

UNIVERSITY OF NAIROBI
FACULTY OF ARTS
DEPARTMENT OF SOCIOLOGY AND SOCIAL WORK

EFFECTIVENESS OF THE TRADITIONAL JUSTICE SYSTEMS IN
DELIVERING JUSTICE TO WOMEN VICTIMS OF SEXUAL AND
GENDER BASED VIOLENCE AMONG ETHNIC KUNAMA
REFUGEES IN ETHIOPIA.

BY

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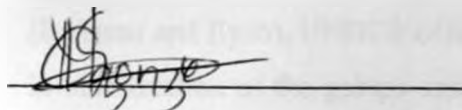
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DECLARATION

This research project is my original work and has not been presented for a degree in any other university.

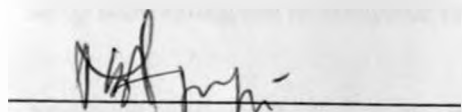


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Abstract

During a crisis, such as armed conflict or natural disaster, institutions and systems for physical and social protection may be weakened or destroyed. Police, legal, health, education, and social services are often disrupted; many people flee, and those who remain may not have the capacity or the equipment to work. Families and communities are often separated, which results in a further breakdown of community support systems and protection mechanisms according to IASC (2005).

A justice system is considered effective when the structure and procedures correspond with international standards of justice and human rights provisions to guarantee that victims are not further humiliated or denied justice.

This study examined the effectiveness of traditional systems in delivering justice especially to women victims of sexual and gender based violence (SGBV). The focus of the study was the Kunama ethnic group as it is the only refugee community in Ethiopia with a recognized and functional traditional justice system. The study subjects were the ethnic Kunama women victims of sexual and gender based violence that sought determination of SGBV incidents from the traditional justice system, those who sought other services from implementing partners in the camp but had not sought judicial redress and those who had suffered violence but took no action. Refugee social workers, police officers from Shimelba and Shiraro police stations were also part of the study in order to give insights on the female victim's perception of the traditional justice system. A total of 222 respondents were involved in this study.

The study revealed that though the traditional justice system is a reliable and readily available means of addressing SGBV incidents among the Kunama, the system is not an adequate means of ensuring that women victims of SGBV receive justice. The composition of an adhoc male only traditional justice panel pre-supposes the likelihood of the female victim of SGBV being disadvantaged in the hearings. Additionally, traditional justice proceedings do not guarantee confidentiality to assure women of justice being served. This is a key factor preventing would-be reports of SGBV by the women to the traditional justice councils.

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ACRONYMS

ARRA:	Administration for Refugees and Returnees Affairs
CL(s):	Clan Leader(s)
DV	Domestic Violence
FGD(s):	Focus Group discussion(s)
FGM:	Female Genital Mutilation
SGBV:	Sexual & Gender-Based Violence
IP(s):	Implementing Partners
IRC:	International Rescue Committee
RL(s):	Religious Leader(s)
SSI(s):	Semi-Structured Interview(s)
UNHCR:	United Nations High Commissioner for Refugees
WA:	Women Association

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CHAPTER 1: INTRODUCTION

1.1 Background

During a crisis, such as armed conflict or natural disaster, institutions and systems for physical and social protection may be weakened or destroyed. Police, legal, health, education, and social services are often disrupted; many people flee, and those who remain may not have the capacity or the equipment to work. Families and communities are often separated, which results in a further breakdown of community support systems and protection mechanisms (IASC, 2005).

Around the world, at least one in every three women has been beaten, coerced into sex, or otherwise abused in her life time. More than 90 million African women and girls are victims of female genital mutilation. After the civil war in 2002, 94% of displaced households surveyed in Sierra Leone reported incidents of sexual assault, including rape, torture and sexual slavery. At least 250,000, perhaps as many as 500,000 women were raped during the 1994 genocide in Rwanda (UNHCR, 2003).

Throughout history, violence against women has been accepted as an inevitable if unfortunate feature of conflict. Additionally, 40,000 cases of war-related rape were reported during the 1992-1995 war in Bosnia and Herzegovina. Between 23,000 and 45,000 Kosovo- Albanian women were reportedly raped in 1998 to 1999 at the height of the conflict with Serbia. In Rwanda, 39% of women surveyed reported being raped during the genocide and another study revealed that two in three women who were raped were HIV-positive. In Burundi after the 1993 genocide, 19% of a sample of women reported being raped (Ibid). Unfortunately, these cases are not the exception. Similar data are reported wherever there are conflicts. According to Obaid (2007), behind each statistic is a human being - a woman who needs support to heal and reintegrate into her family and community. Yet all too often survivors are subjected to discrimination and stigma, which only compound the suffering they have already endured.

The WHO (2005) violence against women fact sheet indicates that many pregnant women and young girls are subject to severe, sustained, or repeated attacks. Worldwide, it has been estimated that violence against women is as serious a cause of death and incapacity amongst women of reproductive age as cancer, and a greater cause of ill-health than traffic accidents and malaria combined (World Development report, 1993).

According to a WHO (2003) bulletin, one in three women in rural Uganda is subject to verbal or physical threats from their partners, whilst 50% of those women who have been threatened, subsequently receive injuries. Not surprisingly therefore, beating a female partner was viewed as justifiable in certain circumstances by 70 per cent of the male respondents and 90 per cent of the female respondents. The study also revealed that domestic violence may be an important factor in women's susceptibility to acquiring HIV.

UNHCR approximated in June 2004 that 200,000 Sudanese had fled into Chad and another 1 million were estimated to be internally displaced due to increased violence in the Darfur region of Sudan. Earlier, a UNFPA press release in May 2004 stated that displaced Sudanese women and men reported abduction and widespread rape of women in Darfur by the Janjaweed. Women and girls in Chad crossing back to Sudan in search of water, food, and firewood also faced risk of sexual violence.

According to UNIFEM, mass rape in the Democratic Republic of the Congo has been accompanied by sexual mutilation and cannibalism, with armed groups particularly targeting pygmy women for cannibalism and genocide.

The Human Rights Watch (2002) reported that as many as 3,000 women in central Kivu in the Democratic Republic of the Congo were raped between 1999 and mid-2000. This demonstrates the extent to which rape was used as a weapon of war in the Congo's five-year conflict.

Sexual violence and abduction of women and girls greatly increased in Baghdad, Iraq, according to Human Rights Watch (2003). Insecurity and fear were keeping women and girls house-bound, out of school, and out of work. The BBC News of 23 March 2004 reported 235 women in Afghanistan had tried to kill themselves by self-immolation since the fall of the Taliban, according to the Afghan Independent Human Rights Commission. Moreover, thousands of Afghan women continue trying to commit suicide every year due to their domestic situation.

According to findings published by WHO (2005), 49% of Ethiopian women who had been in domestic partnerships had experienced physical abuse by a partner at some point in their lives. In 2005, 29% of such women were abused. Additionally, 59 % of these Ethiopian women experienced sexual violence at some point, with 44 % happening during the 12 months preceding the survey. The DHS (2005) in Ethiopia showed that, 71% of women in domestic partnerships had experienced either physical or sexual violence or both over their

lifetime. Furthermore, three in four women aged 15-49 had undergone FGM. 48 % of rural girls were married before age 15, while 74% were married before the age of 18. Of these, only 14.9 % wanted to get married, 15.3 % knew about the marriage before-hand, and only 19.6 % consented to the union (Amin et al, 2008). Moreover, 8 in 10 women believed that there are some situations in which a husband was justified in beating his wife (DHS Ethiopia, 2005).

The 2008 annual statistics among the refugee population further indicate that in Ethiopia, 222 women reported being victims of SGBV. Among them, 44 were from the Eritrean refugee population (UNHCR Ethiopia, 2008).

According to UNHCR, refugees constitute some of the most vulnerable populations to SGBV. Among these, women constitute the largest proportions of individual victims of SGBV. In Shimelba camp, the types of gender based violence most prevalent are sexual violence, abuse and exploitation, domestic violence, forced marriage and FGM. Insecurity and socio-economic dependence contribute to the violence targeting Kunama women going to fetch wood and single Tigrigna women without the protection of male family members (Arrault and Miquel, 2007).

The demography of the camp according to the November 2008 UNHCR statistics, shows a skewed female to male ratio of 34% to 66% respectively, occasioned by the flight of huge numbers of Eritrean young adults from forced military conscription. This disparity poses a huge protection risk to the females as they carry out their daily chores due to the fact that they are outnumbered 2 to 1 by the males. Moreover, the IASC (2005) guidelines shed more light on the breakdown of community support systems and protection mechanisms during and after displacements caused by conflicts, leaving the relatively small number of women in danger of various forms of violations.

Anthropological studies show that the Kunama venerate their ancestors and have a special reverence for the elders of the tribe. This respect allows the elders to make important decisions, called "democratic choices". In this tradition, a minimum of two male elders normally would form a decision panel. These decisions include justice hearings of a wide range of complaints including reports of various forms of SGBV (CNEWA, 2003).

Historically, the Tigrigna have been and are still the ruling class in Eritrea. The Kunama on the other hand are viewed as traitors and are alleged to have supported the Ethiopian

military during the Ethio-Eritrean war which took place between May 1998 and June 2000. This is the reason that caused the flight of the Kunama from Eritrea to Ethiopia. The fact that both the Kunama and the Tigriana live in the same camp, could lead to eruption of old hostilities effectively placing the Kunama women in a very precarious position, making them doubly vulnerable to SGBV meted out by the Tigriana.

1.2 Problem Statement

According to Swaine (2003), "A woman who presents a complaint of violence to a local justice hearing cannot expect that 'justice' in the true sense of the word will be delivered. Women have minimal and often superficial participation in justice hearings and find that the rulings which are passed are often based on the administrators of justice own biases and cultural beliefs regarding women's status in society. Local justice committees usually have little power to enforce their rulings, whether that is in regards to the compensation payment or the prevention of further violence. Usually, men are not obliged to take responsibility for their violent acts while women are apportioned blame for causing violence to occur in the first place."

Among the refugees, often there is little legal recourse for SGBV issues. The courts are in Shiraro and Shire (1 to 3 hours away from the camp) which means that it involves high costs to get there and lawyer fees are also high. Furthermore, the refugees often usually have little trust in the legal system. This often is reflected in the little follow up of the process on cases that go to the courts (Arrault and Miquel, 2007).

