CHAPTER - ONE

INTRODUCTION

1.1background of the study

Experiences in many countries indicate that the formal criminal justice system has not been achieving its objective of controlling crime.[1] Dissatisfaction with the process and outcome of the formal criminal justice system has led to the quest for alternative way of addressing the problem of crime and its consequences.[2] In the course of time, a new approach known as restorative justice has emerged.[3] The new approach, restorative justice is an approach to justice which gives emphasis on the participation of the victim, the offender and the concerned community, rather than applying serious legal principles or punishing the offender.[4]Currently, there is a move towards the importance of restorative justice process in the world.[5]

The 1996, Criminal code of Canada incorporates restorative justice on the land mark decisions between R.V Gladue vs. R.V proulx case said,''(r)restoring harmony involves deterring sentences that responds to the needs of the victim, the community, and the offender.''[6] In South Africa also, victim – offender conferencing started to develop in the early 1990's.[7]The child justice Bill issued by the south African parliament in the end of June 2008 is the first regulation to mention victim-offender conferencing in order to used as an alternative, complement and a

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[1] *Aberra Degefa, justice that heals and restores: the potential of embracing borana Oromo indigenous justice system alongside the Ethiopian formal criminal justice system*, for the partial fulfillment of doctor of philosophy degree in social work, AAU, June 2015, see the abstract. (Here in after, Abera, justice that heals and restores).
[2] *Ibid*
[3] *Ibid*
[4] Parade, a new kind of criminal justice, accessed on July 29,2009,p.6
[5] Ibid
[6] *Getu Edusa, mediating criminal matters in criminal justice system: The prospects of restorative justice*, oromia law journal, 2012, vol 1, No1, p.124. (Here in after, Getu, mediating criminal matter in Ethiopia).
[7] *Ibid*

sentence.[8] Germany also recognized restorative justice in its penal and criminal procedure code by means of compensation scheme. [9]

As far as the Ethiopian context is concerned, new legislations including the criminal justice policy, the draft criminal procedure code and the community service proclamation show the prospects for implementing restorative justice system in the future. The 2011 Ethiopian criminal justice policy has introduced the idea of restorative justice in the criminal justice administration.[10] According to the criminal justice policy, the application of restorative justice to criminal cases can only juvenile offenders are made by the reference of public prosecutor or the court.[11] In the context of the criminal justice policy persons who are able to settle their cases by restorative justice are non–recidivist offenders and those offenders who committed/omitted crimes entailing simple imprisonment.[12]Although we have all this prospects those mentioned new documents and legislations has not been interred in to force. In other words, the formal criminal justice system does not give any legal recognition for restorative justice. In this regard, article 34(5) of FDRE constitution recognizes family and personal matters to be adjudicated by customary and religious laws where parties are deserved and consented. However, with regard to criminal matters the formal criminal justice system needs serious and careful evaluation to introduce restorative justice mechanisms within the system by protecting parties' autonomy by protecting their human rights.[13]

Basic principles adopted by the United Nations in 2002 encourage states to develop guidelines and standards to govern the use of restorative justice

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[8] *Ibid*
[9] *Id p.125*
[10] *The criminal justice policy of the federal democratic republic of Ethiopia*, council of ministers, February,2011
[11] *Wondmagegn Metiku: The role of traditional and informal justice system in promoting access to justice*: A comparative study,p.141-142
[12] *Ibid*
[13] *Muradu Abdo, AAU faculty of law and Gebreyesus Abegaz, Mekele university Faculty of law, customary law teaching material*:2009,p.119

programs.[14] In 2005, the declaration of the eleventh UN congress on prevention of crime and the treatment of offenders called member states to recognize the importance of further developing restorative justice policies, procedures and programs.[15]

As far as the researcher's knowledge is concerned, there are researches done related to this study area. Endalew Lijalem conduct thesis entitled as "A move towards Restorative justice in Ethiopia: Accommodating customary dispute resolution mechanisms with the formal criminal justice system".[16] Besides, he tried to address the place of restorative justice in the formal criminal justice system, the compatibility of Ethiopian customary dispute resolution mechanisms with restorative justice values and principles as well as the prospects to implement restorative justice in Ethiopian criminal justice in the near future.[17] With regard to the place of restorative justice, he argued that the Ethiopian criminal justice system focused on the offender and making him responsible. Therefore, the offender does not have a chance to re-integrate into the community, which creates smooth relation with them. In addition, victims of the crime are not the concern of the Ethiopian criminal justice system.

Finally, he recommends that the formal criminal justice system should be amended in such a way as to giving space for CDR mechanisms. In addition, he recommends that victims, offenders and the community should be the concern of the Ethiopian criminal justice system.[18]

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[14] *Porter, Abbey, J, restorative justice takes the world stage at UN crime congress*. (205), p.2, accessed at: http: // www.real justice. orgUN_crime_congress (last accessed, 29 July,2009 E.C)
[15] Ibid
[16] Endalew Lijalem Eneyew A move towards Restorative Justice in Ethiopia: Accommodating customary dispute resolution mechanisms with the criminal justice system ,LLM Thesis, University of Tromso, Faculty of Humanities, social sciences and Education, Spring 2013. (Here in after, Endalew, A move towards Restorative Justice in Ethiopia).
[17] *Id p.5*
[18] *Id pp.89-98*

However, Endalew failed to address the justification for the need to introduce restorative justice in Ethiopia. He also failed to address the possible challenges and he raises some points on the prospects to introduce restorative justice in the Ethiopian criminal justice system which called for further inquiries. In addition, he failed to discuss the matter comparatively with other jurisdictions that relevant experience can be obtained from them.

The other researcher dealing with restorative justice was Abera Degefa on the title "justice that heals and restores: The potential of embracing Borana Oromo Indigenous Justice system Along Side the Ethiopian formal criminal justice system."[19]However, his study constrained only in the particular justice system called Boron Oromo indigenes justice system with the formal criminal justice system of Ethiopia and provided his recommendation with its implication with social work practice.[20]Further, he did not assess his study comparatively with other jurisdictions that adequate lesson can be obtained from them. Even he failed to assess the need, prospects and challenges to introduce restorative justice in Ethiopia. However, this study is not restricted to a particular justice system. Rather, this study is all about introducing Restorative justice with its challenges and prospects in general. Hence, a certain customary dispute resolution mechanism has not been the subject of this study.

As I have discussed above still there are gaps to be further investigated. As a result, this study will investigate on such gaps and will contribute something on the existing knowledge on such particular issues as normally expected from a fundamental researcher. Hence, this study will attempt to Show the problem of the formal criminal justice system and recommending the possible scenarios to introduce restorative justice system in Ethiopia by gathering relevant information to obtain a lesson from other jurisdictions that have an experience of restorative justice.

[19]*Abera, justice that heals and restores, supra note* 1
[20] *Id* p.187

1.2 Statement of the problem

Restorative justice play an important role in the process of settling disputes and to meet the needs of the victim and the offender by providing information which intern facilitates their psychological healing.[21] Although the Ethiopia criminal justice system is dealing with crimes, it suffers from lots of limitations. Since the Ethiopia criminal justice system modeled in the western system and it was structured with the assumption that crime is considered to be the concern of the state rather than the concern of the victim and the community: and it is the states sole responsibility to respond it by basing retributive punishment.[22] Article 1, paragraph 2 of FDRE criminal code states that ‘’the code aims at the prevention of crimes by giving due notice of the crime and penalties prescribed by the law and should this be in effective 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. Hence, the criminal law of Ethiopia emphasis on punishment as an instrument to prevent the commission of further crimes. The Ethiopia criminal justice system fails to take steps to promote offenders to take accountability of their acts and do not give them the chance to correct wrongs they have committed.[23] The criminal justice system focus on punishment is said to be overlooking the sense of social relationships that exist in the social structure of the Ethiopian communities.[24] For instance revenge is actually accepted practice in all most all parts of the country. Hence, the mere punishment of the offender

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[21] *Zehr, H, Changing Lenses: A new Focus for crime and justice* (3rd ed.), Herald press, 2005, p.191.

[22] *Criminal Code of the Federal Democratic Republic of Ethiopia: Federal NaGarit Gazetta*, Proclamation NO.414|2004, Article23.

[23] *Macfarlane J, Working towards Restorative Justice in Ethiopia: Integrating Traditional Conflict Resolution System with Formal Legal System, Cardozo Journal of Conflict resolution,* 2007, vol.8, No.48, p.488.(Here in after called, Macfarlane j, working towards restorative justice in Ethiopia).

[24] *Ibid*

has not succeeded to eliminate the long standing cultural practice of revenge.

The criminal justice system exempts criminal matters from being community matters.[25] Although the community, family members of the victim and the offender are all consider being secondary and having needs directly related to the crime committed or omitted, the criminal justice system prohibited them an opportunity to participate in the process.[26]Delay of the administration of justice is also a danger to the formal criminal justice system.[27] This is because the longer the pretrial stage is the most probable that witness will disappear, circumstances will not be remembered and evidence, especially documentary evidence will be lost.[28]

Further, the criminal justice system has failed to achieve its intended objective. Hence, the FDRE criminal code set as goals prevention of crimes by giving due notice of the crimes and penalties, prevention of crime through deterrence and reformation as well as rehabilitation of offenders. However all this goals are failed to achieve practically. The result of failure to achieve its objective creates dissatisfaction of the society with the criminal justice system.

Thus, the absence of restorative justice in Ethiopia criminal justice system creates this entire problem. That is why the researcher is devoted to this study in order to find out something for the aforementioned problems by recommending the need to introducing restorative justice in Ethiopia taking a lesson from other jurisdictions.

