

## 5. The handling of homicide in the context of legal pluralism

### Cooperation between government and customary institutions in the Gamo highlands

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*Temechegn Gutu*

#### Introduction

In the Gamo highlands, as in many parts of Ethiopia, customary law continues to be applied, even in areas where the constitution does not allow it. The current study attempts to understand how the Balta community in the Gamo highlands handles homicide and makes use of the availability of parallel legal systems: the customary and state law.

In the Gamo worldview, taking human life is believed to be *gome* – a transgression of a social norm or sin that leads to the pollution of the wrongdoer and can cause misfortune, disease and natural calamities. Therefore, when someone is killed, a ritual of purification is enforced to cleanse the wrongdoer and to restore the social order violated by the act. While customary law perceives homicide as an issue that affects the whole group and therefore emphasizes the restoration of normal social order between the families and clans of the slayer and the deceased, state law defines it as an individual wrongdoing and punishes the criminal.

While the Gamo people's philosophical position in relation to homicide sets its customary legal system apart from the formal state law, this chapter shows that the two legal systems work together in the process of handling homicide cases in a number of different ways. The cooperation between the police, the *ogade* (mediator between two or more communities), and the elders of the community in the collection of evidence is a case in point. Moreover, based on the findings, it seems that the attention given to reconciling the victim's and the slayer's sides in the customary dispute settlement process makes an indispensable contribution in restoring and maintaining peace and harmony in the community, an effect that is also valued and supported by government officials.

Legal anthropology in the colonial context often viewed state and customary law as co-existing but separate areas of authority and adjudication, which used

different procedures rooted in distinct moralities. Recent studies have conceptualized the interplay between state and customary law in increasingly sophisticated ways: seeing each as pursuing its own interests and creating a complex hybrid of overlapping legal jurisdictions (Mann and Roberts 1991:264). However, the existing body of knowledge on this issue is still limited.

Many scholars from different backgrounds have studied the indigenous conflict resolution mechanisms that Ethiopian societies in different regions have developed (Donovan and Getachew 2003, Gebre *et al.* 2011, 2012; Pankhurst and Getachew 2008, Dejene 2002, Ayalew 2012). Gonfa (2014), for example, reported that among the Oromo people, the court, police and the prosecutors encourage conflicting parties to resolve all simple criminal cases through their traditional *jaarsummaa* (elder's council) system. With the consent of the conflicting parties, such cases are formally referred to the elders with an appeal to resolve the conflict and report the result. Some authors have demonstrated that formal and customary institutions are working closely on homicide cases, despite the fact that the law stipulates they should be handled exclusively by the state courts. Esayas (2015:104–108) has shown that, among the Gofa, the council of elders is closely cooperating with the police, the prosecutors and the court to provide evidence or witnesses in, for example, homicide cases.

However, only a few anthropologists are engaged in comparative studies of customary law and the coexistence of customary and state law (see Gebre *et al.* 2011, Alemayehu 2004). This chapter attempts to contribute to the scientific knowledge on legal pluralism in Ethiopia from an anthropological perspective by exploring the experiences of the Balta community of the Gamo highlands in south Ethiopia.

## The Gamo people

The Gamo ethnic group lives in Gamo Gofa Zone in the Southern Nations, Nationalities and Peoples Regional State (SNNPRS). Predominantly, they live in nine districts of the zone and its capital, Arba Minch. The term Gamo refers to both the people and the land where they live (Gebreyohannes 1993 E.C.).

Much of the Gamo territory is highland, where the people grow *ensete* (false banana), barley, wheat, peas, beans, potatoes and cabbages. In some lowland areas they herd cattle and grow sorghum and maize (Freeman 1999, 2001). *Ensete* is a staple food grown across the highland communities and every house in the highland is surrounded by an *ensete* grove. However, recently introduced cash crops, such as bananas, mangos and avocados, have become the main source of livelihood in the lowlands. Besides agriculture, weaving is also an important activity in many parts of Gamo (Getaneh 2014).