Kunama female survivors of SGBV predominantly rely on the traditional justice system. It discourages them from going to the formal legal systems to seek re-dress in an effort to maintain age-old traditions and perpetuate culture. It is the only ethnic group in the camp with a functional traditional justice system.

However, a number of criticisms have been leveled against these forms of justice; they are discriminatory on the basis of age, gender, social status and family circumstances, they have weak linkages with the judiciary and other relevant formal institutions, lack harmonization because they are as varied as there are ethnic groups, and sometimes even variations within the same ethnic group exist. They have also been accused of not being codified; therefore open to varied interpretations and applications.

Given the limited confidence in formal justice systems among the Kunama and the considerable dependence on tradition to address a wide range of concerns in this society, this study sought to examine the significance of the traditional justice practices and their effectiveness in the delivery of justice to women victims of SGBV.

1.3 Research Questions

- i. What is the structure of the Kunama traditional justice system?
- ii. What is the significance of the traditional justice system in addressing SGBV among the Kunama?
- iii. What are the limitations of the traditional justice system in effective delivery of justice for women victims of SGBV?
- iv. What is the effectiveness of traditional arbitration in delivering justice to women victims of SGBV among the Kunama?

1.4 Overall aim of study

This study aimed to examine the effectiveness of traditional justice systems for women victims of sexual and gender based violence among the ethnic Kunama refugees in Ethiopia.

Specific Objectives:

- i. To describe the structure of the Kunama traditional justice system.
- ii. To examine the significance of the traditional justice system in addressing SGBV among the Kunama.
- iii. To identify the limitations of the Kunama traditional system in delivering justice to women victims of SGBV.
- iv. To examine the effectiveness of the Kunama traditional justice system in the delivery of justice to women survivors of SGBV.

1.4 Study rationale

The destruction or weakening of institutions and systems for physical or social protection are brought about by crises such as armed conflict or natural disasters aggravating the vulnerability of Kunama women to SGBV. This is because Families and communities are often separated, resulting in a further breakdown of community support systems and protection mechanisms (IASC, 2005).

Statistics drawn from such diverse locations as Darfur, Democratic republic of Congo, Uganda, Liberia and Sierra Leone depict gross violations of human rights in the form of SGBV perpetrated against women and girls. These scenarios can be extrapolated to other situations of armed conflict resulting in human displacement such as the one affecting the Eritrean refugees in Ethiopia, and thus warrants attention.

Even though sexual and gender based violence, and particularly exploitation of women, are common experiences in refugee settings, few communities have recognized, functional traditional systems that address such violations. In the Ethiopian context, the Kunama are the community with a recognized functional traditional justice system. In the face of breakdown of formal justice systems and crises as those resulting in displacement of people, it would be important to analyze the effectiveness of such traditional systems in delivery of justice to victims of sexual and gender based violence.

UNHCR Ethiopia (2008) documents the range of sexual and gender based violations experienced among refugees in Shimelba camp, Ethiopia to include: domestic violence, rape, sexual harassment, attempted rape, other sexual violence, forced marriage, physical assault and the least reported type – FGM (only one case reported). The majority of cases are reported from the Tigrigna ethnic group, the second being Saho and only 1% reported from the Kunama ethnic group. More than 60% of the survivors reporting SGBV are single women and children who are living alone. This is an indicator that the lack of community networks is an aggravating factor. The fact that Kunamas hardly ever report SGBV cases despite the fact that FGM is carried out on 100% of the female population, shows the need for a more serious investigation to ascertain whether or not there is under reporting of violence, especially against women.

This clearly indicates that when SGBV incidents occur, the Kunama women opt to go to the traditional justice system to have their cases solved. Additionally resistance from the Kunama traditional system to the involvement of NGOs, and other interested government bodies working in the camp in their court hearings points to the fact that their verdicts may not be in-line with international human rights standards. This fact puts in a strong argument for the study of this traditional justice system to ensure compliance with international human rights standards.

Women use local justice because of its basis in their culture and the fact that it is a familiar and known concept. Women's strongest complaint was that in the traditional mediation process women are usually the ones blamed, and therefore they do not get a fair hearing within the process. Additionally, the traditional mediation system was not a very strong system due to its inability to enforce the payment of compensation. Others also believed that the traditional/local mediation does not have the power over men to stop incidents of violence from occurring again (Swaine, 2003).

Most studies on violence against women tend to focus on the formal means of prevention and response through prosecution and rehabilitation, but few ever consider the use of the non-formal traditional means of achieving the same goals.

This study would be important because it would not only focus on identifying the limitations of informal justice systems, but would also explore the means of strengthening such systems to deliver justice.

1.6 Scope

The study focused on the ethnic Kunama refugees in Shimelba Refugee Camp situated 80km away from Eritrean border, 175kms from the Sudan border and 1200km away from the capital, Addis Ababa. The camp is found in 'Tahitay-Adiabo' woreda.

The UNHCR (2008), statistics show that there were 10, 540¹ registered Eritrean refugees in the Camp, 7,006 (66%) of them are males. At this point in time, there were 3 major ethnic groups in the camp: Kunama, Tigigna, Saho and others. The Tigigna alone make up 69.1% of the total camp population, whereas the Kunamas 28%, the Saho 2.2% and others 0.7%.

The study subjects were the ethnic Kunama women victims of sexual and gender based violence that either had their cases determined by the traditional justice councils (14 respondents), or those whose cases were filed before the ethnic justice councils and were pending determination (8 respondents). Another category of respondents were Kunama victims of SGBV who had reported their cases to other agencies operating in the camp including UNHCR, IRC and ARRA having not filed their cases with the traditional justice system (22 respondents) as well as 136 Kunama women who had suffered any form of

¹ According to the UNHCR Ethiopia November 2008 statistical report the camp accommodates a total of 10, 540 Eritrean refugees.

SGBV but had not made any reports. 10 refugee social workers and 10 police officers from Shimelba and Shiraro police stations were also involved in the discussions, totaling 222 respondents.

The subjects in the study sample were drawn from the three zones A, B and C inhabited by the Kunama refugees according to the camp structure. Each zone is composed of 4 villages each, spreading the sample size over 12 villages. The period for time of incidents was between 2006 and 2008 when IRC introduced a GBV program in the camp. It is worth noting that this is not the total number of SGBV victims as some may have left for the United States of America through the Kunama group resettlement program.

The IRC January (2007) SGBV statistics for Shimelba camp, stated that the types of gender based violence most prevalent were sexual abuse and exploitation, sexual violence, domestic violence, forced marriage and FGM. Insecurity and socio-economic dependence contributed to the violence targeting Kunama women going to fetch wood and single Tigrigna women without the protection of male family members. (Arrault and Miquel, 2007)

1.7 Limitations of the Study

One limitation of the study was the possibility of withholding of the information by those with cases pending determination for fear of prejudice if word got around that they had talked to “outsiders” from their community. Others could have taken the opportunity to exaggerate their cases so as to garner sympathy from the research team.

This was dealt with by the re-iteration of the research team that this was only an information gathering exercise and that the findings would be forwarded to UNHCR Ethiopia who operate in the camp to inform their project planning for the next year following the recommendations of the report.

There was also the likelihood of fatigue setting in on the interpreters due to the monotony of the subject through out the 20 FGDs. This was overcome by the creation of a rotational schedule for the interpreters including a slow-down on the sessions held in a day, staggering of the FGD sessions to avoid tediousness, as well as ensuring they received adequate compensation for the services rendered.

Due to the inability of the researcher and the research assistant to access the traditional council sessions, proxies were used in the form of the two refugee interpreters who were community members. This is because attendance for these hearings is restricted for non-community members.

Additionally, non-obtrusive observations were used to follow the proceedings so as to get an accurate picture of what they entailed in terms of summoning of witnesses, evidence handling and actual deliberations. Conversations before and after the council hearings were also documented for triangulation of all the information gathered on the traditional justice system.

This study concentrated on Kunama refugees resident in the 3 zones making up the Kunama settlement. It does not include other Kunama who left the camp on group resettlement to the United States of America.

Definitions

Clan: A group of people united by kinship and descent, defined by perceived descent from a common ancestor. Even if actual lineage patterns are unknown, clan members nonetheless recognize a founding member or apical ancestor...²

Focus Group

Discussion: A form of structured group discussion involving people with knowledge and interest in a particular topic and a facilitator.³

Implementing

Partner(s), Refers to IRC, ARRA and UNHCR.

Institution(s): Structures and mechanisms of social order and cooperation governing the behavior of two or more individuals. Also, taken as custom, practice, relationship, or behavioral pattern of importance in the life of a community or society,⁴

Refugee Camp: A temporary camp constructed to host refugees.

Refugee: Persons who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ..."⁵

Semi-Structured

Interview: An interview method that follows a pre-defined set of question parameters, although still allowing for a degree of flexibility. New questions can be brought up during the interview as a result

² en.wikipedia.org/wiki/Clan

³ www.evaluateit.org/glossary/

⁴ <http://www.thefreedictionary.com/institution> and <http://en.wikipedia.org/wiki/Institution>

⁵ <http://home.vicnet.net.au/~sail/refugees.htm>

of what the interviewee says, so the interview flows more like a conversation than a structured interview...

Survivor(s): Individuals or groups who have suffered sexual and gender-based violence.⁶

Norms: A rule that is socially enforced. Social sanctioning is what distinguishes norms from other cultural products or social constructions such as meaning and values.⁷

⁶ Guidelines for prevention and response, UNHCR, 2003

⁷ [http://en.wikipedia.org/wiki/Norm_\(sociology\)](http://en.wikipedia.org/wiki/Norm_(sociology))

CHAPTER 2: LITERATURE REVIEW

2.0 INTRODUCTION

Vulnerability to SGBV is aggravated during a crisis, such as armed conflict or natural disaster. This is because institutions and systems for physical and social protection may be weakened or destroyed. Furthermore, families and communities are often separated, which results in a further breakdown of community support systems and protection mechanisms according to IASC (2005).

Patterns of SGBV are similar and in some cases identical for countries within the same geographical region, experiencing the same type of turmoil. The victims in most cases are women and girls as cited in most of the studies carried out such as the ones listed below.

Around the world, at least one in every three women has been beaten, coerced into sex, or otherwise abused in her life time (UNHCR, 2003). According to Obaid (2007), behind each statistic is a human being - a woman who needs support to heal and reintegrate into her family and community. Yet all too often survivors are subjected to discrimination and stigma, which only compound the suffering they have already endured.