1.3 Objective of the study

[25] *Mc cold, p, Restorative Justice: the role of the community, paper presented to the academy of criminal justice sciences annual conference,* Boston, 1995, p.2. (Here in after, Mc cold, Restorative justice, the role of the community).
[26] *Ibid*
[27] *Thehay weda, timely disposition of criminal cases, journal of Ethiopian law*, vol. xxiv no.1 July 2010.p.50
[28]*Ibid*

1.3.1 Main objective

The main objective of this study is to appraise the Ethiopian criminal justice system in order to study the need, prospects and challenges for introducing Restorative justice in Ethiopia.

1.3.2 Specific objective

This study specifically aimed at achieving the following specific objectives.

1. To investigate the experience of selected jurisdictions namely south Africa, Canada, and Germany having restorative justice and drive a lesson from them.

2. To examine the reason why introducing restorative justice is needed in Ethiopia.

3. Examine the place of CDR (victim offender mediation) mechanisms in solving criminal disputes in Ethiopia justice system.

4, To identify and examine the prospects and challenges for the introduction of restorative justice in Ethiopia.

5, to provide possible recommendations for problems raised in this study.

1.4 Research questions

1.4.1 Main (central) research question

Why do we need to introduce restorative justice in Ethiopia?

1.4.2 Specific question

1, why the Ethiopian criminal justice system is not effective in achieving its intended objective? And in what way it is designed to be effective?

2, is there any legal frame work to practice restorative justice in the formal criminal justice system in Ethiopia? If no, what will be the solution?

3, what are the prospects (opportunities) to introduce restorative justice in Ethiopia?

4, is there any danger to be encountered from the introduction of restorative justice? And what is the approach to avoid it?

1.5 Significance of the study

The study is all about introducing restorative justice in Ethiopia: challenges and prospects. Hence, the study will be helpful to:

1, for all of those interested in reforming the existing but in adequately performing formal criminal justice system, particularly for policy makers to incorporate restorative justice in Ethiopia.

2, To add knowledge's and concepts for readers about the role of restorative justice to fill the gap in the formal criminal justice system.

3, it will help to create an awareness and understanding on the importance of restorative justice to resolve criminal disputes in the social life of the society.

4, it will help as an input for justice professionals for their future work regarding with restorative justice.

5,It will essential for the victim of the crime, the offender and the community who are not satisfied with the formal criminal justice system in order to search amore cheaper, responsive, and culturally relevant system called restorative justice system.

6, It will also significant as a reference for further researchers conducting a research on the area.

1.6 methodology of the study

Although the research is predominantly based on a doctrinal research method, qualitative research method is also employed in certain cases

particularly to conduct Interviews from the justice professionals in order to substantiating the legal gaps. Why because this type of methodology is important for answering my research question.

The researcher has been used both primary and secondary data collection methods. Data has been collected from primary data sources such as interview with justice professionals, domestic and foreign legislations. The researcher also employs secondary data sources such as text books (both domestic and foreign), journal articles, academic thesis, and other jurisprudence. Internet searches also employed as means of data gathering tools.

1.7 limitations of the study

This study can be suffered from limitations. There has been a constraint of domestic sources as to the introduction of restorative justice in Ethiopia. Hence, the researcher fills this gap by consulting relevant foreign sources in the area of the study as the case may be. So, luck of source of data is one limitation of the study.

The researcher would face shortage of time which is a great problem to search data and literature as well as materials which are important to conduct this paper.

Due to the financial problem the researcher would face great challenge to write the research because of luck of laptops, luck of internet access also another problem which faced the researcher.

Since the area of the research is a broad concept there has been knowledge limitation. But, the researcher has tried to tackle the problem by employing all possible maximum effort, resource, and time, within a given time as much as possible and have been submit an excellent problem solving paper

1.8 scope of the study

The study mainly focuses about introducing restorative justice in Ethiopia and the possible challenges and prospects to it. However, although it is not in detail it also touches other countries legislation on restorative justice as the case may be to provide a need arises and adequate lesson can be obtained. Furthermore, a reference to a certain customary dispute resolution has not been made the subject of the study.

1.9 organization of the study

The research is organized into four main chapters. The first chapter deals with the proposal showing the basic structure of the research by identifying problems that requires study to achieve the ultimate objectives up on formulation of the research question, significance of the study, research methodology, limitation and scope of the study as well as organization of the chapter.

The second chapter focuses on the conceptual over view of restorative justice, the comparison between Restorative justices with that of the formal criminal justice system. This chapter also devoted on the necessity of restorative justice as well as restorative justice in selected jurisdiction has been the subject of the study.

The third chapter is dedicated to the need to introduce restorative justice in Ethiopia with the possible justifications taking in to consider the lesson of experienced states. In addition to this, the challenges and prospects to introduced restorative justice in Ethiopia have been discussed.

The last chapter (chapter four) provides the conclusion of the whole study and forward recommendations for the concerned stake holders.

CHAPTER -TWO

RESTORATIVE JUSTICE: CONCEPTUAL OVER VIEW

2.1. Definition and concept of restorative justice

There is no single accepted definition of the term restorative justice. [29]. To find a well accepted definition of restorative justice has been difficult due to the growing nature of the field.[30] Though there is no simple and straight

[29] *Daniel W. van Ness, An overview of restorative justice around the world*, center for justice and reconciliation at prison fellowship international, Washington DC, for the distribution of the 11th UN congress on crime prevention and criminal justice, Bangkok, Thailand, April 22,2005,p.3

[30] *Endalew, a move towards Restorative justice in Ethiopia, supra note* 16, p.25

forward definition of restorative justice the following definition could be provided:

One definition of restorative justice is given by Howard Zehr that is "Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible."[31]According to this definition restorative justice needs active participation of the parties to the offence in order to resolve the problem of the offence. The parties who have a stake in the offence themselves are required to heal the harm caused as the result of the crime and put things right as much as possible.[32] According to this definition no need of the formal criminal justice machinery in the process; rather the parties themselves can solve their case.

The seconded definition provided by Marian Liebman defines restorative justice as: "Restorative justice aim to restore the well being of victims, offenders and communities harmed by crime and to prevent further offending."[33]We can understand from this definition that restorative justice tries to restore the parties by resolving the consequence of the offence and repair harms sustained as a result of the offence. Restorative justice seeks the offender to change his behavior in order to prevent future re- offending. It also offers the opportunity for the victim to restore the harm sustained or loss acknowledged.[34]

The hand book on restorative justice programs prepared under the United Nations office on Drugs and crime defines the term restorative justice as "Any process in which the victim and the offender, and where appropriate,

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[31] *Howard Zehr with Ali Gohar, the little book of restorative justice,* good books intercourse publisher, Pennsylvania, USA,2003,p.40.(here in after, Howard Zehr, the little book of restorative justice).
[32] *Ibid*
[33] *Liebmann marian, restorative justice how it works*, Jessica Kinsley publisher, London,UK,2007,p.25(here in after, Libmann, restorative justice how it works)
[34] *Ibid*

any other individuals or community members affected by a crime, participate together actively in the resolution of maters arising from the crime, generally with the help of the facilitator."[35] In this definition restorative justice sees crime as an act against the victim and focus on resolving maters arising from the crime that has been committed against the primary victim and community.[36] It also believes that both the victim and the offender need the assistance of third party facilitator in order to seek and identify harms, and promoting reconciliation.[37]

Generally, from the above definition one can understand that, Restorative justice is different from the formal criminal justice system in several ways. Firstly, Restorative justice views criminal acts as a violation of a relationship among victims, offenders and the concerned community instead of putting a state as a sole victim.[38] Secondly, it involves several parties in responding to crime rather than giving key roles to the government (represented by public prosecutor) and the offender, it includes victims and communities as well. Finally, it measures success differently, the formal criminal justice system the measurement is how much punishment is inflicted, while in restorative justice the measure is how much harm is repaired or prevented.

2.2 Basic Principles of Restorative Justice

Restorative justice is guided by some key principles. The principles are basic elements which restorative justice can significantly produce independent of the criminal proceeding. These principles of restorative justice are discussed here in below.

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[35] *United nations, office on drugs and crime, hand book on restorative justice programs*, New York, November 2006, p.100 available at, http://www.unodc.org/ pdf /criminal justice/06-56290-E-book.pdf (last accessed 15 August 2009 E.C),(here in after called., united nation office on drug and crime)

[36] *Ibid*

[37] *Ibid*

[38] *Endalew, a move towards Restorative justice in Ethiopia, supra note* 16, p.28

A, Focuses on harm and consequent needs

Restorative justice view crime as harm inflicted upon the victim, and the community. Victims support and healing might seem as an obvious aim for a certain criminal justice system, to have it as apriority would turn the system on its head.[39] On the other hand, most formal criminal justice systems are focused on offenders by identifying, catching, arresting, charging, by taking to court, as well as by sentencing and punishing them.[40]

Hence, the trend in the criminal justice system shows that once crime is committed the responsibility is shifted to the state.[41] The person who has committed the offence will be prosecuted by the state and the victim becomes out of the game from the process.[42] This process overlooks the harm caused by the victim. Focusing on the harm caused by the offences to victims and communities make it necessary the need for a shift in the way we respond to crime.[43] Therefore, restorative justice seeks to heal and repair the harm experienced primarily by victims, and then on offenders and communities.[44]

B, Address obligations resulting from harm

An offender has an obligation to accept responsibility for inflicting the harm and mitigating the consequences that have ensued.[45] This has its own implication. It indicates that offenders demonstrate acceptance of his obligation by expressing remorse for his actions, making apologies, and making reparation or compensating the victim.[46] As we see the primary obligation is for the offender however, the community also has an obligation as well. The communities also take responsibility to encourage offender's

[39] Liebmann, restorative justice how it works, supra note 33,p.26
[40] *Ibid*
[41] *Howard zehr, the little book of restorative justice, supra not*e31, p.21
[42] Ibid
[43] Ibid
[44]Ibid
[45] Id *p.22*
[46] Liemann, restorative justice how it works , supra note,33, p.26

effort to take responsibility for their actions.[47] It follows that community members have responsibility towards the victim and the offender. The assumption is that crime disrupts the relation of persons in the community.