The Gamo people have more than 200 clans, and Gamo society is further subdivided into different social classes or strata, some of which are based on occupation and descent, including farmers (*malla*), craft workers (*mana*, *tsoma* or *digela*) and slave descendants (*ayle*) (Arthur 2013, Bosha 2013, Weedman 2013, Olmstead 1975, Freeman 2004).

Before the introduction of Orthodox Christianity to the highlands in the fifteenth century, the Gamo people followed only their own belief system (Getaneh 2014). Despite the influence of Christianity, the local people managed to maintain their own beliefs until the twentieth century, when Protestant Christianity was introduced to Gamo with the help of the Sudan Interior Missions (SIM), who visited the area in the 1920s and 1930s (Freeman 2004).

The Gamo highlands have some forty self-administered communities (*dereta*)<sup>1</sup> (Bureau 2012). According to Freeman (2004), every *dere* has its own *kawo*<sup>2</sup> (hereditary ruler), its own *halaqa* (initiate in small-sized *dere*), *huduga* (initiate in medium-sized *dere*) or *maga*, as well as its own *dubusha* (assembly place), where the public assembly (*dere dulata*) meets to discuss communal matters. Each *dere* also has its own *ogade* (spokesman),<sup>3</sup> responsible for inter-*dere* affairs and official communication with other *dere* on various socio-economic and political issues. As such, each *dere* is a self-administrating unit. Though there exist many parallels, there are also slight differences in the way conflicts are handled and resolved in each *dere*.

The Gamo highlands were incorporated into the Ethiopian state in the second half of the nineteenth century. As stated by Freeman (2004), knowing that their neighbours found it difficult to withstand Menelik II's forces, the Gamo people quickly submitted to the emperor's soldiers in 1897, though – as several Gamo elders recounted – there was some unorganized resistance in different places. Following the subjugation of the Gamo, the soldiers established their administrative centre at Chenchä, a small town that served as the capital of Gamo Gofa Province before the centre was shifted to Arba Minch in the 1960s (Freeman 2004:37). Since their incorporation into the Ethiopian state, the Gamo have experienced many changes in their socio-political and economic life (Freeman 2004, Zenebe 2014, Mahe 2013). These can be summarized as changing power relations, an increase in religious alternatives, and improvements in transport and trade (Freeman 2004:31–38).

Under imperial rule (1897–1973) many local dignitaries received new titles (Freeman 2004:31–32). In Gamo, the *kawo* became *balabat* – a title given to the landlords

1 *Dereta* is the plural form of *dere*.

2 Zenebe (2014), citing the Gamo Gofa Zone Culture and Information Department, argued that the title of *kawo* or *kati* was introduced in Gamo indigenous governance in the sixteenth century. My own research in 2008 E.C showed that not all Gamo *dereta* were ruled by a *kawo*: ten *dereta* were ruled by a *halaqa* and Ganta was ruled by a *kati* (king).

3 In some *dere* this office is called *gaanna*.

responsible for managing a territory and collecting tax from tenants. As such, the local leaders retained their local power but, at the same time, had to be loyal to the centre. In turn, they were given certain different privileges and positions, becoming, for example, juridical officials or being put in charge of the local police. While, in principle, all criminal cases were to be brought to the newly established courts, at first they were heard by the *balabat* (Bureau 1978:282, Abeles 1981:62).

In this way, the people of the Gamo highlands were exposed to the state legal system from the early years of their incorporation into the Ethiopian state. However, the newly introduced courts and police were not positively accepted by the local people (Bureau 2012). Rather, as Bureau has described, there was little interaction between the newcomers and the local population: the Gamo people generally avoided visiting the new markets established by the newcomers and continued to use their own courts and Orthodox churches. In terms of settlement, the northerners were confined to garrison towns while the local people stayed in the rural areas (Bureau 2012). Besides Chenchä, the main administrative centre of Gamo, several smaller towns – such as Ezzo, Gulta, Gerese, Baza and Kamba – were founded elsewhere in the highlands as local administrative outposts; each had its own state institutions (Freeman 2004).