A global view of SGBV

The WHO (2005) violence against women fact sheet indicates that many pregnant women and young girls are subject to severe, sustained, or repeated attacks. Worldwide, it has been estimated that violence against women is as serious a cause of death and incapacity amongst women of reproductive age as cancer, and a greater cause of ill-health than traffic accidents and malaria combined (World Development report, 1993).

A similar study by WHO (2003) showed that 40% of women of reproductive age had experienced physical violence by a partner in Nicaragua. 70% of the physical violence was considered severe, whilst a total of 31% of women were beaten during at least one of their pregnancies.

Throughout history, violence against women has been accepted as an inevitable if unfortunate feature of conflict. Some 40,000 cases of war-related rape were reported during the 1992-1995 war in Bosnia and Herzegovina. Between 23,000 and 45,000 Kosovo-Albanian women were reportedly raped in 1998 to 1999 at the height of the conflict with Serbia (UNHCR, 2003).

Sexual violence and abduction of women and girls greatly increased in Baghdad, Iraq, according to Human Rights Watch (2003). Insecurity and fear were keeping women and girls housebound, out of school, and out of work.

The BBC News of 23 March 2004 reported 235 women in Afghanistan had tried to kill themselves by self-immolation since the fall of the Taliban, according to the Afghan Independent Human Rights Commission. Moreover, thousands of Afghan women continue trying to commit suicide every year due to their domestic situation.

In an RHRC Consortium survey conducted in East Timor, physical assault by non-family members decreased from 24.4% during the crisis to 5.8 per cent post-crisis. Sexual assault decreased by more than half once the conflict ended. This study demonstrates the increased incidence of SGBV during conflict.

Findings from a study carried out by Association Najdeh (1999) of Palestinian refugee women indicated that 30% of women were subjected to beating at least once during their marriage, with the husband as the main perpetrator. 25% of Azeri women surveyed in 2000 by the Centers for Disease Control acknowledged being forced to have sex; those at greatest risk were amongst Azerbaijan's internally displaced, 23% of who acknowledged being beaten by their husbands.

SGBV in the African Context

More than 90 million African women and girls are victims of female genital mutilation. After the civil war in 2002, 94% of displaced households surveyed in Sierra Leone reported incidents of sexual assault, including rape, torture and sexual slavery. At least 250,000, perhaps as many as 500,000 women were raped during the 1994 genocide in Rwanda. Moreover, 39% of women surveyed reported being raped during the genocide and, in one study, two in three women who were raped were HIV-positive. In Burundi after the 1993 genocide, 19% of a sample of women reported being raped. Unfortunately, these cases are not the exception. Similar data are reported wherever there are conflicts (UNHCR, 2003).

According to a WHO (2003) bulletin, one in three women in rural Uganda is subject to verbal or physical threats from their partners, whilst 50% of those women who have been threatened, subsequently receive injuries. Beating a female partner was viewed as justifiable in certain circumstances by 70 per cent of the male respondents and 90 per cent

of the female respondents. The study also revealed that domestic violence may be an important factor in women's susceptibility to acquiring HIV.

UNHCR approximated in June 2004 that 200,000 Sudanese had fled into Chad and another 1 million were estimated to be internally displaced due to increased violence in the Darfur region of Sudan. Earlier, a UNFPA press release in May 2004 stated that displaced Sudanese women and men reported abduction and widespread rape of women in Darfur by the Janjaweed. Women and girls in Chad crossing back to Sudan in search of water, food, and firewood also faced risk of sexual violence.

In the same geographical region, doctors in the Democratic Republic of Congo classified vaginal destruction as a crime of combat due to systematic and exceptionally violent gang rape in 2006. Thousands of Congolese girls and women suffered from vaginal fistula — tissue tears in the vagina, bladder, and rectum — after surviving brutal rapes in which guns and branches were used to violate them (HRW, 2002).

An International Alert report published findings of a survey of rape survivors in the South Kivu region which revealed that 91% suffered from one or several rape-related illnesses (Ibid).

According to UNIFEM, mass rape in the Democratic Republic of the Congo has been accompanied by sexual mutilation and cannibalism, with armed groups particularly targeting pygmy women for cannibalism and genocide.

The Human Rights Watch (2002) reported that as many as 3,000 women in central Kivu in the Democratic Republic of the Congo were raped between 1999 and mid-2000. This demonstrates the extent to which rape was used as a weapon of war in the Congo's five-year conflict.

Approximately 50,000 to 64,000 internally displaced women in Sierra Leone had histories of war-related assault, whilst 50% of those who came into contact with the Revolutionary United Front reported sexual violence as reported by Physicians for human rights (2002).

Additionally, a 1999 government survey stated that, 37% of Sierra Leone's prostitutes were less than 15 years of age, and more than 80% of those under 15 were unaccompanied or children displaced by the war.

Across the border in Liberia, Refugees International (2004) estimated that up to 40% of women were raped during Liberia's 14-year civil war; and teenagers were the most targeted group.

SGBV in Ethiopia

According to findings published by WHO (2005), 49% of Ethiopian women who had been in domestic partnerships had experienced physical abuse by a partner at some point in their lives. In 2005, 29% of such women were abused. Additionally, 59 % of these Ethiopian women experienced sexual violence at some point, with 44 % happening during the 12 months preceding the survey. According to the DHS (2005) in Ethiopia, 71% of women in domestic partnerships had experienced either physical or sexual violence or both over their lifetime. Furthermore, three in four women aged 15-49 had undergone FGM. 48 % of rural girls were married before age 15, while 74% were married before the age of 18. Of these, only 14.9 % wanted to get married, 15.3 % knew about the marriage before-hand, and only 19.6 % consented to the union (Amin et al, 2008). Moreover, 8 in 10 women believed that there are some situations in which a husband was justified in beating his wife (DHS Ethiopia, 2005).

SGBV among the Kunama refugees

The 2008 annual statistics for the refugee population further indicate that in Ethiopia, 222 women reported being victims of SGBV. Among them, 44 were from the Eritrean refugee population (UNHCR Ethiopia, 2008).

The Kunama are a nilotic ethnic group living in Eritrea and Ethiopia, making up only 2 percent of the population of Eritrea, where they are one of the smallest ethnic groups. Most of the estimated 100,000 Kunama live in the remote and isolated area between the Gash and Setit rivers near the border with Ethiopia. The Ethiopian-Eritrean War (1998-2000) forced some 4,000 Kunama to flee their homes to Ethiopia. As refugees they reside in the tense area just over the border with Eritrea and in proximity to the contested border village of Badme (<http://en.wikipedia.org/kunama>). This large number of Kunama refugees is often exposed to exploitation and violence. The exploitation and violence includes various forms of SGBV.

According to UNHCR, refugees constitute some of the most vulnerable populations to SGBV. Among these, women constitute the largest proportions of individual victims of SGBV. In Shimelba camp, the types of gender based violence most prevalent are sexual violence, abuse and exploitation, domestic violence, forced marriage and FGM. Insecurity and socio-economic dependence contribute to the violence targeting Kunama women going to fetch wood and single Tigrigna women without the protection of male family members (Arrault and Miquel, 2007). The demography of the camp according to the November 2008 UNHCR statistics, shows a skewed female to male ratio of 34% to 66% respectively, occasioned by the flight of huge numbers of Eritrean young adults from forced military conscription. This disparity poses a huge protection risk to the females as they carry out their daily chores due to the fact that they are outnumbered 1 to 2 by the males. Moreover, the IASC (2005) guidelines shed more light on the breakdown of community support systems and protection mechanisms during and after displacements caused by conflicts, leaving the relatively small number of women in danger of various forms of violations.

Anthropological studies show that the Kunama venerate their ancestors and have a special reverence for the elders of the tribe. This respect allows the elders to make important decisions, called "democratic choices". In this tradition, a minimum of two male elders normally would form a decision panel. These decisions include justice hearings of a wide range of complaints including reports of various forms of SGBV (CNEWA, 2003).

Although many forms of SGBV constitute crimes by Ethiopian law, structural limitations of the formal justice system ensure that the police and courts do very little to attend to these types of injustice as they usually go unreported and if reported, weak law enforcement by the police and the long judicial procedures deter would-be reports (Mulu, 2007).

The Kunama were formerly a nomadic people and today are settled agriculturalists and pastoralists living from cattle. They are matriarchal with a prominent role played by women. According to the Kunama social system, a child is a member of Kunama society only if his or her mother is Kunama, and relatives are only recognized on the mother's side. The Kunama have ceremonies for rights of passage—birth, circumcision, and passage to adulthood—performed by members of the particular kinship group (Eritrean-Kunama.de 2001). Female circumcision (or female genital mutilation, FGM) is normally performed on young girls between the ages of five and twelve, and the most extreme form of FGM

(infibulation, or type III) is carried out on 31 percent of Kunama women according to the U.S. Department of State (US DOS 1 June 2001; Eritrean-Kunama.de, 2001).

The Kunama carry out many tasks communally, including house building, collecting firewood, setting fences, plowing, weeding field-crops, harvesting, crop-gathering and storing, death and burial, and memorial rites (Eritrean-Kunama.de 2001).

In Shimelba camp, the types of gender based violence most prevalent are sexual abuse and exploitation, sexual violence, domestic violence, forced marriage and FGM. Insecurity and socio-economic dependence contribute to the violence targeting Kunama women going to fetch wood and single Tigrigna women without the protection of male family members (Arrault and Miquel, 2007).

Collecting wood for cooking was also identified as putting women at risk (especially Kunama women who are the ones that go out and collect wood). Because of the scarcity of resources in the region, especially wood – refugees and the local communities compete for resources creating tensions between the two resulting in harassment or sexual abuse. Additionally, the distance covered during firewood collection is extensive and could take the women up to 5 hours for a return trip. This was also seen as another contributory factor to domestic violence as women will not be able to make food for their husbands in time or be away from the house for too long (Ibid).

SGBV cases reported include domestic violence, rape, sexual harassment, attempted rape, other sexual violence, forced marriage, physical assault and the least reported type – FGM (only one case reported). The majority of cases are reported from the Tigrinya ethnic group, the second being Saho and only 1% reported from the Kunama ethnic group. More than 60% of the survivors reporting SGBV are single women and children who are living alone. This is an indicator that the lack of community networks is an aggravating factor. The fact that Kunamas hardly ever report SGBV cases despite the fact that FGM is carried out on 100% of the female population, shows the need for a more aggressive awareness raising intervention geared primarily towards attitude change (UNHCR Ethiopia-APR, 2008).