C, Engagement of legitimate stakeholders in the process

This principle suggests that those most affected by the incident of crime, ought to be the principal speaker and decision makers in the process of restorative justice, rather than trained professionals representing the interest of the state.[48] Those affected by the crime are victims, the community and even offender's themselves.[49] This is because these parties are affected by one way or another way by the offence. Thus, all affected parties should involve in the restorative justice process to resolve the crisis. All present in a restorative justice meeting have something valuable to contribute to the goal of the meeting. But in case of formal criminal justice the victim appear as a witness if the public prosecutor needs him but if the prosecutor is not in need of the victim, the victim will have no chance of participation.[50]

D, Voluntary participation of the concerned parties in the process

Restorative justice is based on the voluntary participation of the concerned stake holders in the process. The participation of parties will be free from any external influence; rather it is based on their own free will.[51]The freedom of the parties extended to the extent of withdrawing from the process at any time.[52]Therefore, the freedom of the parties either to participate in the process or not is very crucial in restorative process.[53]

[47] Howard zehr, the little book of restorative justice, supra note 31, p.22
[48] Ibid
[49] Ibid
[50] Endalew, a move towards restorative justice in Ethiopia, supra note 16,p.65
[51] Id pp.31-32
[52] Ibid
[53] Ibid

Hence, the presumption is that when a person freely admits his unlawful act without any external pressure, he is just supporting the justice system and becomes law abiding citizen.

E, Uses Inclusive (collaborative) process

The last but not the least, principle of restorative justice is that its collaborative and inclusive process.[54] As opposed to the formal criminal justice system, which are guided by stringent principles and formalities and the outcome of the case is decided by the judge, restorative justice gives emphasis on the collaboration of the parties and mutually agreed out comes.[55] This process enables parties to discover the root cause of crime and arrive on an agreement on the harm caused by crime as well as the manner of the restoration process[56]

2.3 Models of Restorative Justice

2.3.1 Victim offender mediation (VOM)

As the name indicates, mediation is the process in which a neutral third party, who does not have the power to impose a binding decision, helps the victim and the offender communicate, either directly or indirectly to settle their dispute in peaceful manner.[57] In this model both the victim and the offender are to participate actively to bring about resolution of the problems that really concern them.[58] The mediation process can lead mutual understanding for both the victim and the offender and sometimes may lead to reparation.

Victim offender mediation is one of the most popular and commonly used restorative justice programs.[59] It brings together the primary victim and the

[54] Howard zeher, the little book of restorative justice, supra note 31,p.24
[55] Endalew, a move towards restorative justice supra note 16,p.32
[56] Ibid
[57] Id p.36
[58] Ibid
[59] Tyler Murphy Wilson, Restorative justice and shoplifting: Participant Awareness of harm, Decision-Making, and Recidivism, LLM Thesis, University of Colorado, 2013, p.29 (Here in

offender using a mediator to coordinate the process.[60] In the meeting process the offender is held accountable the victim is repaired and the community recognized.[61] The mediator helps disputing parties to consider the ways to make things right. Since mediators claim no authority, they can empower people through the mediation process to regain control over their own relationship rather than assuming that all social order must be imposed by some kind of authority. In this regarded, Fuller claimed the justice system as such:

> "The justice system should welcome the introduction of programs that divert cases from the formal criminal courts and prisons to the warmer and more personal victim offender mediation rooms. He further argued that mediations central quality is its ability to reorient the parties towards each other, not by imposing prescribed rules on them, rather by helping them to achieve anew and shared perception of relationship and perception that will re direct their attitudes and dispositions towards one another."[62]

Therefore, VOM offers both the victim and the offender to take an active step to bring about resolutions of the problems that really concern them.

2.3.2 Family group conferencing (FGC)

Family group conferencing has more participants than victim offender mediation.[63] Not only primary victims and offenders participates but also secondary victims , parties families and close friends as well as the community representatives are also participants of the process. All this peoples are well needed, because they are connected to at least one of the primary participants. They are also brought together by an impartial third party, which usually has the task of facilitator.[64]

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after called, Tyler, restorative justice and shoplifting).
[60]Ibid
[61] Ibid
[62] Theo gavrields, restorative justice theory and practices, addressing the discrepancy,2007,p.31
[63] *Id* p.33
[64] *Ibid*

Family group conferencing provides to the victim, the offender and all those who are affected by crime an opportunity to be directly involved in a discussion leading to a decision regarding sanctions and amends. The discussion increase the offender's awareness about the impact of his/ her actions, provide the chance to regret, apologize, take full responsibility, and be forgiving by victims and the community.[65] FGC offers the victim who has suffered harms the opportunity to have their harms to be acknowledged by the offender and the offender should repair the harm done to the victim. In this way, the behavior of the offender is changed and can integrate back in to the community and we can prevent the occurrence of future crime.[66]

2.3.3 Sentencing circle (sc)

Sentencing circle have taken the foundation of conferences and intertwined with the values and principles of North American aboriginal people.[67] SC is highly inclusive process as compared with VOM and FGC. It includes sometimes law enforcement agencies, judges, defense counsel, prosecutor, police officer, the victim and the offender, even peoples from community organization like Neighborhood watch or helpful citizens can join the circle to share their concerns about the criminal activity.[68]

The discussion among those in the circle are designed to reach a common understanding about the best way to resolve the conflict and dispose the case, taking in to account the interest of the community, the victims, and the rehabilitation of offenders.[69]Sentencing circle is conducted with the existence of the community and they support the sentencing process.[70] It is the best example of participatory justice, since the community can directly involve in the process.[71] This is done by the formation of community justice

[65] *Ibid*
[66] *Id* p.34
[67] *Tyler, Restorative justice and shoplifting, supra note* 59,p.33
[68]*Ibid*
[69] *Endalew, a move towards restorative justice in Ethiopia, supra note* 16, p. 40
[70] *Ibid*
[71]*United Nation office on drug and crime, supra note* 35 ,p.23

committee (Here in after called, CJC) that may include representative from the formal criminal justice agencies.[72] The main objective of CJC is to find more constrictive ways to respond conflict in their community.[73] Because the CJC interacts with the formal criminal justice agencies, victims, offenders and the various stake holders in the community.[74]

2.4 Comparison between Restorative Justice and Formal Criminal Justice System

The comparison between restorative justices with the formal criminal justice has some sort of benefits for us. Firstly, by contrasting the two terms our perception of restorative justice will be enhanced. In other words the comparison will help us to have a better understanding of restorative justice than simply defining it. Secondly, it will help us to know the extent to which the idea of restorative justice deviates from the formal criminal justice system.

There are many differences between restorative justice and the formal criminal justice system. One difference between restorative justice and the formal criminal justice is the way crime is defined. Crime in the formal criminal justice is defined as a violation against the state or breaking of laws, restorative justice looks crime as a violation against inter personal relationships.

When wrong is done it will result injuries which may be either physical or psychological to the person against whom it is committed. Primarily the one to be harmed is the wronged person. Hence, crime is primarily a conflict between persons resulting injuries to victims, offenders and the community. Therefore, crime is a violation against the state is only secondarily.[75]

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[72] *Ibid*
[73] *Ibid*
[74] *Ibid*
[75] *David W., American courts and the criminal justice system*, six edition, Wadsworth pub Co., USA, P.376

The other difference lays on the role of the victim the offender and the community. Government plays little role in restorative justice, whereas, government's role in the formal criminal justice system is significant.[76]The basic beliefs in restorative justice are based on the judgment of the victim, the offender, and the whole community affected by the incidence of crime.[77] It considers the participation of all the stake holders in the administration of the criminal justice system as an indispensable requirement for the justice system to be effective. The community's should be involved in the prevention of crime and in responding its consequences.[78] In the formal criminal justice system the state's professionals such as, the police, the prosecutor and the courts play significant role. The role of the victim, the offender and the community in the formal justice system is minimal. Sometimes their role may not go beyond reporting and being a witness.

The process of restorative justice is based on dialogue of the parties; the formal justice system is based on the isolation of the offender from the community. In restorative justice the victim, the offender and the community will make dialogue and negotiation to deal with the consequence of crime. Whereas, the formal criminal justice is characterized by a situation whereby the state will prosecute the offender and the offender will try to defend the case. The room for negotiation and dialogue is closed or very minimal in the formal criminal justice system.

In short, Restorative justice focuses on whether harm was done and seeks solution to it.[79] In other words, priority is given on the needs of the victim that is to be repaired. Victims will have the opportunity to express the full impact of the crime up on their lives, to receive answers to any questions about the incidence, and to participate in holding the offender accountable

[76] *Victor, J Joseph l, (ed.) criminal justice* 99//00, 23rd edition, Dushkin/ Mc Graw co., USA, 1999, P.196.
[77] *Abera, justice that heals and restores, supra note* 1 , p.24
[78] *Ibid*
[79] *Id*. P.25

for his or her actions.[80] Offenders can tell their story of why the crime occurred and how it affected their lives.[81] As much as possible offenders should make things right, through compensation which make the healing process acceptable to all.[82]

Concerning the formal criminal justice system, evidences suggest that the system does not aim at restoring the relations disrupted by the wrongful act. Under the formal criminal justice system, the primary victim of crime is the state by disregarding of the community. With regard to victim's perspective, the major reason for the dissatisfaction is the exclusion or lack of a legitimate role in the process of their case beyond that of being witness for prosecution. The formal justice system results a devastating consequence by ignoring many of the emotional consequences of the entire process.[83]

The following table shows a clear picture on the comparison between restorative justice and the formal criminal justice.