The Balta community of the Gamo highlands was exposed to this new administration through the garrison town of Kamba, which is some 15 km away from the Balta area. While the regimes of emperors Menelik II and Haile Selassie were based on indirect rule, when the Derg regime took over in 1974, many local institutions central to the life of Gamo people – such as the public places (*dubusha*), ritual places, and the traditional palace (*gadho*) – were destroyed. Since the coming of the FDRE government to power in 1991, many Gamo institutions have been revitalized (Zenebe 2014:31).

The research for this chapter was undertaken in Balta *dere*, one of the eleven *dereta* in Kamba district of Gamo Gofa Zone. Balta was chosen because traditional institutions for conflict resolution, including those for cases of homicide, are still central to the life of the local people and now work side-by-side with state law. The aim is to understand how this community handles homicide cases in the context of plural legal system, with a focus on the cooperation between government and customary institutions.

## The traditional political and legal system of Balta *dere*

In the Gamo political system, each *dere* has various offices with specific duties that are hierarchically structured. As mentioned above, although they are generally similar, there exist slight differences between the different *dere* (see Freeman

1999, 2000; Getaneh 2006, Wondimu 2010, Zelalem 2016).<sup>4</sup> In the following I will describe the political offices as found in Balta and most other *dere*.

At the top of the hierarchy is the *kawo*, a politico-religious leader who is often referred to as 'king' in the literature (Abeles 1981, Freeman 2004, Zelalem 2016). Succession to this position is hereditary and usually governed by the rule of primogeniture. The office holder has different administrative and religious duties. Accordingly, the *kawo* is a senior office holder politically and a senior sacrificer in Balta traditional religion. He makes the final decisions in the internal matters of the community of his jurisdiction, adjudicates over serious crimes and administers the territory (Freeman 2004, SNNPR Council of Nationalities 2008 E.C, Gamo Gofa Culture and Information Department 2004 E.C).

Below the *kawo* is the *huduga*, a politico-religious position. The title is acquired through an initiation ceremony. The *huduga* is responsible for governing the sub-administrative unit within the *dere* and making sacrifices on behalf of the community under his jurisdiction. The office holder is accountable to the *kawo* and his community. Below the *huduga* is the *ogade* (also: *gasaa maga*), a kind of spokesman or mediator between different *dere*. The position is hereditary and passes from father to eldest son on the father's death. The *ogade* is responsible for handling all matters concerning inter-*dere* affairs, more specifically inter-*dere* conflict and homicide mediations. The *ogade* is followed by the *maga*, a kind of mediator within one *dere* who has to handle conflicts and homicides within the *dere*. Working closely with these officials on multiple social issues is the *dere cima* (council of elders). It plays a central role during social gatherings and public assemblies and works closely with the *maga*, the *ogade* and the police on conflict resolution.

## Conceptualizing conflict and homicide in Gamo

As explained by one of my informants,<sup>5</sup> the term 'conflict', *ooshsha* in the Gamo language, refers to a condition in which disagreement over a particular issue has occurred between two or more individuals or groups. Conflicts in Gamo may be inter-personal, inter- and intra-family, inter- and intra-clan, inter and intra-*dere*. Their causes lie in the economic, political and social life of the people. Whether interpersonal or at the inter-group level, conflict is perceived as a group issue; and a conflict between individuals from two families, clans or *dere* can easily become a

4 The reason for the differences in the traditional political structure (but also some other aspects of life) of the *dereta* is that the Gamo *dereta* used to be relatively autonomous.

5 Wondifraw is a native Gamo from Dorze village and an experienced researcher in the Gamo Gofa Zone Culture and Tourism Department. He was field assistant in the research project entitled 'Shared Values of the Gamo, Gofa, Gidiccho, Zayse and Oyda ethnic groups' in 2015–2016.

conflict between the respective groups. Less serious crimes can be settled through mediation and compensation payments, after which social peace is re-established between conflicting parties. Homicide cases within Gamo<sup>6</sup> are handled differently, as killing someone from the same ethnic group is believed to lead to a state of pollution for the perpetrator that has the potential to affect the well-being, health and fertility of both humans and animals belonging to his family and clan. Being *gome* (polluted) is also believed to affect the natural order. As such, it can cause drought, disease and, therefore, harm to the whole community. Thus, the homicide of a Gamo by another Gamo must be followed by ritual purification of the slayer. The procedure for handling intra-*dere* homicide is slightly different to that used for inter-*dere* homicide.