Understanding Violence

Violence: The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation (WHO, 2005).

Violence against Women

"Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women (UN Declaration on the Elimination of Violence against Women, UN GA 1993)."

The IASC (2005) GBV guidelines state that gender-based violence is an umbrella term for any harmful act that is perpetrated against a person's will, and that is based on socially ascribed (gender) differences between males and females.

Acts of SGBV violate a number of universal human rights protected by international instruments and conventions. Many, but not all, forms of SGBV are illegal and criminal acts in national laws and policies. Around the world, SGBV has a greater impact on women and girls than on men and boys.

The term "gender-based violence" is often used interchangeably, with the term "violence against women", highlighting the gender dimension of these types of acts; in other words, the relationship between females' subordinate status in society and their increased vulnerability to violence. It is important to note, however, that men and boys may also be victims of gender-based violence, especially sexual violence.

2.1 The International Legal Framework

This comprises:

- a) "Hard law" such as International human rights conventions, International humanitarian law and UN Resolutions.
- b) Special UN procedures such as UN monitoring committees, special envoys, special rapporteurs, and experts.
- c) "Soft law" includes International guidelines, International conference documents, declarations and programmes of Action.

International conventions and treaties are legally binding but not enough. They need to be translated into national legislations by the states that subscribed to them. UN guidelines and conference documents and programmes of action are not legally binding. However they are the result of a continuous process of negotiation and advocacy efforts representing a consensus agreed upon by state representatives.

International instruments protecting women against SGBV:

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (IVth Geneva Convention, 1949):“(...) Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault.” (§.27)

UN Guidelines on the Protection of Refugee Women (UNHCR, 1991):“... Women and girls have special protection needs that reflect their gender: they need (...) protection against (...) sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services.” (§.3)

CEDAW - General Recommendation No.19 on “Violence against Women” (1992):“GBV, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms (...) is discrimination...” (§9) “Wars, armed conflicts and the occupation of territories often lead to increased prostitution trafficking in women and sexual assault of women, which require specific protective and punitive measures.” (§16)

Second World Conference on Human Rights (Vienna, 1993): “Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery and forced pregnancy, require a particularly effective response” (§.38)

International Conference on Populations and Development (ICPD Programme of Action, 1994): Sexual and reproductive rights are human rights “(...) [Reproductive health] services should be particularly sensitive to the needs of (...) women and children (...) with particular attention to those who are victims of sexual violence.” (§.7.11)

“(...) All necessary measures should be taken to ensure the physical protection of refugees – in particular , that of refugee women and refugee children – against sexual exploitation, abuse and all forms of violence.” (§.10.24)

International Criminal Court (ICC Rome Statute 1998): "Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity are Crimes against humanity: widespread and systematic use (§.7.1.g), and War crimes: as part of a plan, policy or a large-scale commission (i.e.: a grave breach of the Geneva Conventions) (§.8.2.e.).

UN Security Council Resolution 1325 (2000): "Calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict." (§.10)

Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for (...) crimes against humanity, and war crimes including those related to sexual and other violence against women and girls..." (§.11)

UN Security Council Resolution 1820 (June 2008): Strong demand for immediate and complete stop to acts of sexual violence against civilians, in particular "against women and children". Sexual violence "can exacerbate situations of armed conflict" and "impede the restoration of international peace and security"

2.2 National legal framework Vs Traditional Practices

A majority of the traditional practices held in high regard by the Kunama ethnic group have been criminalized under Ethiopian law, thus the traditional justice system is unwilling to abandon some of its valued cultural traditions. These practices include Early marriage carrying an imprisonment sentence of 1-7years depending on the age of the victim and Female circumcision with associated injuries to females of any age is punishable by simple imprisonment of not less than 3 months or a fine of not less than 500 Birr. Infibulation of the female genitalia gets 3-5years in prison. Additionally, participation is punishable by imprisonment not exceeding 3 months or fine not exceeding 500 Birr. Depending on the gravity of domestic violence, imprisonment ranges from 1-15 years; rape penalty ranges from 5-20 years of imprisonment. Trafficking in women and minors carries an imprisonment not exceeding 5 years, and fine not exceeding 10,000 Birr.

2.3 Theories of justice

Rawls (1999), states that Justice is the first virtue of social institutions, as truth is of systems of thought. It concerns itself with the proper ordering of things and persons within a society.

There are variations of justice that support various theories according to Rawls (1999).

Utilitarianism is a form of consequentialism, where punishment is forward-looking. Justified by the ability to achieve future social benefits resulting in crime reduction, the moral worth of an action is determined by its outcome.

Retributive justice regulates proportionate response to crime proven by lawful evidence, so that punishment is justly imposed and considered as morally-correct and fully deserved. The law of retaliation is a military theory of retributive justice, which says that reciprocity should be equal to the wrong suffered such as life for life, wound for wound.

Restorative justice is concerned not so much with retribution and punishment as with (a) making the victim whole and (b) reintegrating the offender into society. This approach frequently brings an offender and a victim together, so that the offender can better understand the effect his/her offense had on the victim.

Distributive justice is directed at the proper allocation of things — wealth, power, reward, respect — between different people.

Oppressive Law exercises an authoritarian approach to legislation which is "totally unrelated to justice", a tyrannical interpretation of law is one in which the population lives under restriction from unlawful legislation.

2.4 Theoretical Framework:

The theoretical perspective that guided this study is the restorative justice theory, closely supplemented by the retributive justice theory.

Restorative justice is a theory of criminal justice that focuses on crime as an act against the individual or community rather than the state. Dialogue between the offender and the victim is crucial to restorative justice. The person who has harmed takes responsibility for their actions and the person who has been harmed may take a central role in the process, in many instances receiving an apology and reparation directly or indirectly from the person who has caused them harm.

Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice

seeks to build partnerships, to re-establish mutual responsibility for constructive responses to wrongdoing within our communities. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all (Suffolk University, 2005).

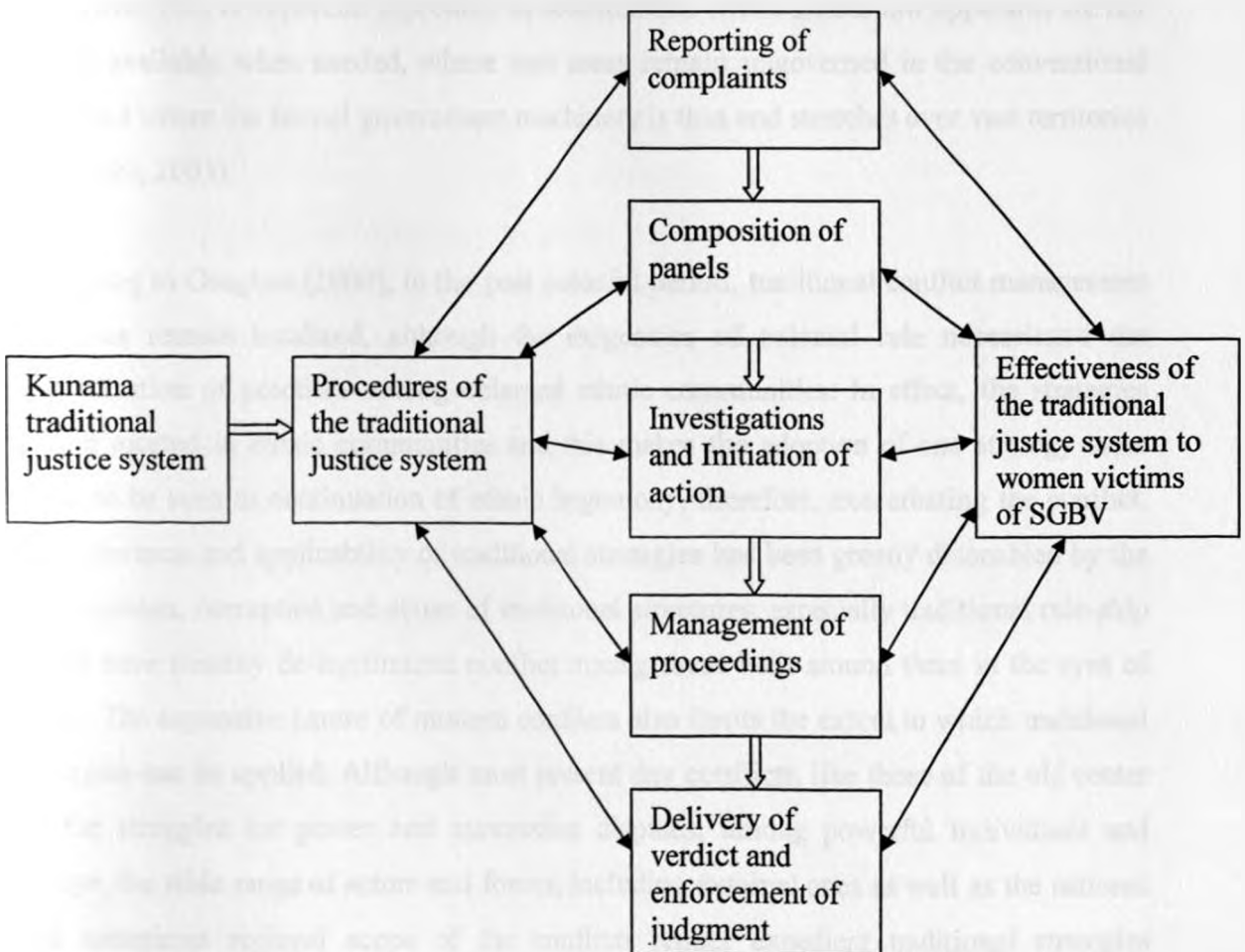
Retributive justice is a theory of justice that considers that proportionate punishment is a morally acceptable response to crime, with a focus on the satisfaction and psychological benefits it can bestow to the aggrieved party, its associates and society (Ibid).

These two theories are highly characteristic of the traditional mediation systems of the Kunama ethnic group.

2.5 Conceptual framework

The key variables correlated revolved around the application of traditional justice system procedures and their effects on sexual and gender based violence justice.

Table 1: Conceptual framework



2.6 Traditional justice systems

When most sub Saharan African countries became independent in the early 1960s, the majority of African citizens were resolving their disputes using traditional and informal justice forums. Despite their popularity, these forums were regarded as obstacles to development. Informal and traditional modes of settling disputes have remained as widespread as ever (Musembi, 2000).