Formal criminal justice	Restorative justice
Crime is an act against the state, a violation of a law	Crime is an act against another person and the community
The formal criminal justice system controls crime	Crime control lies primarily in the community
Offenders accountability is by taking punishment	Offenders accountability is by assuming responsibility and taking action to repair harm
Crime is an individual act with individual responsibility	Crime has both individual and social dimensions of responsibility in which different stake holders search for a solution
Threat of punishment deter crime and punishment changes behaviors of offenders	Punishment alone is not effective in changing behavior and is disruptive to community harmony and smooth relationship

[80] *Ibid*
[81] *Ibid*
[82] *ibid*
[83] *Id* p.26

Victims are peripheral and mere footnotes of the process	Victims are central to the process of resolving a crime, victims interest is highly protected
The offender is defined by deficits	The offender is defined by capacity to make reparation
Focus on establishing blame or guilt: on the past (did he/she do it?)	Focus on the problem solving, on liabilities on the future(what should be done?)
Emphasis on adversarial relationship	Emphasis on dialogue and negotiation
Imposition of pain to punish and deter the offender: result(in the sentence)is the most important	Restitution as a means of restoring both parties :The process most important part is the process that shapes and sometimes heals the relationship among all parties
Community on side line, represented by state acting through public prosecutor	Community as a facilitator in restorative process
Response focused on offenders past behavior	Response on present and future relationship on the parties to the conflict
Dependence up on involvement of legal professionals	Dependence on direct involvement of all stake holders

Table 1.1 comparisons between formal criminal justice and restorative justice[84]

2.5 Reasons for the Necessity of Restorative Justice

Restorative justice is a new approach to crime which comes to picture in the 1970's.[85]But throughout history it has been practiced in the form of CDR mechanism especially mediation. In fact, there is a belief that the origins of modern concept of restorative justice are rooted in the criminal justice practice of peoples around the world which are embedded in religious and spiritual traditions.[86] Since conflict occurs among people's in all kind of relationships and in all social settings. Conflict by itself is neither good nor bad. However, the way in which conflict is handed determines as to whether it is constructive or destructive. In other words, conflict has the potential for either a great deal of destruction or much creativity and positive social

[84] *Gordon Baze more , Restorative Justice , Earned Redemption and A Communitarian Response to crime* ,Atlantic university, Florida, may 1999,p.20
[85] *Abera, justice that heals and restores, supra note* 1, p.22
[86] *Ibid*

change. Restorative justice as the name suggests is a social process of reconciling parties or finding a win-win solution to their grievance and also a system of making good the harm occurred among the parties.

Empirical evidences suggest that restorative process, which empowers victims, offenders and communities to take an active participation in the formulation of, providing responses to crime, increase public trust in the justice system and even may, reduce re-offence rates by offenders.[87] Restorative justice, whatever specific focus programs it may have in different localities, gives victims the chance for direct involvement in the process of dealing with the incident that has harmed them.[88] Victims have the chance to express their feeling about the harm and its consequence to the person who has offended against him, and they can also express their views about what is needed to put things right.[89] Victim's satisfaction associated with restorative justice programs are said to be result from the process better addressing the personal needs of the victim.[90] These needs include, compensation to make the harm good, answers and information so that victims can regain a sense of security, expression and validation of their experience of the offence and their emotional response to the offence; and empowerment in terms of a sense of personal power over their environment and the resolution of their own cases.[91]

Restorative justice in bring together different participants responding to criminal harms, victims, offenders their respective families and community representatives in a deliberative process which can result in accountability, reparation and community based solutions to go to the root of crime causations are the main participants.[92] Properly administered, restorative justice process produce individually tailored solutions involving interactions

[87] *Zvi D, Gabbay, justifying restorative justice, A Theoretical justification for the use of restorative justice practice journal of dispute resolution,* 2005 vol2 ,p.349
[88] *Https//www. justice gout, nz/publications* accessed on September 13, 2017
[89] *Ibid*
[90] *Ibid*
[91] *Ibid*
[92] *Https//www. Restorative justice.org/ articles* accessed on August 24,2017

among offenders, victims and the community at large.[93] It can give victims answer to questions about why they have been victimized that information or support on their own or not. Victims are more likely to receive an apology through a restorative process than at formal court proceeding. Similarly for offenders, restorative process offers a unique opportunity to face up to what they have done, take responsibility for what they have done and make up the harm their offending has caused.

The formal criminal justice system marginalizes and puts the victim of a crime into the periphery of making them mere footnotes in the criminal process. [94]In this regard Zehr stated that:

“If victims participate in their case at all, it will likely be as witness if and only if the state needs them as witnesses. The offender has taken power from them and now, instead of returning power for them, the criminal justice system also denies them power.”[95]

That is, victims of a crime is a sort of double loser, at first, vis-à-vis the offender, and secondly being denied rights to full participation in the criminal proceeding.[96] Whatever may be the outcome of the case in the criminal prosecution, the victims does not get any significant benefit to mitigate his/her victimization; nothing helps the victim to restore and repair the damage caused to him/her by the crime. This is because the court simply punishes the offender either by death, imprisonment, fine or other forms of monetary punishments, which goes to the government treasury not to the victim, depending on the gravity of the crime and the consequence produced. That is, there is no or little, through separate civil claim,

[93] *Ibid*
[94] *Zehr, H., Retributive justice, Restorative justice, a new perspective on crime and justice*: Occasional papers, issue NO.4, MCC Canada victim-offender Ministries program and MCC U .S Office of criminal justice, 1995, p.4.
[95] *Ibid*
[96] *Christie N. conflict as property: the British Journal of criminology*, 1977, vol.17.No.1, p.4.

possibility to compensate the victims of the crime which needs other civil proceeding.[97]

The formal criminal proceeding process also assumes a monopoly over the process and excludes the larger community from participation by calming that the public is represented by the public prosecutor. It ignores family members of the victim and the offender, and other community members are all secondary victims who, directly or indirectly, have a stake to the crime.[98]

According to many writers the driving force behind the development of restorative justice theory and practices was the result of the inadequacy in the formal criminal justice system and the consequent need to establish new ways of doing justice or addressing the in adequacies of the existing criminal justice system. [99]Today in various parts of the world, restorative justice has come to be an impressive social movement with strong influence in the formal criminal justice system on the way crime is viewed and response is made.[100]As a new way of viewing crime and responding to its consequences, restorative justice has become a practical option. Since, it is a holistic and relational in its approach to conflict resolution. The process are found on the recognition of the inter connectedness among victims, offenders as well as the concerned communities.[101]

2.6 Restorative Justice in Selected Jurisdictions and Best Practice

Restorative justice is now a day's recognized by a number of countries. However, the researcher selected restorative justice of three states to the study. The Canadian restorative justice system, the South African restorative justice system, and finally restorative justice in Germany will be discussed. The researcher selected the above mentioned countries regardless of the legal system (common law or civil law) which the country

[97] *Ibid*
[98] *Mc cold, Restorative justices, the role of the community, supra note* 21, p.2.
[99] *Abera, justice that heals and restores, supra note* 1, p.23
[100] *Ibid*
[101] *Id* pp.26-27

they belongs. Rather it is because they have laws which provide a room for the application of restorative justice in their formal criminal justice system. That is why the researcher selected the above jurisdictions believing that adequate lesson could be learned. In the coming sub sections the study will endeavor to show how restorative justice is regulated in these selected states.

2.6.1 Restorative justice in Canada

The starting point of restorative justice in Canada is the culture of the Aboriginal peoples. Though the culture of the Aboriginal peoples are not appropriate models of restorative justice, it has been consistent with the principles of restorative justice .Accordingly, as these rich traditions become well known, they have influenced the development of restorative justice particularly in the innovation of sentencing circle. The beginning of the modern restorative justice in Canada is formally recognized in Kitchener-Waterloo, Ontario where the Mennonite central committee introduced victim-offender mediation in courts.[102]

In 1988, the parliamentary standing committee on justice conducted a review of sentencing, conditional release and related aspects of correction, and published a report called 'taking responsibility', commonly known as the 'Daubery report'.[103] This far reaching review includes the needs of victims and restorative justice. The committee recommended that the government should support the expansion and evaluation of victim- offender reconciliation programs at all levels of the criminal justice process by providing; substantial support to victims through victim's service and by encouraging their participation in the process.[104]

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[102] *Research frame work for a review of community justice in Yukoa, community justice*, p.9, available at: www.justice.gov.yk. ca, 02-1 history. (Last accessed 20 Septembr2010 E.C.), (Here in after called, Research frame work for a review of community justice).
[103] *Id* p.10
[104] *Ibid*

In the1990s, restorative justice gained significant momentum in Canada. The national association of Canada is active in criminal justice, brings together twenty non-governmental organizations involved in the criminal justice system by published a discussion paper that high lights restorative justice with in a "social responsibility approach" to justice.[105] The approach applies restorative justice process to improve the existing justice system of Canada.

The federal ministers of Canada responsible for justice endorsed a report called corrections population growth, which aimed to address the growth in the prison population in Canada.[106] One of the recommendations of the report was to increase the use of restorative justice and mediation approaches.