### Intra-dere homicide

In the past, when homicide occurred within one *dere*, the slayer reported the case to his/her family and then took refuge in the *kawo gadho* (residence of the *kawo*), seeking protection from the deceased person's family, who might come for revenge. Not only the slayer but also his relatives would take refuge in another place and stay in exile until the families had been reconciled. Nowadays, once the slayer's family have reported a case to *maga*, the perpetrator is kept in the police station rather than in the *kawo gadho*. Then the reconciliation process between the two families is initiated through the *maga*.

In consultation with the *kawo*, the *maga* identifies the elders of the community (*dere cima*) with whom he will progress the reconciliation ritual. With the selected elders, he then travels to the residence of the deceased person's family, where they explain that the crime constitutes a violation of the customary law (*dere woga*) and, as such, is an unacceptable act. They also condemn the homicide as *gome*. Further, they outline the position of the slayer, his family and clan, who regret what has happened, feel guilty and wish to reconcile. It is common for the family of the deceased to initially reject the request to forgive the killer. However, the social norm obliges them to accept in the end. As Solomon, a retired teacher from Kamba town stated, failing to accept the *maga*'s request to forgive the family of the slayer potentially brings *gome* to the family members of the deceased person, so they eventually accept.

Once the family of the deceased has agreed to reconcile, the ritual of purification and re-integration of the slayer's family and clan into the society is carried out on the *dubusha* ('public meeting place'). After this, they can return to their houses

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6 This applies only when a Gamo kills a fellow Gamo; killing a member of a group considered an enemy turns the killer into a local hero and brings fertility to him.

and continue their lives as before. After finishing his time in prison, the slayer himself can never return to his *dere* and has to settle elsewhere.

### Inter-*dere* homicide

Adala, the *ogade* of Balta *dere*, explained that when homicide occurs between two *dere*, the case is handled by the *ogade* through *ayidama*, a customary mechanism for resolving conflicts between the different Gamo communities. *Ayidama* is carried out in special places, also called *ayidama*, which are located at the boundary between two adjacent *dere*. These places exist at every corner of each *dere* so that local people do not have to travel far.<sup>7</sup>

The reconciliation process is initiated by the *ogade* of the slayer's *dere*. He rubs his body with mud and ashes before he travels to the *ayidama*, thereby expressing that a particular group in his community (i.e. the culprit and his entire family and clan) is impure. He walks on his knees to show that someone from his group has done wrong and therefore cannot stand upright and be equal with those who are free of wrongdoing. Standing on the *ayidama* he shouts, 'I made a mistake, I killed a person, I am dirty, please forgive me!' until his counterpart from the deceased person's side approaches him. The *ogade* from the deceased person's side cannot refuse to meet the other *ogade*, as it is believed that this would turn him *gome*. Upon his arrival, he is received by the *ogade* from the slayer's *dere*. While on the *ayidama*, they discuss the issue with each other and agree on a date for resolving the case. Once back home, the *ogade* from the *dere* of the deceased person informs his community about his counterpart's request and convinces them to accept. On the agreed date he takes them to the *ayidama*, where they meet the other *ogade* and the slayer's family. From the first contact between the two *ogade* until the re-integration of the slayer into the community, all the steps in the process of resolving inter-*dere* killing cases take place on the *ayidama*.

When the purifying ritual is performed, a member of the *maakka* clan – which has spiritual power to purify wrongdoers – spears the abdomen of a live sheep. When the chyme comes out, the clan head of the slayer is ordered to touch it with his foot. While approaching the chyme, he must hide himself from the public gathered to attend the peace-making ceremony.<sup>8</sup> Then the clan head of the deceased

7 There are five *ayidama* places at the borders of Balta *dere*: Mucalo (between Bonke and Balta), Eshata (between Kamba and Balta), Maazee (Sorba and Balta *dere*), Gongolo (Balta and Kole) and Qeqello (Haringa and Balta).