Specifically, traditional and informal justice mechanisms continue to be useful in Africa for a number of reasons; they overcome the principal obstacles which deny access to formal justice systems to many. In practice, traditional justice systems are quick, carried out within walking distance, carried out in the local language with procedures that are understood by all and enforced by people who are socially important to litigants. In addition, they avoid the "prohibitive" costs to individuals and governments where formal state systems are relied upon. The end goal of traditional justice in Africa was primarily the restoration of peace and social harmony by reconciling the parties to the disputes and the wider communities involved in the dispute. Therefore, justice was more restorative than retributive. This is important especially in communities where formal law apparatus are not always available when needed, where vast areas remain ungoverned in the conventional sense and where the formal government machinery is thin and stretches over vast territories (Musembi, 2003).

According to Osaghae (2000), in the post colonial period, traditional conflict management strategies remain localized, although the exigencies of colonial rule necessitated the generalization of practices among enlarged ethnic communities. In effect, the strategies remain located in ethnic communities and this makes the adoption of one strategy more likely to be seen as continuation of ethnic hegemony, therefore, exacerbating the conflict. The relevance and applicability of traditional strategies has been greatly disenabled by the politicization, corruption and abuse of traditional structures, especially traditional rule-ship which have steadily de-legitimized conflict management built around them in the eyes of many. The expansive nature of modern conflicts also limits the extent to which traditional strategies can be applied. Although most present day conflicts, like those of the old center on the struggles for power and succession disputes, among powerful individuals and groups, the wide range of actors and forces, including external ones as well as the national and sometimes regional scope of the conflicts render expedient traditional strategies

inadequate. Traditional conflict resolution mechanisms are also not static. They represent a synthesis of time honored practices and new techniques, as communities adapt their customs to cope with fundamentally new types of conflict arising from the constantly evolving social, cultural, political and economic circumstances in which they operate; these practices are adaptable and dynamic as opposed to static and timeless (Menkhaus, 2000).

A number of reasons have been advanced for the need for incorporating traditional systems into modern conflict resolution efforts. This will help mitigate the disabling effects produced by the perception of western powers' conflict resolution and management initiatives as extensions of foreign intervention of the recolonization kind. This perception is reinforced by the larger context of economic and political adjustments which have rendered many insolvent African countries new colonies in all but name (Osaghae, 2000).

In the final analysis, both formal and informal systems have their merits, which may vary according to factors such as the nature of the dispute and the relationship between parties. Therefore, rather than being viewed as adversaries, the main concern should be which system provided the most appropriate solutions in what types of cases and how each system's comparative advantages can be enhanced and disadvantages minimized.

Ideal-typical attributes of traditional justice systems (PRI, 2002)

1. The focus is on reconciliation and restoring social harmony.
2. There is an emphasis on restorative penalties.
3. The problem is viewed as that of the whole community or group.
4. The enforcement of decisions is secured through social pressure.
5. There is no professional legal representation.
6. Decisions are confirmed through rituals aimed at reintegration.
7. The rules of evidence and procedure are flexible.
8. The process is voluntary and decisions are based on agreement.
9. Traditional arbitrators are appointed from within the community on the basis of status or lineage.
10. There is a high degree of public participation.

Case studies of traditional justice systems

The Gacaca courts in Rwanda

The Rwandan genocide of 1994 took place in the context of a civil war and an attempt gone awry to introduce multiparty democracy. It was the violent apex of a country history marked by sporadic eruptions of ethnic violence as a consequence of the struggle over power (and wealth) over the course of time—a struggle grafted on to the Hutu–Tutsi ethnic bipolarity that marks the Rwandan socio-political landscape. The Bahutu are the majority ethnic group with approximately 84 per cent of the population, 14 per cent of the population is Batutsi and 1 per cent Batwa (IDEA, 2008).

The Gacaca (literally meaning justice on the grass) courts are Rwanda’s main transitional justice instrument. The Gacaca bench often contains a mixture of survivors (Batutsi) and ‘non-survivors’ (Bahutu). Sometimes the judges are only Hutu or only Tutsi. The ethnic composition of the bench is seen as a means to get a viewpoint passed. The judges received short training on the law and procedures. Every district (that is, approximately every ten sectors) has a coordinator to supervise the Gacaca activities. This is the person who can be consulted by the judges.

An analysis of the strengths of the Gacaca courts revealed that the ordinary Rwandan preferred the traditional court over the formal national system and the International Criminal Tribunal for Rwanda because to them the formal justice system was physically and psychologically removed from them. Additionally, in the recent past, women have taken up active participation in the proceedings as they play a crucial role in reconstructive activities. The speed of the proceedings helped to take care of a backlog of cases that would have otherwise taken longer to process.

One glaring weakness was the fact that Gacaca courts nevertheless remain biased against women because of its inadequacy for fully addressing sexual crimes. Provisions have been made to allow women to testify on sexual crimes, for example, through in camera sessions. But the embedding of the Gacaca in a local face-to-face community makes it difficult to tackle these crimes (Ibid).

The Taliban and traditional justice in Afghanistan

Mojumdar (2009), suggests that former Taliban practices were an extreme form of generally-accepted customary laws in the region that are based on tribal codes and restorative justice principles.

Many of the tenets of the Taliban were only an extreme form of an ideology that had its roots in the traditional practices and customary laws of some tribal groups. Inspired by tribal codes and principles of restorative justice, many of the customary laws of Afghanistan, especially the Pashtunwali (the unwritten code of honour of the Pashtun people practiced even today), would be considered abhorrent and a complete violation of basic principles of internationally recognized human rights including the right to life and liberty.

This is an extreme form of traditional justice which seems to have only weaknesses such as the use of women as private property in dispute settlement; taking lives in exchange for injury or murder and treating the sheltering of a battered woman as a kidnapping which demands retribution through murder. This did not begin or end with the Taliban, nor did the practice of summary or public executions. The brutality that is now seen to characterize the Taliban regime was evident in the behavior of the 'commanders', 'warlords' and power brokers, with long years of conflict having brutalized the fighting men and having entrenched the most egregious aspects of the 'spoils of war' as routine practices.

The Kunama traditional Justice system

The practices of the Kunama traditional justice system fall in-between the two case studies on extreme ends of a continuum. There appears to be little legal recourse for GBV issues. The courts are in Shiraro and Shire (1 to 3 hours away from the camp) which means that it involves high costs to get there and lawyer fees are also high. The refugees have little trust in the legal system. There is also little follow up of the process on cases that go to the courts (Arrault and Miquel, 2007).

Measures to improve non-formal justice should be pursued alongside efforts to decentralize and streamline formal justice structures so that people are able to meaningfully choose remedies from the range of systems available. The fact of high usage of non-formal justice systems in rural areas does not automatically lead to the conclusion that those systems are the best; it could simply mean that they are the only ones available.

Interface of the Formal and Traditional Justice Systems

Women use traditional justice because of its basis in their culture and the fact that it is a familiar and known concept.

Formal law enforcers are seen to have more force and capacity to scare violent husbands into stopping their actions. A combination of the two is seen to be most forceful, where women can take advantage of cultural and accepted methods of dealing with problems, while ensuring that processes are fair and deliver what they want – justice for the act of violence and for that violence to stop (Swaine, 2003).

Accessing formal justice systems is also problematic. Women go to the police because of fear for their own safety, in the hope of protection from violent husbands, and in the expectation that the formal justice system will stop the violence that they are experiencing in their homes. The experience of going to the police however is not always a supportive and protective one. Women cannot be guaranteed that police officers will take their cases seriously, nor ensure that they are no longer exposed to real threats. Women often withdraw their complaints from the formal justice system due to the ways in which police handle cases, and/or often, because of their lack of economic power, some women prefer to solve problems through traditional justice due to a fear of losing economic support should their husbands be jailed (Ibid).

Therefore, traditional justice systems appear to be a viable tool for accessing justice for women survivors of SGBV though may need strengthening to enable them become more effective in their delivery of justice.

Research Question

In light of the above strengths and weaknesses of traditional justice systems, the researcher investigated the following question;

Is the use of a traditional justice framework an effective tool against sexual and gender based violence among the Kunama people of Ethiopia?

CHAPTER THREE: RESEARCH METHODOLOGY

3.0 Introduction

This chapter deals with the methodology employed in this study. The purpose of the section is to give a broad outline of the approaches used, the research site, data collection, analysis and presentation.

This section will detail site selection, unit of analysis, unit of observation, the sampling design, sources of data, techniques of data collection and data analysis.

3.1 Site selection and description

The study was carried out in Shimelba Refugee Camp situated 80km away from Eritrean border, 175kms from the Sudan border and 1200km away from the capital, Addis Ababa. UNHCR 2008 statistics show, there were about 10, 540⁸ registered Eritrean refugees in the Camp, 7,006 (66%) of them are males. At this point in time, there were 3 major ethnic groups in the camp: Kunama, Tigrigna, Saho and others. The Tigrigna alone made up 69.1% of the total camp population, whereas the Kunamas 28%, the Saho 2.2% and others 0.7%.

3.1.1 Demographic information

Table 2: Eritrean Refugees (UNHCR Ethiopia, 2008).

Eritrean	24.54%	of the total population
	Individuals	%
Addis Ababa	497	2.4%
My-ayni	3,094	15.0%
ERT-Afar	6,486	31.5%
Shimelba	10,540	51.1%
Total	20,617	100%

⁸ According to the November 2008 report the camp accommodates a total of 10, 540 Eritrean refugees.

Table 3: Eritrean Camp ethnicity table (UNHCR Ethiopia, 2008).

Northern Camp (Eritrean's)			
Ethnicity	Shimelba	Maiayni	Total
Afar	11	3	14
Belin	11	3	14
Kunama	3795	13	3808
Sahow	268	124	392
Tigre	62	21	83
Tigrigna	6387	2929	9316
Other	6	1	7
Total	10540	3094	13634

The demography of the camp according to the November 2008 UNHCR statistics, shows a skewed female to male ratio of 34% to 66% respectively, occasioned by the flight of huge numbers of Eritrean young male adults from forced military conscription. This disparity poses a huge protection risk to the females as they carry out their daily chores due to the fact that they are outnumbered 1 to 2 by the males.

Table 4: Total Refugee Population in Ethiopia (UNHCR Ethiopia, 2008).