The1996, criminal code of Canada incorporates the concept of restorative justice on the land mark decisions between R.V Gladue vs R.V proulx case said

….. (r) Restoring harmony involves deterring sentences that responds to the needs of the victim, the community and the offender.[107]Further, the criminal code of Canada incorporates purpose, principles and objectives of sentencing by stipulating as, "to provide reparation for the harm done to victims or the community" and "to promote a sense of responsibility for offenders, and acknowledgement of the harm done to victims as well as to the community".

A national conference on restorative justice is held in March 1997 in Vancouver, British Columbia. The conference creates a mutual understanding on representatives of both governmental and non-governmental organizations criminal justice practitioners and researchers

[105] *Ibid*
[106] *Ibid*

[107] *Getu, mediating criminal matters in Ethiopia, supra note* 8,p.124

to observe the implementation of restorative justice and to design further initiatives for the expansions of the field.[108] The conference was shad a light for the advancement of restorative justice in Canada. It raises awareness of restorative justice and served as catalyst for subsequent action.

Following the Vancouver conference, a working group was organized, composed of senior officials from federal, provincial and territorial governments with a mandate in the elaboration of policies for restorative justice, promotes and disseminate research as well as share information on its development in Canada.[109]In May 2000, the working group prepared a consultation paper titled as restorative justice in Canada. The consultation paper tries to address the roll of the government and the community in restorative justice, the effects on victims, appropriate offences for restorative process, accountability issues, training and standard of practice.[110] .

2.6.2 Restorative justice in South Africa

The guiding principles and practices of restorative justice provided a strong foundation for the Truth and Reconciliation Commission (Here in after called, TRC).The Commission was established to discover the truth about past human right violations of the Apartheid conflict.[111] Its task was to establish the fate of victims of gross human right violations and releasing offenders who disclosed the Truth about the violent acts committed during the apartheid conflict.[112]

TRC focus on the restorative principles of healing parties involved in a conflict, rather than punishing the offenders.TRC draws from restorative practices to promote more meaningful and constructive 'punishments; that

[108] *Research frame work for a review of community justice, supra note* 102,p.10
[109] *Id* pp.10-11
[110] *Id* p.11
[111] *Mapea, Traggy (ed.)Truth and Reconciliation Commission as a model of Restorative justice :Beyond Retribution- prospects of Restorative justice in south Africa*,ISS,Pretoria,2005,p.66
[112]*Ibid*

oblige the offender to do something for the victim, to provide some service to the community, or take part in an education program.[113] TRC also draws from the philosophy of restorative justice to justify the use of amnesty as away to encourage offenders to participate in the dialogical processes of restorative justice and reconciling parties in a conflict.[114] In principle, granting amnesty to offenders is compatible with the philosophy of healing rather than punishing. Amnesty can also be essential tool in getting offenders as well as victims to the table for dialogue. However, in reality Amnesty raises a serious questions about the degree to which TRC facilitate restorative justice through truth and reconciliation.[115]

In South Africa restorative justice started to develop since 1990's. The child justice Bill issued by the south African Parliament in the end of June 2008 is the first regulation to deal with restorative justice in general and victim offender mediation in particular.[116] Even the definition in the child justice Bill, passed by the South African Parliament in June 2008, states that:

Restorative justice is "An approach to justice that aims to involve the child offender, the victim, the families concerned and the community members, to collectively identify and address harms."[117]

In South Africa victim offender mediation is used as an alternative for a sentence. The decision weather victim offender mediation is appropriate or not is given by the prosecutor or the court. In South Africa justice system, the nature of the crime does not exclude a case from the use of restorative justice approach altogether and it is not only reserved for petty offences

[113] *Emily B, Mawhinner, Restorative justice: Lesson from Truth and Reconciliation in south Africa and Rwanda*, Hamline university school of law, *Journal of public law and policy*, 2015,vol,36, issue No.2, p.26
[114] *Ibid*
[115] *Ibid*
[116] *Getu, mediating criminal matters in Ethiopia, supra note* 8,p.124
[117] *Nicky story, Restorative justice in South Africa, A community justice program serving the Victoria region*, 2001, available at: https://rajvictoria. word press.com(last accused 2 October,2010E.c)

committed by young offenders. [118]There is no age restriction and it can be used in cases of serious violent crimes, including murder. Restorative justice is principally apples for the benefit of the victim of crime. If we cannot implement restorative justice because of the seriousness of the offence, we are affecting the victim. That is why we said restorative justice can be used irrespective of the type of crime.

2.6.3 Restorative justice in Germany

Over recent years, restorative justice approaches including mediation and restitution has been practiced in German criminal law.[119] Further aspects have strengthened the victim position in the criminal procedure. The most important provisions on restorative justice in Germany are provided in section 46a of the German criminal code (see the full text here in below).Section 46a of the German criminal code provided that:

> 1, in an effort to achieve reconciliation with the victim restorative justice, has provided full restitution or the major part thereof for his offence, or has earnestly tried to provide restitution.[120]Or
>
> 2, In a case in which providing restitution for the harm caused required substantial personal services on his part, has provided full compensation or the major part thereof to the victim, the court may mitigate the sentence as per section 49(1) or, unless the sentence to be imposed on the offender is imprisonment of more than one year or fine of more than three hundred and sixty daily units, may order a discharge.[121]

As per section 46a of the German criminal code the legislator has provided a number of policies. At first the interests of the victim were protected in the frame work of the criminal procedure. Since, the offenders were promoted to respond to the needs of the victims caused by their offenses. In addition, offenders were offered an opportunity to take responsibility for

[118] *Ibid*
[119] *European Best Practices of Restorative justice in the criminal procedure*, available at: www. Jar <sites> default> files.pdf (last accessed, 5 October, 2010E.C.
[120] *Id* p.126
[121] *Ibid*

their offence in a voluntary manner, in this way they reduce their guilt.[122] Section 46a of the criminal code also deemed to facilitate peace among the parties and between the offender and the community. It reduces the need to rely on punishment as means to balance the outcome and effects of an offence.[123]

The section takes in to consideration reconciliation and compensation in a wide sense. It is also applicable to offences including felonies like robbery, rape and murder or attempted murder as well as business crimes.

Section 46a of the criminal code regulates cases where Restorative justice and victim offender mediation has taken place. Prosecutors and judges have to inform victims and offenders about the possibly of restorative justice and they should suggest using it in every suitable cases, but they do not have a legal power to impose it.[124] This possibility is provided under section 10 sub-section7 of the juvenile criminal court act. Section 46a of the criminal code is open for professional as well as volunteer mediators, for conferencing circle and direct communication between victims and offenders by letters, E-mail, telephone or by meeting each other. It allows a new approach in the development for the field of restorative justice and is not limited to mediation or conferencing.

Because of Directive 2008/52/EC, which provided that: “states standard for mediation in international civil cases have to be transferred in to national law until 2011?” As a result, the German law maker has very recently started the preparation of general mediation law. [125]This law includes general standards for meditative procedure in criminal cases as well as standards for the necessary training of mediators.

[122] *Ibid*
[123] *Ibid*
[124] *Id* p.128
[125] *Id* p.129

CHAPTER –THREE

INTRODUCING RESTORATIVE JUSTICE IN TO THE ETHIOPIAN CRIMINAL JUSTICE SYSTEM

In the preceding chapter, an attempt has been made to show the concept of restorative justice and how it looks like in selected states. In this chapter, the researcher tries to see the general over view of restorative justice as well as the reason behind to introduce restorative justice in Ethiopian justice system and the challenges together with their solutions, finally the prospects for introducing restorative justice in Ethiopia will be profoundly discussed.

3.1 General over view of restorative justice in Ethiopian criminal justice SYSTEM

In Ethiopia, especially in the countryside, CDR mechanisms have been practiced for centuries.[126] Even today the use of CDR mechanisms dealing with victims and criminal offenders are widely practiced and deeply rooted among the different ethnic group in the country.[127] However, despite its wide practice and importance in resolving criminal matters, the Ethiopian formal criminal justice system failed to integrate it as an alternative criminal dispute resolution process.[128] In this regard, Art.34 (5) of the FDRE constitution provided that:

[126] *Getu, mediating criminal matters in Ethiopia, supra note* 6,p.100
[127] Ibid
[128] Ibid

> "This constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute." [129]

The 1995 FDRE constitution embodied a clear recognition of customary and religious laws and courts in family and personal matters among the disputants that consent to such a jurisdiction. However, With respect to criminal matters, the constitution is not in a position to allow disputants parties to settle their case through CDR mechanisms.[130]

In addition to the constitution, Art.1 paragraph 2, of the FDRE criminal code also stipulated that:

> "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. [131]

Hence, we can understand that, the criminal code set as goals prevention of crimes by giving due notice of the crimes and penalties, prevention of crimes through deterrence and as well as rehabilitation /reformation of offenders.[132]Thus, the goals are to be achieved by punishing offenders and the punishment can deter offenders from committing other crimes.