8 This man should not expose himself to the general public before the ritual is accomplished. If he is seen, he might be killed by the family of the deceased person out of revenge. If he or any relative of the slayer are killed before the clan head has touched the chyme of the speared sheep, the ritual ends immediately as it is believed that both families have thus equally harmed each other and blood has been compensated with blood.

person is told to touch the chyme, but he does not have to hide himself from the public.

After this, the *maakka* cleanses the family and the clan of the slayer by using *er-cho*, a kind of grass, to purify the wrongdoers and their relatives from *gome*. Finally, compensation (*susaa qantso*) – currently about 150 ETB – is given to the relatives of the victim for the spilling of his blood. The family of the slayer do not hand the compensation payment directly to the relatives of the victim; both families are instead represented by their respective *ogade*. While handing over the compensation, the *ogade* of the slayer walks on his knees, kissing the ground until the money has been accepted by the *ogade* of the deceased person. This ritual cleansing is crucial for re-establishing peace and thereby allowing normal social interaction between the families of the slayer and the deceased. It symbolizes the accomplishment of the resolution and is still performed today; although, while traditionally the slayer had to hide somewhere until the process was over, today it is done while he is in police custody or prison.

## Prevalence of government institutions in the study area

Administratively, Ethiopia is divided into nine regional states and two city administrations. The regional states are sub-divided into zones, districts (*woreda*), and *kebeles* (smallest administrative unit) in order to decentralize power to the grass roots level as specified in the 1995 FDRE constitution (FDRE 1995).

As noted earlier, Balta *dere* is located in Kamba district in Gamo Gofa Zone. In Kamba district, there are a number of government institutions, including offices for the police, women and children's affairs, education, health, social affairs, agriculture and rural development, culture and tourism, and the court. A number of schools, police stations and posts, a court, health centres and posts have been established under these different offices in order to ensure that their services are accessible to the communities. Over time, the traditional geo-political administration of the Gamo highlands has undergone some significant changes. Accordingly, the former Balta *dere* was restructured and now consists of nine *kebeles* in the current administrative structure of Kamba district. However, as the local people continue calling it Balta *dere*,<sup>9</sup> I have decided to use this name throughout this chapter to refer to all nine *kebeles*.

9 In most cases, but not necessarily all, the *dere* are bigger than the *kebele*. For instance, like Balta *dere*, which consists of nine *kebeles*, Dorze *dere* consists of thirteen *kebeles*.



Several different government agencies operate at the *kebele* level in Balta *dere*, including the *kebele* administration, the *kebele* social court,<sup>10</sup> the *kebele* militia, and schools, a health centre and police stations have been established to serve the local communities. These agencies are headed by various personnel, such as the *kebele* chief, the social court committee, local militia, development agent workers, teachers, nurses and policemen. The majority of them are from Balta and only a few are from other *dereta* in Kamba district or other parts of the Gamo highlands. Specifically, the chairman of the *kebele*, local militia, social court workers, teachers, nurses, development agent workers and the policemen are from the Gamo ethnic group. As one informant stated, the duties of these personnel and institutions are highly integrated. As an example he mentioned that the school principal participates in *kebele* administration affairs in the belief that he should participate in the affairs of the community in which the school is established.

## Cooperation between government and customary institutions in handling homicide

In collaboration with traditional leaders and elders, state institutions at different levels engage directly or indirectly in conflict resolution for crimes ranging from the minor to the serious, including homicide. As mentioned above, customary institutions have continued to exist side by side with government institutions. As I was informed by several policemen in Kamba and during interviews with local authorities in Arba Minch, state institutions need to cooperate with customary institutions and vice versa to resolve certain conflicts. In the following, the factors that make their cooperation necessary as well as the areas in which they support each other will be described in more detail.