Camp/Site	Age Breakdown							
	0-4		5-17		18-59		60+	
	F	M	F	M	F	M	F	M
Addis Ababa	99	88	212	202	331	523	10	25
ERT-Afar	308	380	948	1,170	1,383	2,081	60	156
Fugnido	2,369	2,553	4,331	4,606	5,291	2,650	142	47
Kebribeyah	1,723	1,743	3,061	3,167	3,288	2,776	144	194
KEN-Borena	241	269	568	450	504	450	84	78
Maiayni	29	39	38	91	322	2,554	3	18
Sheder	606	659	1,379	1,364	1,392	1,028	77	39
Sherkole	388	443	737	957	911	1,321	14	13
Shimelba	637	638	971	1,171	1,753	5,002	173	195
Aw-barre	1,034	1,018	2,295	2,290	2,132	1,412	117	60
Total	7,434	7,830	14,540	15,468	17,307	19,797	824	825
%	8.8%	9.3%	17.3%	18.4%	20.6%	23.6%	1.0%	1.0%

Shimelba camp, home to the Eritrean and by extension, the Kunama ethnic group has a total of 3534 females and 7006 males. This translates to a 34% female and 66% male demographic, acting as a contributory factor to SGBV and more specifically rape as the women are not enough to go round the male population.

3.2 Research Design

According to Singleton et al (1998:102), research design is the arrangement of condition for collection and analysis of data in a manner that aims to combine relevance to the research with economy in procedure. The study entailed the examination of the impact of traditional mediation practices on the rights of the woman. As a result, the researcher did not have any direct control of the independent variable due to the fact that their manifestations had already occurred. More specifically, the study combined both survey and field methods.

Focus group discussions and semi-structured interviews for key informants were used by the researcher to obtain information through the responses of a sample of individuals to represent the population of study. The FGDs were utilized as the key method of data collection, as the study focused on the traditional justice system and its handling of cases involving women victims of SGBV. This was deemed appropriate as it facilitated the flow of information without feelings of victimization of any individual as no specific personal questions were dealt with. Additionally, the moderation by other members of the discussions also helped in ensuring that more information was gathered round the table as opposed to only one person giving it thereby taking care of instances of overplaying or underplaying of the procedures and compensation that could have arisen if the information was collected from an individual. Any incident of failure of a respondent to recollect the exact procedures was also taken care of by the group moderation which served as a reminder. Furthermore, feelings of stigma and ostracism were also dealt with as the FGDs helped in the avoidance of embarrassment as the respondents had all experienced similar violations. The FGDs also acted as a catharsis for the women when the information was brought out in the open.

A total of 20 focus group discussions of 10 people each were carried. 18 of them involved women victims of SGBV among the Kunama ethnic group in Shimelba refugee camp located in Tigray region of the Federal Democratic Republic of Ethiopia, in the following categorization. The ethnic Kunama women victims of sexual and gender based violence that either had their cases determined by the traditional justice councils (14 respondents), or those whose cases were filed before the ethnic justice councils and were pending determination (8 respondents). Another category of respondents were Kunama victims of SGBV who had reported their cases to other agencies operating in the camp including UNHCR, IRC and ARRA having not filed their cases with the traditional justice system (22 respondents) as well as 136 Kunama women who had suffered some form or other of SGBV but had not made any reports. An additional 2 FGDs composed of 10 refugee social workers and 10 police officers from Shimelba and Shiraro police stations were also conducted, totaling 222 respondents.

4 of the FGDs were composed of women who had dealt with the traditional justice system and had sought services from the implementing partners operational in the camp, 14 composed of Kunama women in general who had suffered SGBV while 1 FGD each was

held with the formal justice structure comprising the police officers stationed at Shimelba and Shiraro police stations and the refugee social workers.

Table 5: Participants in the research

Methodology	Participants	Number	F	M
FGDs	Kunama women victims of sexual & gender based violence	180	180	0
	Kunama refugee social workers	10	4	6
	Ethiopian Police officers (Shimelba & Shiraro)	10	2	8
Semi-Structured Interviews	Kunama women victims of sexual & gender based violence whose cases have been or are being mediated by the traditional justice system.	22	22	0
	TOTAL	222	208	14

3.3 Units of analysis

Baker (1994:102) defines units of analysis as the social entities whose social characteristics are the focus of the study. It is the phenomenon of being studied. Singleton et al (1988:69) further define units of analysis as the activities (objects or event) under study. In this study, the unit of analysis was the traditional justice system of the Kunama ethnic group.

3.4 Unit of observation

Unit of observation refers to the source (s) of primary data (information) about the issue under investigation; otherwise referred to as the study's respondents. These were the people from the Kunama ethnic group living in Shimelba camp, Tigray region of Ethiopia. The primary target were the women who had had their cases mediated by the traditional justice system as well as those whose cases were currently being mediated and those who had suffered any form of violence without seeking justice.

Secondary targets for the information were the refugee social workers who provide psycho-social support to the victims of SGBV as well as counseling them on where to access services in the camp.

3.5 Sampling design

Stephen and Mc Cathy (1958:22) in Singleton et al (1988:130) have defined sampling as the seeking of knowledge and information about a population (sample) in order to extend the findings to the entire population.

The study adopted non-probability sampling techniques. The primary unit was the group of women survivors of SGBV among the Kunama community, which had been selected purposively. The target population in this sample frame were members of the Kunama ethnic group.

The researcher categorized Shimelba camp into three zones, according to the camp structure. Zone A, Zone B, and Zone C with a total of 12 villages in order to get a true representative population of the Kunama ethnic group.

Two stages cluster sampling was used. At the first stage, through purposive selections twelve villages were drawn from the three zones, followed by a second stage of purposive selection of three blocks in Zone B, 2 blocks in Zone C and 1 block in Zone A. From SGBV incident records, Zone B had been the most problematic hence the lion-share of respondents, followed by Zone C due to the distance from security agents and lastly zone A, due to its proximity to the security agents. Cluster sampling was appropriate for this study since the listing of population elements was not a pre-requisite (Singleton et al. 1988:147). Additionally, only samples of individuals who met the conditions below were drawn. They were victims of SGBV whose cases had already been mediated by the traditional justice system and SGBV victims whose cases were currently under mediation during the research period. Additionally, women who had suffered violence and sought the services (excluding justice) of implementing partners in the camp and women who had suffered some form or other of violence were also part of the sample.

3.6 Sources of data and techniques of data collection

The study utilized focus group discussions as the key method of data collection with various groups of people in the camp such as: individuals who had recently had their cases determined in the traditional courts, individuals who had on-going cases, women in general who had suffered some form or other of SGBV and never reported their cases to any justice agency, social workers and police officers stationed in Shimelba and Shiraro police stations.

3.6.1 Secondary data

The review of secondary data was used to supplement the primary data. Secondary data involved information that the study obtained from published and unpublished literature on traditional justice practices. This information also included journals on refugees and justice, UNHCR and IRC reports, media reports and review of literature on the refugee situation.

3.6.2 Primary data

This involves first hand information that the proposed study obtained from the respondents; who in this case were the Kunama ethnic group residing in Shimelba camp. The data was collected through:

Focus group discussions with:

Women victims of SGBV whose cases had already been mediated by the traditional justice system to gather their experiences/perceptions of the mediation process; women victims of SGBV whose cases were currently under mediation by the traditional justice system during the research period to gather their experiences and perceptions of the process thus far; Kunama women who had suffered some form or other of SGBV but had never sought the services of any justice system in the camp; Refugee social workers who offer psycho-social support to the women victims of SGBV and advise them of the services available in the camp. This was to get a feedback on the perception of the SGBV victims on the service options available and their preference of one over the other.

Lastly discussions were also held with the formal justice system through the police officers stationed at Shimelba and Shiraro police stations.

Semi-structured interviews:

Key informant interviews were carried out. Singleton (1988:153) puts forth that purposive sampling allows the investigator to rely on his expert judgment to select units that are representative of the population. Semi structured interviews for the key informants relied on the assistance of an interview guide to capture the required information. The interview was administered to key informants who included women victims of SGBV whose cases had been mediated by the traditional justice councils as well as women whose cases were pending with the traditional justice councils at the time of the research.

Direct observations:

Koul (1992:168), states that, “observation is the process in which one or more persons observe what is occurring in some real life situations and they classify and record potential happenings according to some planned scheme.” The researcher made observations on lifestyles of the Kunama women to find out the impact of traditional justice procedures on their lives, including their firewood collection, freedom of movement within and outside the camp, and their access to income generating activities.

It was noted that men had a distinct advantage over the women during the hearings as they were able to bring along friends who would intimidate the victims and their witnesses at the end of the hearings. Additionally, women didn't have much room for moral and psychosocial support during the hearings because the traditional justice council was composed of men only as women were not accorded decision making powers culturally.

Furthermore, women were not allowed to engage in discussion during the deliberation portion of the hearings and were left as mere spectators.

Attendance of non-community members such as the staff of the operational partners in the camp who would lobby for fairer judgments was restricted. This meant that the women victims were at the mercy of cultural biases in their search for justice.

3.7 Data analysis

This is an exercise or process of searching and identifying meaningful patterns in the data. The research question was tested using the qualitative data collected from the FGDs and the SSI and the researcher was therefore able to draw conclusions from the study.

3.7.1 Qualitative data

Nachmias (1992:292) points out that in field research, “observers formulate hypothesis and note important themes throughout their studies.” Babbie (1995:296) further postulates that in field research; “you look for similarities and dissimilarities. One looks for these patterns of interaction and events that are generally common to what you are studying.

Data organization entails the “cleaning up” of data by simplifying and transforming the data. This was done through processes such as selection, summaries and para-phrasing, ensuring that data was reduced to a comprehensive and manageable size. Analysis also included drawing conclusions and verifications following SSIs with the 22 female respondents.

Final conclusions were tested to find out if they conformed or were plausible to the research question. The qualitative data collected did shed light on the structure and function of the traditional justice system, the significance of the traditional justice system, the limitations of the system as well as its effectiveness.