Victims of the crime are not in the center of the Ethiopian criminal justice system. Their role is limited to providing information in the form of accusation or complaint so as to set the justice in motion, or to be merely a witness for his or her own case if, at all, the public prosecutor needs him or her to be a witness. [133]The public prosecutor may not call the private victim as a witness if he or she finds another person who can prove the case better

[129] See art. 34(5) FDRE constitution
[130] *Ibid*
[131] See art.1, paragraph 2,of the FDRE criminal code
[132] *Ibid*
[133] *Endalew, a move towards restorative justice in Ethiopia, supra note* 16, p.65

than the victim.[134] Thus, it is the discretion of the public prosecutor either to include or exclude the victim in the criminal justice system as a witness. Even when the victim is called as a witness to his or her own case, he or she does not have a chance to properly encounter the accused as his or her communication with the accused is limited to answer to cross examinations. The victim is not also allowed to remain in the court room to hear the testimony about his or her case and to attend the full trial so as to avoid copying of testimonial words of other witness and is left outside from the court room, perhaps, being angry and humiliate through across-examination in courts.[135] Though victims of a crime have an interest in attending and observing what is happening in the court trial, the Ethiopian criminal justice system excludes them from observing such rituals by the mere fact that they appear as witness of the public prosecutor.[136]

The Ethiopian criminal justice system also excludes the community from participation.[137] If the community is said to be participated in the process, it is only in the form of providing information about the commission of the crime, i.e. in the form of accusation or compliant so as to set the Justice in motion, and by merely appearing as a witness in the criminal proceedings.[138] Therefore, we can understand from the above discussion that, restorative justice mechanisms are not allowed any formal space of operation within the formal criminal justice system of Ethiopia.

3.2 Justifications for the need to introduce restorative justice in Ethiopia

3.2.1. Failure of the criminal justice system to meet purposes of punishment.

[134] *Ibid*
[135] *Christie. N, conflict as property, supra note* 96,p.8
[136] *Ibid*
[137] *Ibid*
[138] *Ibid*

First see what purposes are to be intended, to achieve in our criminal law. Regarding this purpose the FDRE criminal code states that:

> "The code aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be in effective 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."[139]

The provision makes a general statement of the aims and objectives of the criminal code. The purpose of punishment provided under the Ethiopian criminal law, raised above, is meant to achieve different purposes.

Hence, we can understand that the criminal code has adopted for the purpose of prevention of crimes by giving due notice of the crimes and penalties, prevention of crimes through deterrence as well as rehabilitation/reformation purpose of punishment.

A, Prevention purpose of punishment

When you see prevention of crime as we know many people will not have access to know the penalties prescribed by the law. This is because information flow regarding to law is very limited in Ethiopia. Hence, for effective prevention of crime by giving due notice the extent of penalties provided under the law should also be known. Unfortunately, many people do not have access to law. As we know the purpose of publication of law by Negarit Gazeta is to make the law accessible to the people and to implement the principle "Ignorance of law is no excuse" i.e. in principle individuals are expected to know the laws of the country. However, if we see the reality, the mere facts of publication of laws under Negarit Gazeta do not justify, the fact that it is accessible to every individual. Even the media do not adequately provided information about laws to the public. As result, the public has no knowledge about legal issues .the outcome of this

[139] see art.1,paragraph2of the FDRE criminal code

then is large number of people will not be able to know the penalties provided by the law. This will have negative consequence in the purpose of prevention of crime by giving due notice of the penalties. Thus, to avoid such problem the option is introducing restorative justice system in to the criminal justice system.

B, Deterrence purpose of punishment

The other purpose of punishment envisaged in the criminal code is prevention of crime through deterrence. Deterrence has to do with deter actual offenders and others from committing crime by making an example of the offender so that likeminded people's are warned of the consequence of crime and deterrent to the criminal him/ herself giving a lesson not to commit another crime under the fear of punishment.[140]Deterrence is justified because of the reason that if offenders are left unpunished, similar offences will be committed by others for they will have no fear of punishment due to their act.[141]Then, to say the purpose of punishment on deference aspect is met, the number of crimes as well as offenders has to decrease. In view of this let see the situation in Amhara region.

In the year 2008E.C the number of crimes as recorded by Amhara region Police Commission was 32947and the number of persons involved were 52513 in the region.[142]This report shows that in the following year (2009 E.C) the number of crimes increased to 35899 and the numbers of persons involved in the crimes were 57212.[143]

According to the report, in one year's time (2008-2009E.C)the number of crimes increased by 2952 and the number of persons involved increased by 4699.Therefore, as can be understand from the report the number of crimes

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[140] *patrik and AN Derson, Donald J, Newman, introduction to criminal justice*,5th ed, 1993,p.288
[141] *Ibid*
[142] Amhara National Regional State Police Commission crime investigation core process, statistics report, accessed on October, 24, 2010E.C.
[143] *Ibid*

committed and the number of persons involved in the crimes have increased. Hence, the purpose of punishment by deterring prospective offenders is failed to achieve its intended objective. Thus, to avoid such problem, the best option at the movement is introducing restorative justice system.

C, Reformative /Rehabilitative purpose of punishment

Punishment has reformative or rehabilitative purposes in a sense that offenders can get reformed and become a law abiding citizens after serving their punishment. This is because it is presumed that they are given skill based education and vocational training while they are in prison so that they will be self-sustained and law abiding after release.[144] For reformation and rehabilitation to be effective there are certain preconditions that prison institutions should fulfilled. Since, the FDRE criminal code gives emphasis on this purpose as stipulated above. To meet these purposes prisons should create conducive environment to change and reform offenders and later enable him a law abiding citizens after serving their sentence.[145] The purpose cannot be achieved by simply confining offenders in prisons. So, to achieve the purpose there should be some activities that prison institutions to be done. However, achieving the above purpose is not an easy task. Hence, it needs sufficient financial as well as human resource.[146]

Therefore, reformative or rehabilitative purpose of punishment is difficult to achieve by the application of the formal criminal justice alone. Therefore, in order to achieve these purposes we need to introduce restorative justice.

3.2.2. Cost and prison population reduction

As has been noted the criminal justice system lacks budget. With an increase in the number of crimes it is clear that the cost of the criminal

[144] Berihun Adugna, *on purpose of punishment*, lecture delivered at the school of law, Bahir Dar university, 2009E.C.
[145] *Ibid*
[146] *Ibid*

justice will increase. Due to lack of financial resources one can think of the problem that may arise in the criminal justice system. Hence, lack of financial resources is one of the reasons for the inefficient operation of the formal criminal justice system. Then the need for cost and prison population reduction arises in the criminal justice system.[147] Thus, one of the mechanisms is to do justice in another way that will help to reduce cost of prison population. One option at the movement is restorative justice. Since, restorative justice can be applied by local resources and community members.[148] In such cases the cost of the state will be limited to undertake such activity.[149] So, restorative justice has the potential to minimize cost.

3.2.3. The need for community and victim involvement in criminal justice system

Practically community members are affected in one way or another way by the commission of crimes. Involving community members to participate in the criminal justice system is important in tackling the problem of crime. However, the Ethiopian criminal justice excludes the community from participation. Based on the concept that crime is a violation against the state or a violation of its prescribed laws and the community is presumed to be represented by the state.[150] If the community is said to be participated in the process, it is only in the form of providing information about the commission of crime, i.e. in the form of accusation and compliant so as to set the justice in motion.

Similarly, victims of the crime are not also in the center of the Ethiopian criminal justice system. As has been noted their role is limited to providing information in the form of accusation or compliant so as to set the justice in motion, or merely a witness for his/her own case if the public prosecutor

[147] Interview with Abebe kase, Coordinator of The Amhara National Regional State justice professional training and Legal Research institute, *on the need to introduce restorative justice*, October,27,2010 E.C (Here in after called, interview with Abebe Kase)
[148] *Ibid*
[149] *Ibid*
[150] see art.1 of FDRE criminal code

needs him/her to be a witness.[151] Moreover, there is no possibility to bring the victim and the offender together so as to enable them to discuss the causes and consequences of the crime, restoring and maintain their peaceful relationships. However, as has been explained victims need to participate in the aftermath of crime.

Hence, the fundamental premise of restorative justice principle is that crime is a violation of people and relationships rather than merely a violation of law. The most appropriate response to criminal behavior is to repair the harm caused by the wrongful act and make the damage good. As such, the formal criminal justice system should provide those most closely affected by the crime(the victim, the offender, and the community) an opportunity to come together to discuss the event and attempt to arrive at some type of understanding about what can be done to provide appropriate reparation.

Braithwaite in his optimistic account of restorative justice, explained for why restorative justice might outperform formal criminal justice system. This includes not only crime reduction, offender rehabilitation and deterrence (individual and general) but also the process gains in the form of: victim's satisfaction, offender's satisfaction, community satisfaction, cost effectiveness, securing justice and enriching freedom and democracy.[152]

3.2.4. Problem of delay on criminal proceedings in the justice system

According to interview data obtained from Abebe kase delay of the administration of justice form an important danger to the system[153] This is because the longer the pre-trial stage is, the most probable that witness will disappear, circumstances will not be remembered and evidence, especially

[151] *Endalew, A move towards restorative justice in Ethiopia, supra note*,16.p.65
[152] *Restorative justice and crime prevention presenting a theoretical exploration, an empirical analysis and the policy perspective final report of the European project, restorative justice and crime prevention*, April 2010,p.8
[153]interview with Abebe Kase, *supera note*,147

documentary evidence will be lost.[154] As per Article 37(1) of the criminal procedure code provided that every police investigation..... shall be completed without unnecessary delay". Though, the term “unnecessary delay” is general and subject to abuse. In the strict sense of the term there is no legally limited time with in which an investigation shall be completed. The law has not provided an accurate time limit to complete certain investigation.

Hence, the criminal justice system is full of delays to the determent of right to speedy trial. As the principle goes “justice delayed is justice denied”, many people are being denied from getting justice due to delays.[155] This is a clear prohibition to the determinant of people's right that is entitled by virtue of the constitution. Restorative justice play vital role to alleviate such problems. Due to the easy procedures in restorative justice the possibly of delay will be less. Thus, the possibility of rendering decision within short period of time will be easier in restorative justice system.

3.2.5. The need to comply with the global legislative development /trend

The worlds today are changing its criminal justice system dramatically with the passage of time. Obviously, states formal criminal justice system is expected to regulate the changing behavior of its people; especially its criminal law is expected to be changing. Accordingly, our formal criminal justice system needs to be re- consider. Now it has become the trend of most nations of the world to recognize restorative justice in its domestic legal system.