### Factors contributing to cooperation

#### (i) Preference for customary mechanisms

As is the case in many other places in Ethiopia (Gebre *et al.* 2011, 2012; Pankhurst and Getachew 2008), customary conflict resolution mechanisms in Gamo continue to be preferred over state institutions by the local population. The accessibility, restorative power and participatory nature of the Gamo people's customary in-

10 The social courts can be categorized as what Ayke and Mekonnen (2011:201–215) call 'semi-formal institutions', that is, institutions that have both formal and informal features. They seem formal since they are established by proclamation, but look informal since the so-called 'judges' are untrained and receive no salary.

stitutions, as well as the transparency of their processes and impartiality of the decisions made, all work to make them preferable to state institutions.

The restorative effect and potential to bring sustainable peace is achieved through the ritual of purification and reconciliation. My informants emphasized that the families of the slayer and deceased family can engage in the same social arena after the ritual: members of the two families can intermarry and attend the same market without any fear, and the family of the slayer can also freely travel in the *dere* of the deceased person.

The participatory nature of customary conflict resolution lies in the fact that, for example in the context of homicide, all family members from both sides take part in the reconciliation process. As crime itself is perceived at the collective level, its resolution requires the participation of all family and clan members, who are represented by their respective clan heads.

The transparency and impartiality of the customary institutions stems from the fact that, throughout the whole process of reconciliation, the discussions are carried out in public places, where every witness presents their evidence in the presence of the public. Both victim and perpetrator are given an equal chance to talk about the case. Nothing is hidden from the public on this stage, and this forces the traditional leaders and elders to be impartial. As both sides receive the decision after they have contributed to the discussion, it is felt that there is no winner and loser.

Finally, when compared to the state institutions, customary institutions are more easily accessible to local communities. Travelling to and staying in towns in order to access a state court is costly, while customary reconciliation takes place locally, on either the *dubusha* or *ayidama*.

State agents have duly recognized the local preference for customary law and have also noted that it is difficult to restore peace and ensure stability in the area if customary institutions are excluded. Understanding how much the customary institutions are integrated into the local culture and recognizing the importance of their social capital in peace-building processes, the state institutions collaborate with customary institutions in the resolution of conflict in general and homicide in particular.

## (ii) Shared interest in resolving cases of homicide

Both state and customary institutions perceive the act of homicide as the violation of a norm. Views expressed by local elders and policemen revealed that neither the local culture among the Gamo nor state law tolerate homicide. As described above, among the Gamo the act of homicide is a violation that results in ritual pollution (*gome*) and endangers the whole community if it remains unresolved. The government rates homicide as a violation of state law and a disturbance of social

order. As a result, both legal systems sanction any act of homicide on the basis of certain normative orders, although the kinds of sanctions imposed are different.

The numerous interviews I conducted with local elders and state agents show that, whenever homicide cases are reported, both customary and state institutions intervene in order to settle them. Representing government institutions, the police and local militia arrest the slayer and keep him at the police station until the court comes to a final verdict. Representing customary institutions, local leaders and elders get involved and engage in reconciliation efforts with the aim of healing the relationship between the families of slayer and deceased. One policeman expressed how working with local agents enables the police to be more effective:

We [the police] are from Gamo and we understand that crime is not limited to an individual perpetrator. It is a matter of the family and the clan of the criminal. Therefore, the reconciliation process should address the needs of all stakeholders. In this context, elders and traditional leaders approach the crime to reconcile the family and their clan. Quite the opposite, in our context [government institutions and state law], crime is perceived as a matter of an individual criminal and thus we have to punish the individual. (Summary of an interview, 26 October 2017)

As can be seen, while sharing an interest in avoiding and resolving conflicts related to homicide, in practice the state and community deal with different aspects of the same problem. While state law deals with the individual criminal, the Gamo elders are concerned with healing the social ill that was caused by the slayer at the group level. Thus, when a case goes to court, the duty to reconcile and purify the family and the clan of the slayer and the deceased rests on the shoulder of the local actors. As the problem is thereby addressed both at the individual and the communal level, ideally, the two systems complement each other.<sup>11</sup> Although, it cannot be denied that in practice there can be tension and conflict over areas of responsibility.