CHAPTER FOUR: DATA PRESENTATION AND INTERPRETATION

Introduction:

The information contained in this report comes from the findings of a qualitative research carried out over a 2 week period, (24th August to 6th September 2009), by a research team of 4 members. (1 female researcher, 1 female research assistant, 2 interpreters – 1 male, 1 female)

The study focused on the ethnic Kunama refugees in Shimelba Refugee Camp situated 80km away from Eritrean border, 175kms from the Sudan border and 1200km away from the capital, Addis Ababa. The camp is found in 'Tahitay-Adiabo' woreda. UNHCR 2008 statistics show that there were about 10, 540⁹ registered Eritrean refugees in the Camp, 7,006 (66%) of them are males. At this point in time, there were 3 major ethnic groups in the camp: Kunama, Tigriana, Saho and others. The Tigriana alone make up 69.1% of the total camp population, whereas the Kunamas 28%, the Saho 2.2% and others 0.7%.

Looking for justice

From the discussions held, the traditional justice hearing process followed this methodology.

The process of arbitration starts from the girl/woman telling her mother of the incident. The mother then consults with her father if he is around or she can directly take the case to any 'It-kishe' of her preference. 'It-kishe' will approach the family of the alleged perpetrator and fix a date, time and place for the mediation process. The alleged perpetrator will also approach 'It-kishe' of his choice and conveys the date, time and venue of the mediation as explained by the victim's 'It-kishe'. In the mediation process the two families are expected to bring the survivor/complainant and the alleged perpetrator to the venue. The victim gives her version of the story first; this is then followed by the accused's version of the events that took place.

The complainant's 'It-kishe' interrogates both the complainant and the accused. The perpetrator's, 'It-kishe' is also permitted to question both the victim and the accused to bring out any details that may have been left out. Thereafter, the floor is left open for

⁹ According to the UNHCR Ethiopia November 2008 statistical report the camp accommodates a total of 10, 540 Eritrean refugees.

discussion among the 'It-kishe'. Both the defendant and the plaintiff do not participate in the discussions.

From, discussions with the 22 respondents in the semi structured interviews, 2 options were sought for the delivery of justice; the traditional and the formal justice systems.

Table 6. Justice mechanisms used by Kunama women

Justice system used	Number of respondents
Traditional justice system – resolved with compensation paid.	9
Traditional justice system – resolved with compensation required but not paid.	4
Traditional justice system – still pending with the traditional council.	8
Formal justice system – reported to the police.	1
Formal justice system – reported to the police and taken to court.	0
TOTAL	22

When women approach the traditional justice system, they are first and foremost searching for the recognition of their rights and for their problems to be handled in a way that upholds and respects these rights. The implication is that women expect a fair process which will culminate in the perpetrator being punished appropriately, thus delivering “justice” to the women survivors of SGBV.

This research revealed that women look for justice to make the violence they undergo receive recognition as wrong and ultimately for the violence itself to come to an end. Therefore the subject of this study highlights whether this is achieved through the traditional justice system they look to for justice. An evaluation of the focus group discussions and the semi-structured interviews and an analysis of the emerging issues will highlight the factors that assist or hinder access to justice for the women survivors of SGBV.

1. The structure of the Kunama traditional justice system.

To understand the intricacies that determine the structure of the Kunama traditional justice system, one has to delve into their clan composition and dialects. From the FGDs and the SSIs, the following information was gathered.

1.1 The Kunama clan composition and dialects:

The Kunama community in Shimelba refugee camp is composed of four sub-clans; Shuwa, Kerewa, Serma and Guma. While there is homogeneity across all clans in terms of language with slight differences of dialects, there is diversity in religion. Some are Christians (i.e. protestants and Catholics) while others are Muslims. However, the majority of them follow their own traditional beliefs. They believe in 'Ana' or 'Dungul', which literally means one God.

Among the four major clans, Shuwa and Kerewa have a strong relationship. A Kerewa cannot accept a compensation for any damage or injury ensuing from violence or negligence from a Shuwa and vis-à-vis. The same holds true for Serma and Guma.

No norm restricts marriage across the clans. However, many in the community (including the women) believe that it is always advisable to conclude marriage between those who are very close to each other clan-wise referred to as endogamy¹⁰. They justify that dispute, conflict management and resolution will be very easy if spouses are from very close clans or people who live very close to each other.

The Kunama have 8 dialects: Barka, Tika, Marda, Ai'masa, Taguda, Ilite, Tara and Sokodasa. There was consensus from the groups that Barka, Tika and Marda were the only dialects in the camp.

The Kunama are considered as matrilineal¹¹ society. The society has three key traditional institutions called Laga-ainiya, Sang-nena, and It-Kishe. These traditional institutions maintain peace and order, and also execute justice whenever necessary and/or upon complaint.

¹⁰A system in which an individual may only marry another person from within the same kin group, clan, or tribe. <http://www.answers.com/topic/endogamy>

¹¹It is a system in which one belongs to one's mother's lineage. In a matrilineal descent system, an individual is considered to belong to the same descent group as his or her mother. In other words, it is relating to, based on, or

1.2 Kunama traditional mediation practices:

The FGDs discussed the following as the different mediation avenues used.

1.2.1 It-Kishe

This is a kind of traditional practice whereby the Kunama mediate any kind of disputes, violence and conflicts. Though it varies from one informant to the other, It-kishe literally means “home’s people” or “neighborhood’s people” or “our people” or “people very concerned about our issue”. It-kishe is institutionalized and a popular approach by which a wide range of conflicts are mitigated among the Kunama.

While most of the time the term It-kishe is used to refer the process, it is also used to refer to those persons involved in mediating the issue at hand. Accordingly, It-kishe is a traditional conflict resolution process and persons mediating any incidents resulting from disputes, conflicts and violence.

Anyone who is popular for his good personality, wisdom and knowledge of traditional laws and norms can serve as It-kishe. In many cases a person who has served as It-kishe and successfully managed mediation is more preferable. The complainant and her family/relations select one It-kishe, while the defendant also selects his. These can only be male as the Kunama tradition does not accord women decision making powers.

1.2.2 Sang nena

Sang nena is the most respected institution among the Kunama. Many informants consider it the highest institution. However, Sang nena only see and mediate cases of murder/homicide. According to some informants while ‘Sang’ means mediators, ‘nena’ also means ‘bone’. From this ‘Sang nena’ is literally translated as bone mediators, the bone/tie which is broken as a result of murder.

While the term Sang nena is used to refer the mediation process of murder cases, a person mediating such incidents is also called Sang nena.

However, unlike It-kishe, Sang nena is a well structured institution with permanent mediators whose authority is inherited. Sang nenas (mediators) are members of one big family from the 'Kerewa' clan. They also have their own chairperson. There is existing tradition that the chairperson of the Sang nena would hand-over his authority to the eldest son of his oldest aunt if he is sick or that he cannot recover or if is too old to continue his work. Though Sang nena is strictly from a certain family of Kerewa clan, they are regarded as the Sang nena of all the Kunama (Shuwa, Kerewa, Serma and Guma). They are highly accepted by all clans and segments of the population (elders and youth, men and women). Sang nenas are regarded as persons born with great wisdom. They are very charismatic and everyone believes that whatever they say will definitely happen. Sang nena is still an active institution among the Kunama in the camp.

1.2.3 Laga ainiya

Laga ainiya is an institution authorized to make and enforce laws on land and agriculture. While 'Laga' means land, 'ainiya' means lord – hence, Laga ainiya means Land lords. Their roles are more of coordination and harmonization than forcing people to work and collect tax. The authority of Laga ainiya is also inherited. Currently, since there is no land and agriculture owned by Kunama, this institution does not function in the camp.

According to the informants, It-kishe mediated all cases except for murder/homicide in the camp which are dealt with by the Sang nena. Laga ainiya do not carry out any mediation as a structure because there are no land ownership disputes in the camp.

2. Significance of the traditional justice system in addressing SGBV among the Kunama

2.1 Justice options

Staying silent

It is imperative to point out that, similar to thousands of women across the globe, many Kunama women do not seek justice. They opt to remain silent, and try to cope with the problem themselves. Others, for example, may put up with domestic violence for a long period until they reach a point where they just cannot take anymore and then seek justice. This is often done too late, as a final act of desperation, when immense physical, emotional and psychological damage has already been done. 188 respondents (85%) felt that they could not seek justice for incidents of domestic violence as it was something women had to put up with as part of married

life. 208 ie 94% of the women in the FGDs had experienced domestic violence at one point in their lives. Local attitudes towards the presence of violence in the home, local gossip and pressure from both women and men were referred to as reasons why women might not feel that they could react to experiences of gender based violence. Many felt that they should just conform to the wifely role and life that was expected of them.

Table 7. Correlation between type of violence and time of initial reporting to the traditional justice system.

Type of violence	Reporting frequency			Total
	After 1 incident	After less than 5 incidents	After more than 5 incidents	
Domestic violence without visible injuries	6	52	150	208
Domestic violence with visible injuries	189	16	3	208
Marital rape	0	1	3	4
Attempted rape	1	2	-	3
Sexual harassment	0	0	22	22
FGM	0	0	0	0
Sexual abuse (relations with minors)	11	-	-	11

The figures on the table do not represent only one violation per respondent, it caters for multiple types of violations meted, such as the case of a woman who has suffered domestic violence coupled with marital rape as well as harassment. This is to get data on the time interval between the occurrence of an incident and its reporting. It also sheds light on the severity of an incident as perceived by a victim and the traditional justice council which dictates the speed of reporting.

From the 208 cases of domestic violence without visible injuries, only 6 were taken to the traditional justice system after the first incident. The explanation given by the respondents was that violence without visible injuries was not deemed serious by the traditional mediators and more often than not the perpetrators walked away scot-free after the mediations. This therefore discouraged would-be reports as justice was not seen to be served.

Visible injuries such as a broken limb or missing body part were taken seriously by the traditional mediators. hence the high number of reports after a single incident.

Marital rape was hardly ever reported due to the lack of confidentiality during the mediation sessions, while many attempted rape cases weren't brought before mediation by many due to the perception of the community and mediators that no harm had been done yet. The same perception befell sexual harassment, therefore only persistent incidents were reported. The sexual abuse cases reported mostly occurred during the initiation of a girl to woman-hood when a hut was constructed for her and she was expected to choose a husband of her liking.

Table 8. Table showing the age of the respondents

Age (Years)	SGBV incidents frequency
15 - 18	15
19 - 25	40
26 - 30	36
31 - 35	48
36 - 40	27
41 - 45	23
46 - 50	10
Above 51	7

The age interval was done according to the IRC intervals used to collect the monthly SGBV data. The highest number of incidents was reported among women aged 31-35 years old. According to the respondents, this was because they were hopeful that traditional mediators would give them a fair hearing due to their maturity in marriage as opposed to those below 30yrs who would often be dismissed on account that they were still new in the institution of marriage and should therefore be able to work out their differences.