Thus, it is the right time for us to go in line with the global legislative trend which in turn is achieved by recognizing restorative justice in to our substantive and procedural criminal codes.[156] Apart from this, the legal

[154] Ibid
[155] Ibid
[156] interview with Yibltan Yimer, Trainer and Researcher in the Amhara National Regional State Justice professional Training and Legal Research institute, *on the need to introduce*

recognition of restorative justice has its own contribution for the appraising of our formal criminal justice system.[157]

3.3. Possible Opportunities to Introduce Restorative justice in Ethiopia Justice System

Though the idea of Restorative justice is not yet formally developed in the Ethiopian criminal justice system, there are some developments in recent years which provided fertile grounds for the introduction of restorative justice in Ethiopia. Consensus, which is supported by certain actions, has been reached regarding the role and importance of using CDR mechanisms as a basis to implement restorative justice in Ethiopia criminal justice system.[158] Hence, restorative is a suitable choice for Ethiopians taking in to account the long standing CDR mechanisms practiced over a majority of ethnic groups.

Similarly, new documents and legislation's including the criminal justice policy, draft criminal procedure code, and draft community service proclamation, provides some rooms for the implementation of restorative justice in the Ethiopian criminal justice system in the form of diversion to customary dispute resolution mechanisms have enacted. Those promises and potentials are discussed here in below.

3.3.1. The existence of CDR mechanisms as a basis for restorative justice.

The greatest opportunity for the introduction and implementation of restorative justice in the Ethiopian criminal justice system is the presence of multiple CDR mechanisms which are compatible with the values and principles of restorative justice.[159] This is due to the fact that, most of the Ethiopian communities are traditional and religious who live up to, and have great respect for the customary and religious rules, the implementation of

restorative justice in Ethiopia, October,27,2010E.C

[157] *Ibid*

[158] *Endalew , A move towards restorative justice in Ethiopia, supra* note 16,p.89

[159] *Ibid*

restorative justice using CDR mechanisms would be much easier.[160]With regard to this Eyob Getachew, Public prosecutor in the Amhara National regional State justice bureau stated the following:

> In Ethiopia almost every ethnic group has its own CDR mechanisms. One of the prominent CDR mechanisms that are found in the 'Geda' system of oromia region called 'Guma'. In 'Guma' the dispute resolution mechanism is based on the voluntary participation and collective decision making of the disputant parties. Besides, it focuses on healing the harm caused by the crime, reintegration of offenders and prevention of future offending. Similarly, the south people's regional state and the Amhara regional state CDR mechanisms practice restorative justice in different ways. For instance, one of the Dispute Resolution Mechanisms of southern people's Regional state is the 'Mezenger'. For homicide cases the compensation includes that a girl has to marry the victim's family and when she born child, considered as substitute for the killed, which has the power of reconciliation between the offender and the victim's family. In Amhara Region there are different types of Dispute Resolution Mechanisms, some of which are the Awie zone (Agew) CDR mechanisms called the 'Arekesgn' and 'Meheye'. The Batie CDR mechanisms in oromia special zone of Amhara region called 'Abagar' as well as the Raya CDR mechanisms 'Zeweld' in the North wello zone are some of the instances of CDR resolutions that contain the basic principle of restorative justice. He further said that since the application of long standing CDR practices of the community serves as a great opportunity for the implementation of restorative justice, even other countries could take the Ethiopia CDR mechanism as an experience. [161]

So, one can mouth fully speck that in Ethiopia most of the ethnic group has their own CDR mechanisms. The CDR mechanisms of Ethiopia are so related and compatible with Restorative justice.[162] Even, using CDR mechanisms to develop Restorative justice programs is also consistent with the constitutional provision of ensuring access to justice.[163]

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[160] *Ibid*

[161]Interview with Eyob Getachew, public prosecutor in the Amhara National Regional State justice bureau, *on the opportunities to introduce restorative justice in Ethiopian justice system*, November,25,2010 E.C(Here in after called, interview with Eyob Getachew).

[162]

[163] *Ibid*

Therefore, the presence of multiple CDR mechanisms, though they are not well institutionalized and organized, which are compatible with the values and principles of Restorative justice coupled with the current movement towards their recognition are important steps for the introduction of Restorative justice in Ethiopia criminal justice system.

3.3.2. The enactment of new documents and legislations

Currently, new documents and legislations including the criminal justice policy, the draft criminal procedure code, and the draft community service proclamation, which provides some rooms for the implementation of restorative justice in the Ethiopian criminal justice system in the form of diversion to the CDR mechanisms, have been enacted.[164]

The 2011 FDRE criminal justice policy introduces new legal thinking and procedures in the Ethiopian criminal justice system. The preamble of the policy states that criminal cases can be referred to the out of court mechanisms at any stage of the criminal proceeding up on the request of public prosecutor or the accused, or up on the motion of the court so as to make the criminal justice system speedy and accessible.[165] It provides general principles guiding the referral of criminal cases to the out of court mechanisms which include that the CDR mechanisms can be used: taking into account the type of crime, the character of the accused, and the circumstance of commission of the crime, if the interest of the victim and the public are better protected by using CDR mechanisms than regular court system.[166] Particularly, if the offender is youth (juvenile), female, disabled, elderly, non-recidivist criminal, and he\she is accused of crimes punishable with simple imprisonment and re-conciliatory agreement is reached between the offender and the victim.[167] The offender must willfully admit all ingredients of the crime and sincerely express his repentance in

[164] *Endalew , A move towards restorative justice in Ethiopia, supra note*,16 p.92-94
[165] *Id* p.92
[166] *Ibid*
[167] *Ibid*

writing and that he must ask for an apology to the victim, and he must express his\her readiness to restitute the damage caused in advance, that he\she has the right to refuse the referral of the case to CDR mechanisms all of which are the basic elements in restorative justice process.[168] The public prosecutor is given a discretionary power to participate in the re-conciliation process, in the determination of compensation, and may also order the offender to perform community service as a form of punishment. However, a policy is not a law, but a document, it is required to implement and given force to the policy.

Ethiopia has also prepared a draft criminal procedure code with the objective of incorporating new legal thinking called restorative justice in to its criminal justice system. To that end, it includes new provisions compatible and convenient to introduce restorative justice. Like the draft criminal justice policy, the draft criminal procedure code provides discretionary power to public prosecutors and judges to divert the criminal case to CDR mechanisms with the aim to: easily integrate the offender in to his/her community and to help the offender take responsibly and show remorse for his wrong doing as well as to protect and give voice to the victim and communities at large.[169]

Accordingly, the public prosecutor or the judge may divert the case to CDR mechanisms, up on the fulfillment some preconditions. In this regard, Art. 171 of the draft criminal procedure code, provided that, the public prosecutor or the judge may divert a case to CDR mechanisms where the offender is youth (juvenile), female, disabled, elderly, or he/she is under serious physical or mental illness during the commission of the crime or hearing as well as the offender is willing to compensate the victim for the harm he caused. This provision is almost a direct reflection of the criminal justice policy.[170]

[168] *Ibid*
[169] *Id* p.92
[170] *Ibid*

Thus, the draft code tries to provide fertile conditions and rooms for the implementation of restorative justice. Particularly it gives recognition to CDR mechanisms that are applicable to criminal matters, and states guiding principles and conditions to make referral to them there by increasing the implementation of restorative justice. Nonetheless, the recognition and application of CDR mechanisms on criminal matters is argumentative in the absence of constitutional clause which recognizes their application. Hence, Art.9 of the FDRE constitution provided that any law or customary practices which contradict the constitution is null and void. Therefore, the amendment of the constitution to incorporate a constitutional clause recognizing the application of CDR mechanisms to criminal matters is necessary to avoid such argument.

In July 2011 Ethiopian has also prepared its draft law on community service under the advocacy and sponsorship of an advocacy organization justice for all and prison fellowship Ethiopia.[171] The proclamation authorizes Judges to order community service, if he believes that performing community service will reform the offender better than serving punishment in prison.[172] Thus, the recognition of community service as one form of punishment will facilitate the implementation of restorative justice in Ethiopian criminal justice system.

3.4. Challenges to introduce Restorative justice in Ethiopian criminal justice system

1. Incompatibility with human right standards

Though Restorative justice mechanisms are useful tools for the administration of justice as discussed above have its own challenges. These challenges are mainly related to its fear of incompatibility with human right standards particularly with regard to women right.[173] Most of the time in most CDR mechanisms of Ethiopia women could not be treated equally with

[171] *Id* p.96
[172] *Id* p.97

men.[174] Some CDR mechanisms even pass decisions which are against the interest and right of women.[175]

The other challenge is with regard to defendant's right. The criminal justice systems have many protections to the defendant not to convict him wrongfully. This is due to the presumption of innocent provided under the FDRE constitution. Hence, in order to convict the offender the public prosecutor should persuade the court beyond reasonable doubt. However, in the Restorative justice side their might be a danger that defendants may simply accept responsibility for the offence they did not commit due to fear of prosecution in the criminal justice system. Nonetheless, in practice the possibility of occurring this is low.[176]

2, Difficulty to establish uniformly applicable CDR mechanisms at national level

Despite the fact that, Ethiopia has enormous CDR mechanisms that helps to resolve disputes in collaboration with disputant parties and families aimed at reintegration of the offender and restitution of the victim, the dispute resolution mechanisms are quite different based on the ethnic group, so they may not have uniform application throughout the country.[177] This is because accommodating this diverse dispute resolution mechanism in to one system may be a great danger to the process.[178]However, in the view of Macfarlane, Ethiopia has an enormous CDR mechanism, restorative justice is necessary, because in his view first customary dispute resolution mechanisms are closely related with restorative justice.[179]Secondly, in many

[173] Interview with Saba Demeke, Trainer and Researcher in the Amhara National Regional State justice professional training and legal research institute, *on challenges to introduce restorative justice in Ethiopia*,October,27,2010 E.C
[174] *Ibid*
[175] *Ibid*
[176] Interview with Saba Demeke, *supra note* 173
[177] Interview with Eyob Getachew, *supra note* 161
[178]*Ibid*
[179]*Macfarlane j, working towards restorative justice in Ethiopia: supra note* 23

villages conflict is not report to police rather dealt with dispute resolution.[180] So, restorative justice helps to fill the gap between formal and informal criminal justice system.