## Areas of cooperation in handling homicide

### (i) Handover of the slayer

The cooperation between customary and state institutions in the handling of homicide can be observed at different stages from investigation to the conviction of a wrongdoer, and has been confirmed during interviews with local elders and traditional leaders, as well as policemen in Kamba town, who particularly appreciate the efforts of the traditional leaders. Adala, the *ogade* of Balta *dere* explained how – under pressure from the government side – he and others made the handover of a slayer to the police a precondition for the initiation of the reconciliation process:

11 See Lauth (2000) who emphasizes this positive impact of legal pluralism.

In the past, after killing a person most of the time a slayer took refuge in the home of the *kawo* to escape revenge from the deceased person's relatives. Nowadays, the government is taking care of slayers by hiding them in prison, which is a safe place for them. We are working with the police in facilitating the handover of the slayer, and do not initiate the reconciliation before this.

The police and other members of the peace forum have told us repeatedly that we [the traditional leaders] are not allowed to initiate reconciliation for serious criminal cases like homicide before the transfer of the slayer to the police or local militia. As a result, in collaboration with a slayer's family, we identify his whereabouts and facilitate his handover to the police in case he hides in order to initiate the reconciliation process. (Summary of an interview with Adala, 20 February 2017)

The following case illustrates such cooperation in the handover of a criminal.

Seo<sup>12</sup> was a young man from Balta and aged 25. He was sentenced to seventeen years in prison by the Arba Minch Area High Court for killing a man from a neighbouring Kamba *dere*. During my interview he told me that he had already served four years in prison office in Arba Minch. After killing the man, he had sent word to his parents through a messenger about what he had done, in order to prevent a possible revenge attack by the family of the deceased person. He spent the whole night in the nearby forest and oversaw the on-going situation from there. After understanding that the situation was difficult, he decided to take shelter with relatives in a remoter place. However, after a week the police came and took him to the police station. (Summary of an interview with Seo, 29 April 2017)

Seo's father recounted the hardship the family underwent until things were settled:

I don't want to remember those horrible months [referring to the six months he had to take refuge with his family far from his residence]. I lost everything, houses, cattle, sheep, horses, grain, everything I had accumulated since my childhood within less than an hour. A week after the killing happened, two policemen and militiamen visited me with the Balta *ogade*. We discussed and agreed on how to initiate the reconciliation process, so I told them where my son was hiding. The next day I heard that the police had taken him to the police station. Immediately, the *ogade* initiated the reconciliation process. Thanks to everyone involved, the policemen, the militia, the *ogades* and the *dere cima*, we managed to get back to our residence after six months and pick up our life there from scratch. Once he is released from jail, my son will also join and live with us [referring to his family, community and clan], and nothing will happen against him since we have already finalized everything. (Summary of an interview, 25 October 2017)

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12 Pseudonym

The case illustrates how local actors – that is, the *ogade* and the family of the slayer – collaborate with state agents in identifying the whereabouts of the slayer and thereby help prevent the post-homicide conflict escalating. It also shows the great social pressure put on the family, whose members are ostracized along with the slayer and forced to leave their home until reconciliation is over. Transferring the murderer to the state institution is not really a matter of choice for them but a duty, as it has become a precondition for the reconciliation process to begin.

## (ii) Identification of the criminal

Identification of the slayer is another area in which state institutions depend on the cooperation of the local community. By Gamo custom, people meet to take an oath (*chako*) at the *kawo's* public meeting place (*kawo dubusha*) in order to identify a slayer. Assuming that he is at the assembly, the traditional leaders and religious experts (*demutha*) instruct and advise the slayer to disclose himself. Most of the time, as I was told by my informant Adala, slayers disclose themselves, fearing that they might be cursed if they hide their identity. If no one gets up to admit their guilt, the clan leaders and elders go back home for a few days to consult their respective clan members before they resort to performing a public curse at the meeting place. If it comes to that, all the suspected individuals are presented in front of the public. They are again strongly advised to speak the truth. This time, if no one admits the wrongdoing, the elders sit down in two rows opposite each other while the religious specialist speaks as follows:

Look at the God in the universe, look at the *dubusha* where we are sitting, carry the spear and cross in between the public body sitting covering their faces in two rows.

