad-leafed herb) are used to sprinkle on the perpetrator and the area defiled by the bloodshed. These plants are believed to possess ritual purity and symbolize peace. In cases where conflicts occur between villages, disputes are resolved through a peace-making ceremony known as "cleansing the land" (Hallipke, 2008). Elders, with the traditional authority of *shorokota*, are tasked with purifying the area where the conflict took place.

Bloodshed is believed to taint the land, so cleansing rituals are performed to restore the community's purity and bring back peaceful life. During these rituals, elders pray for negative things like quarrelling, disputes, diseases, and evil to be expelled, and for positive things like peace, calmness, health, and prosperity to prevail.

3.6. Challenges to Traditional Conflict Resolution

There are both internal and external challenges to traditional conflict resolution. The younger generation pays less attention to their traditional culture in general and conflict resolution mechanisms in particular. The younger generation is neglecting the traditional values of the community as discussed by Asnake *et al.* (2013). Elders complain that the younger generation is forgetting the indigenous adjudication process. When incidents occur between youths, they prefer to take their cases to modern courts and do not want to comply with the elders' decisions.

The younger generation disrespects elders who have demonstrated their knowledge and disregards our traditional way of life. We are gradually losing our basic values, including honesty and truth. Currently, chaos is prevalent in every village, with frequent quarrels and disputes among individuals that are difficult to settle. Some individuals even refuse to accept our decisions. It is unclear where we are heading.

Currently, the respect for traditional conflict resolution institutions, which play a significant role in maintaining and restoring peace, is greatly diminishing among the young generation. For example, these institutions are recognized as guardians of peace and have the power to resolve conflicts in Konso (Hallpike, 2008). They are embedded in local values, norms, and beliefs. Today, though, the Konso community's traditional values, customs, and beliefs are being undermined and are no longer as highly esteemed or respected. Elders in the area are concerned about the decline

of their native culture and the disregard for the standing of their long-standing peace building organizations.

Conventional dispute resolution techniques have suffered as a result of the region's Christianization. Many traditional cultural practices are seen as detrimental and evil by Christians. For example, it is believed that evil spirits have an influence on conflict resolution activities such as taking oaths, casting curses, and carrying out cleaning rites. Christians thus refrain from engaging in these kinds of activities. According to Kariuki (2015), "modernized" Africans have a bad opinion of their traditional legal system. Kariuki went on to explain that traditional customs such as purifications, rites, and trials by ordeal—all of which are crucial for settling conflicts—have been declared unlawful and heathen. According to elders, Christians treat holy sites disrespectfully and disparage them. Swearing stones were taken out of a holy public space in one hamlet where fieldwork was done by fundamental Christians who thought they were the objects of demonic spirits.

Another challenge to this tradition arises from the modern legal system. While it is widely acknowledged across the country that customary punishment mechanisms play a vital role, there is sometimes tension between the modern legal system and customary institutions. Many civil cases that are sent back from the courts can be handled by traditional dispute resolution organizations. However, some customary decisions are invalidated when brought to court. For instance, the modern legal system criticizes customary punishments like fines, beatings, executions, ostracism, and expulsion as human rights violations. Ethiopian law acknowledges indigenous institutions as long as they do not contradict the country's Constitution, do not violate international human rights standards, and all parties in conflict agree (Epple, 2020). Hence, according to Gebre (2020), customary laws in Ethiopia are under pressure from state law. Interference from contemporary courts is endangering the independence of indigenous institutions. As a result, the modern system runs the risk of abusing and exploiting the judgments made by conventional institutions. Elders in the study area have expressed worry about cases in which contemporary courts have reversed their rulings. The elders' authority to decide on some issues has been seriously weakened as a result. Elders have even been imprisoned in certain instances for their role in punishing criminals who had implicated them in court.

4. CONCLUSION AND RECOMMENDATIONS

The Konso people's traditional conflict management methods are closely related to their social life. The adjudication process in the mechanism of conflict management relies on specific principles, such as submitting the case, arranging a meeting, implementing punishment, reconciliation, and purification. Most often, the Konso people address unidentified incidents through swearing and curses, necessitating supernatural intervention. The severity of the offense determines the level of punishment, ranging from simple verbal warnings to the death penalty. The main purpose of the punishment is to provide a lesson for others and restore social harmony. However, the system is currently facing various internal and external threats, including the neglect of the younger generation, which is reflected in the erosion of traditional social values, norms, and beliefs; the spread of Christianity; and threats from the modern court system, which sometimes reverses the decisions of elders.

Finally, the article emphasizes the importance of properly socializing children to value and respect the values, norms, and beliefs of their community. Additionally, the modern legal system should recognize local institutions of conflict resolution as an alternative system, without abusing or exploiting them.

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