3, cost of reforming the justice system

The other challenges is related with the cost of Reforming the administration of the justice system in general and to implement Restorative justice in particular takes up the largest part of the national budget; Since Ethiopian government may face tight budget constraint to assist the strategy to implement and facilitate the cost effectiveness of Restorative justice institutions with in the country's criminal justice administration.[181]

4, lack of recognition of restorative justice in the formal criminal justice system

The criminal justice system of Ethiopia is a more western oriented system and it fails to accommodate CDR mechanisms, this is true both in the 1957 penal code and the revised 2004 criminal code.[182] CDR mechanisms have been practiced in our country both in civil and criminal matters. But, despite this fact when both the victim and the offender are voluntarily willing to settle their criminal dispute through this mechanism, legally speaking courts have been refusing permission of adjudication through it.[183]In this regard, Biadglign tamir previously Banja woreda public prosecutor and currently law school student stated the following;

> He said, in one case a certain driver committed homicide by negligence. Before the commencement of the formal court proceeding by the public prosecutor, both the offender and the family of the victim prefer to settle

[180] *Ibid*
[181] Interview with Eyob Getachew, *supra note* 161
[182] *Ibid*
[183] *Ibid*

> their case by mediation. As a result of the mediation they have reached a mutually agreeable decision and the offender have been obliged to pay compensation of 25,000 Birr for the family of the victim and in return the offender is free from any other civil and criminal liability. However, After the conclusion of the mediation a police officer who is at the crime scene heard of the mediation and arrived at them while they are inviting each other at restaurant, shouted to them and he insists on saying it's unlawful to mediate homicide, as a result of which people in the mediation dispersed and mediators start to run to hide from that place. After that time the formal criminal proceeding set in motion by the initiation of the public prosecutor by disregarding the interest of both the relatives of the victim and the offender.[184]

Therefore, one can understand from this interview that, though parties in a dispute are needed to settle their case through CDR mechanism, there are no legal grounds to allow as an alternative to criminal prosecution. So, there are no opportunities either for the court or public prosecutor to permit adjudication by CDR mechanisms and what courts can actually do is that when parties pray for mediation courts mitigate punishment as per art.82 of the criminal code.[185] So he concludes that the current formal criminal justice system needs a serious reconsideration.

5, the absence of institutional arrangement to implement restorative justice

The last but not the least challenge, is the absence of institutional arrangement for the enforcement of restorative justice in to practice. The

[184]Interview with Biadglign Tamir, previously Banja woreda public prosecutor and currently law school student, *on the recognition of restorative justice in the criminal justice system of Ethiopi*a, January 17, 2010 E.C.
[185] *Ibid*

mere existence of CDR mechanisms which are compatible with the values and principles of restorative justice by itself is nothing to do in practice in the absence of institutional arrangement.[186] Hence, the operation of restorative justice needs well structured and organized institutional arrangement[187]. Unfortunately, as far as the researcher's knowledge is concerned, till know there is no any well functioning institutional arrangement for the application of restorative justice within the formal criminal justice system of Ethiopia. Thus, it might be one challenge for the introduction of restorative justice as a new system of delivering justice.

However, the most critical question here is that how to institutionalize those diversified CDR mechanisms, which are compatible with the values and principles of restorative justice within the formal criminal justice system of Ethiopia. However, the question is beyond the scope of this study and needs further inquiry.

In this regard, I think it is important to discuss the viewpoints raised during the national regional stats justice organs forum on Restorative justice held from Augest16 to 17, 2012 in Adama .[188] The issue is concerned about how to institutionalize the existing CDR mechanisms of Ethiopia and raised two different viewpoints.[189] Proponents of the first view argue that giving legal recognition to CDR mechanisms without the establishment of institutions by itself is sufficient to practice them and it is one mechanism of institutionalizing them.[190] On the other hand, the second view raised that the establishment of separate institution as a pre-condition for the operation of restorative justice in Ethiopian criminal justice system.[191] They further alleged that the existence of separate institution will make easier the

[186] Interview with abebe kase, *supra note* 147
[187] ***Ibid***
[188] ***Endalew, a move towards restorative justice in Ethiopia, supra note*** 16,pp,89-91
[189] *Ibid*
[190] *Ibid*
[191] *Ibid*

implementation of restorative justice as a diversionary measure by the referral of the court or public prosecutor.[192]

In this regard, the second argument seems plausible as organized and well institutionalized CDR mechanisms have a great opportunity to implement restorative justice. This is because courts and public prosecutors will simply facilitate the diversionary process. However, comprehensive and detailed research should be conducted to find out how to institutionalize CDR mechanisms.

CHAPTER-FOUR

CONCLUSION AND RECOMMENDATION

4.1. Concluding remarks

Restorative justice is an approach to criminal justice that aims to rectify the limitations associated with the formal criminal justice system. Restorative justice views crime as a violation of a relationship among the victim, the offender, and the community, instead of considering the state as a sole victim and punishing the offender. Restorative justice empowers victims, offenders and communities to take an active role in the formulation and providing response to a crime.

Having realized this most countries incorporate restorative justice within their formal criminal justice system. Moreover, basic principles adopted by the UN in 2002 encourage states to develop guide lines and standards to the use of restorative justice programs as well as called member states to the use of restorative justice in its formal criminal justice system.

[192] *Ibid*

When we see the situation in Ethiopia, the current criminal justice system is devoid of appraising principles of restorative justice. I.e. The formal criminal justice system neither secures restorative justice to be applied nor encourage parties to a criminal dispute to opt such process. However, as I tried to discus in chapter three there are so many reasons why Ethiopia needs to introduce restorative justice within its formal criminal justice system. Among such reasons, the Failure to meet purpose of punishment, cost and prison population reduction, active involvement of the victim, the offender and the concerned community in the criminal justice system as well as the need to comply with the global legal development are some of the grounds. Hence, all this reasons suggest for introducing restorative justice within the formal criminal justice system. Therefore, there is no doubt as to the need to introducing restorative justice as a means of conflict resolution process within Ethiopian justice system.

Currently there are some promises to incorporate restorative justice system process in the Ethiopian criminal justice system. First, the enactment of new documents and legislations, like the criminal justice policy, the draft community service proclamation and the draft criminal procedure code could be cited.

Second, the existence of multiple CDR mechanisms, though they are not well institutionalized and organized, which are compatible with the values and principles of Restorative justice coupled with the current movement towards their recognition are important steps for the introduction of Restorative justice within Ethiopia criminal justice system.

Despite the fact that, Ethiopia has enormous CDR mechanisms that helps to resolve disputes in collaboration with disputant parties and families aimed at reintegration of the offender and restitution of the victim, the dispute resolution mechanisms are quite different based on the ethnic group, so they may not have uniform application throughout the country. This is

because accommodating this diverse dispute resolution mechanism in to one system may be a great danger to the process. But, still a lot is needed to be done so that restorative justice could at best be provided as an option to the criminal justice system.

4.2. Recommendations

Based on the finding of the study, the researcher would like to forward the following recommendations as follow:-

1, the government should work its best in order to make restorative justice culturally adaptable with the existing CDR mechanisms practiced by the

society. Since, the application of restorative justice in Ethiopian formal criminal justice system is a new phenomenon. Thus, before introducing the system as fast and hard rule, first we should re-shape it in line with the values and principles of restorative justice. This is because; laws should not be simply imported. When enacting laws different realities of the country should be taken in to account. One of such reality is the culture of society. Therefore, the government should strive to adapt such CDR mechanisms with restorative justice as the government is duty bound to support the growth and enrichment of culture that are compatible with fundamental rights and freedoms as provided under Art.91 of FDRE constitution.

2, the Ethiopian criminal justice system is not recognized the application of restorative justice. So, first the legislature should amend current criminal code as well as the criminal procedure code so as to include restorative justice as diversionary measure to the formal criminal justice system and should clearly provide catalogs of crimes of which restorative justice is allowed. Secondly, the legislature should amend the constitution to insert express provisions which recognizes the application of Restorative justice in criminal matters.

3, an independent Monitoring Organ (institution) should be established at national and regional state level. At national and regional level monitoring organ should be launched that has to take the responsibility to observe the implementation of restorative justice. The organ can exert modest pressure to give material and technical support for the implementation of Restorative justice principles and standards within the criminal justice system. It also ensures the progress and realization of Restorative justice and takes further measures as it thinks so.

4, Necessary measures should be taken to properly address the limitations associated with CDR mechanisms in order to utilize those mechanisms as an asset and basis to implement restorative justice in Ethiopian criminal justice

system. Among the measures CDR mechanisms should be properly institutionalized, taking into account their indigenous character and preserving human rights and freedoms of citizens.

5, further research should be conducted at national and regional level as to how to institutionalize CDR mechanisms that are compatible with principles and values of restorative justice and the manner of incorporating in to formal criminal justice system of Ethiopia.

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