With this speech, the expert is saying that, while no person may have seen what the slayer did, God in the universe and the ground on which the slayer moves have seen what he did and will judge him for it. The suspects are then asked to walk between the two lines of seated elders; the assumption is that the innocent will do so, while the real slayer will fear to pass between them and throw himself to the ground, asking forgiveness to avoid being cursed by passing through knowing their guilt.

This traditional way of identifying a culprit is now being used by state officials, who attend the oath-taking ceremonies. Policemen, local militia and security personnel document such events with photos and video, assuming that they lead a suspect to speak the truth.

## (iii) Preventing revenge and further escalation

As seen in the above case, the family of a deceased person will seek to avenge the killing of one of their number. Sometimes, if the situation allows, revenge attacks even happen during the reconciliation process. This inevitably leads to further es-

calation, so the police, local militia, local people and the mediators (*maga*, *ogade*) work together to prevent this. The policeman who led the taskforce in Seo's case said that he often worked with traditional leaders and other potential stakeholders in resolving serious criminal cases like homicide. As he recounted:

It happened four years ago. I was assigned to lead the taskforce established to investigate and resolve the case. We had learned from the local people that the killing happened around 7 pm. After collecting necessary evidence from the crime scene, the body of the deceased person was sent to Addis Ababa for medical investigations.

At about an hour after midnight, we received the information that there was a security problem in the village of the slayer, and that his family was being attacked. Together with local people, we managed to control the situation and forced the relatives of the deceased to return to their village. Then I ordered all of the policemen in the taskforce and the local militia to arrest the slayer, but we could not find him.

After one week, four members of the taskforce together with the *ogade* contacted Seo's father in the remote village where he had hidden. We offered to help initiate the reconciliation process through the *ogade* if he would tell us where his son was hiding. He agreed and on the basis of his genuine information we were able to arrest the slayer. As promised, the reconciliation process was initiated soon after that.

From the very beginning the police officers concerned attended every step of the reconciliation process with three missions: the first mission was to collect additional information about the reasons behind the killing from the discussions held by participants: whether it was intentional or not and how it was actually done. The second mission was to ensure that the reconciliation process was undertaken only for the purpose of restoring the social peace between the families of the slayer and the deceased, rather than to punish the slayer. The third mission was to protect the family of the slayer from an unexpected attack during the ritual of re-integration that would take place in the presence of both the slayer's and deceased person's family.

The whole process took more than six months until the final reconciliation and re-integration ritual marked the completion of my mission of restoring peace and order. (Summary of an interview, 26 October 2017)

The police officer's account shows the direct cooperation between his office and the traditional leaders, who – in combining government pressure and the ritual power of the *ogade* – are able to enforce the handover of a slayer as well as the start of the reconciliation process. Their common interest here is the re-establishment of social peace between the two families/clans, as well as the prevention of revenge attacks that would result in further killing and destruction of property.

## Summary and conclusion

As in many non-western societies, among the Balta community in the Gamo highlands, customary law continues to be practised alongside state law, even in cases of homicide. The findings of this study show that, despite certain contradictions in the values and practices underlying customary and state laws, their relationship displays complementary and cooperative elements when it comes to their application.

Looking specifically at the case of homicide, it was shown that the cooperation between customary and state laws is based on a common view that intra-ethnic homicide<sup>13</sup> is a crime and should be sanctioned. While homicide is an individual matter demanding the punishment of the murderer according to state law, it is locally viewed as a crime that affects the wider social networks of slayer and victim, which makes a ritual restoration of their relationship indispensable. Putting their resources together, state and local community cooperate in identifying, arresting, sanctioning and protecting the slayer, and in preventing further escalation.

The cases shows that, at the local level, the resources of both legal systems can be used productively and in the interests of all the parties involved if enough space is given for flexibility, mutual understanding and tolerance of difference.

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13 Inter-ethnic homicide is entirely handled by state institutions.

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