Formal justice systems

The Kunama bring incidents of SGBV to ARRA or the police only when the incident is between a Kunama and the others ie the local population or the Tigrigna. Other disputes, conflicts and violence, including issues of SGBV happening among the Kunama are mediated using their own traditional mediation practices. According to the respondents, reporting such cases to “outsiders” is a disgrace and will bring shame to the community. This explains the single case reported to the police. During the SSI, the respondent, Mary, explained that she had been raped by a local when she had gone to collect firewood. The case did not go to court as there were no witnesses to corroborate her story.

Traditional justice systems

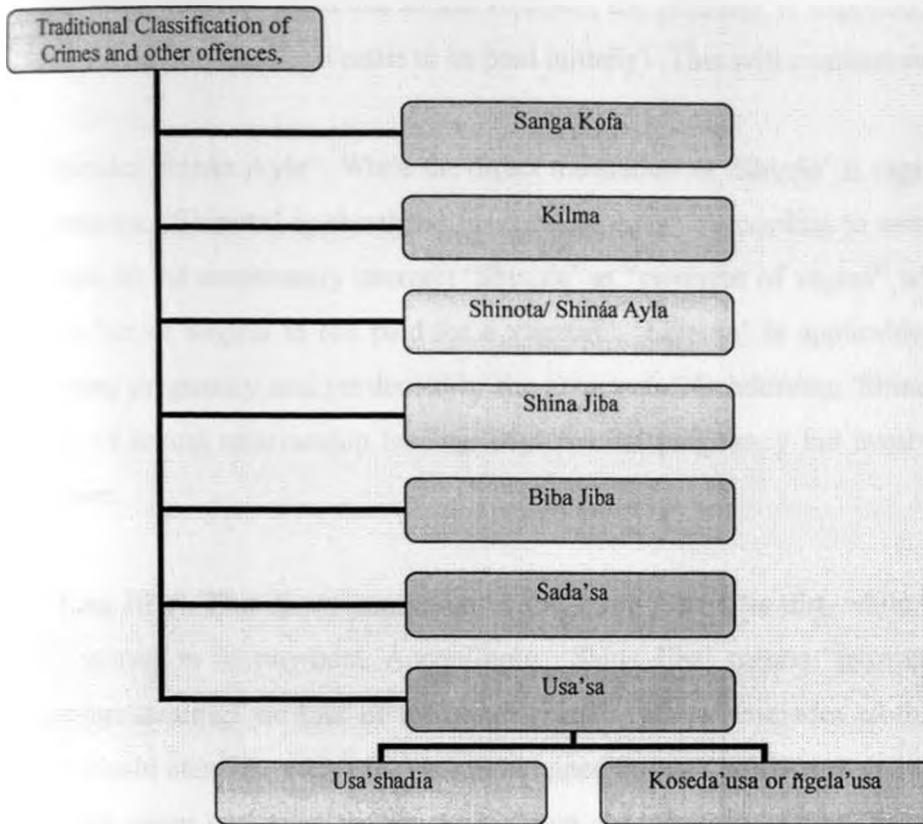
Under-reporting of various forms of gender based violence brought about by language and cultural barriers plays a significant role for the Kunama, resulting in the very negligible figures reported from this ethnic group. Reports from the Kunama refugee social workers indicate that many more incidents of gender-based violence go unreported, as the survivors choose to receive psycho-social and medical support while keeping the incidents away from the formal legal justice system. In November 2008, 16 SGBV incidents were reported to the social workers from the camp, 2 of which were from the Kunama ethnic group. Only 1 case reported from the Tigrigna was taken to court. However, during their house visits, 87 survivors underwent counseling for SGBV related incidents, half of whom were Kunama.

Women know the traditional mediation process; they use it because it is familiar and is what they perceive as a cultural way to resolve their problems. Kunama female survivors of SGBV predominantly rely on the traditional justice system. It discourages them from going to the formal legal systems to seek re-dress in an effort to maintain age-old traditions and perpetuate culture. As the law is not codified or standardized, it is subject to the different personalities involved and their own interpretations of how justice should be administered.

Kunama Traditional Justice procedures

The traditional Kunama laws/norms classify crimes, offences and any such breaches into 3 major categories: “Sang Kofa”, “Kilma” and “Shina”. However, this classification is sometimes stretched to seven categories, with the addition of “Shinota”, “Biba Jiba”, “Sada’sa” and “Usa’sa”.

Table 9. Kunama traditional classification of crimes and other offences



Compensation for offences/crimes

“Sang kofa”. The term ‘Sang kofa’ stands for payment/compensation for death caused by murder. ‘Sang kofa’ is strictly applied only on cases of death due to murders, particularly those murders resulting from physical violence. Deaths resulting from poison, not involving physical violence will not generate ‘Sang kofa’. An offender is subject to payment of more than 20 cattle for the victim’s family. If the victim is female, the number of cattle to be given in compensation exceeds 20. This is a reflection of the matrilineal nature of the Kunama society.

“Kilma”. In the words of some key informants who have a great deal of experience with the It-kishe, the term ‘Kilma’ literally means “half death” or an injury whose extent of damage is as good as half of death. In other words, it is a damage or injury which can lead to death. Therefore, ‘Kilma’ includes any injury resulting in physical impairment or disability or any damage leading to loss of blood due to beating with a stick or stabbing with a knife or other weapons. For instance, breaking someone’s teeth, causing partial or complete blindness, deafness, cutting or damaging the hand, finger or leg, burning a person with fire, putting someone’s house or store on fire, or looting ... are the major criminal acts regarded as ‘Kilma’.

A person found to committing 'Kilma' is liable to pay 4 up to 5 oxen to the victim. However, if the victim ends up blind due to the violence, the offender is expected to pay one cattle every year (in addition to the 5 cattle to be paid initially) .This will continue until the person dies.

"Shinota/ Shināa Ayla". While the direct translation of 'Shināa' is vagina, the term 'Ayla' also means ox. 'Shinota' is shorthand for 'Shināa Ayla'. According to women in the FGDs, some people in the community interpret 'Shinota' as "payment of vagina" while others still consider it as "ox of vagina ie (ox paid for a vagina)". 'Shinota' is applicable to an incident of rape, causing pregnancy and yet denied by the perpetrator. In addition, 'Shinota' is also pertinent to a case of sexual relationship leading to premarital pregnancy but involving denial by the male partner.

"Shina Jiba". The direct translation of the word 'Shina' is dirt, while the term 'Jiba' refers to compensation or payment. Accordingly, 'Shina Jiba' means "payment/compensation for the damage/stealing/ or loss of a Shina or dirt". 'Shina' includes cloth, bed, belt, bead, shoe, household utensils, which the person obtained through hard-work and therefore associated with his/her sweat and thus considered his own dirt –that no one is allowed to damage or take it away without his/her permission. As for the verdict, the perpetrator is liable to pay an ox.

"Biba Jiba". According to FGD respondents, the term 'Biba' means sign/indicator of the danger/crime/offense or in some cases it also refers to the color red. However, in this context, the former meaning was stated to be more appropriate. Thus, 'Biba Jiba' can be taken as a payment/compensation to be made for all the visible signs/indicators of the crime or offences towards the perpetrator. For instance, if someone loses his donkey and isn't aware of its whereabouts, but later finds out that it is dead in Mr. X's compound. In this case, unless the responsible person/reason for the death of the donkey is known, Mr. X will be held accountable for the crime because the available sign/indicator of the crime/offense points towards him. Even in a situation where the donkey has not been found, could not be found, if there is a person who can testify that Mr. X was the last person seen near or around that donkey, Mr. X will be held accountable for the crime. 'Biba Jiba' is applicable where the lost property is in the form of livestock, and that a sign/indicator of the crime should implicate someone. A person found guilty of such a crime is expected to pay half of the price of the lost property.

“Sada’sa”. The term ‘Sada’ is equivalent to the English term poison, while ‘sa’ is the act of doing something. And thus ‘Sada’sa’ means the act of causing injury, sickness or death using poison. Death resulting from poisoning is subject to ‘Sada’sa’ but not ‘Sang nena’. Regarding punishment, if a person is proven guilty of a crime of Sada’sa, he is required to pay 1 cow and 50 kg of grain. In addition, if the victim dies due to poisoning, the offender is also expected to cover the expenses of the memorial services commemorated yearly.

“Usa’sa”. This is all about the ‘evil eye’. This category is divided in to two: ‘Usa’shadia’ and ‘Koseda’usa’. ‘Usa’shadia’ refers to a situation where a person known as an ‘evil eye’ by the community causes any problem (such as sickness, wounds, death, sickness or death of animals) on another person. On the contrary, ‘Koseda’usa’ refers to a case where a person labels/accuses another person as an ‘evil eye’ but later on the allegations are proven wrong. Among the Kunama, addressing a person as an ‘evil eye’ without substantial evidence is considered ‘Koseda’usa’ and punishment is in the form of 2 meters of garment (‘abu’jedi) and some tobacco. An offender of ‘Usa’shadia’ is liable to payment of 1 cow and 50kg of grain (just like Sada’sa).

3. Limitations of the traditional justice system in delivering justice to women victims of SGBV.

Offences and commensurate punishment

All except 3 of the FGD respondents were in agreement that the punishments meted out for instances of SGBV are not commensurate with the severity of the crime. For instance the payment for the offence of rape is 1 ox, while damage which could lead to death is punishable by only 4 to 5 oxen. These are clearly not in-line with international humanitarian law. It is worth noting that the 3 fell in the age-group of above 51. On further probing, the three explained that this punishment had been in force since time immemorial and all their female ancestors had been compensated according to the stipulated scale. They therefore did not find fault with it and saw no reason to have it changed.

Offences not categorized

It is clear from the categorization that there exists a set of rules governing the type of punishment meted out for various crimes committed. However, there are instances where the crime does not fall into any of the categories listed such as abduction of a Kunama girl of

marriageable age against her will, forced marriage of a Kunama girl by her family to a suitor she isn't interested in. This came from a minority of the FGDs conducted with Kunama women who hadn't sought justice from any of the agencies. The other groups maintained that choice of a suitor is left to the girl, though they conceded that a majority of the girls were pressurized by their families on the choice of a husband, and in the end, the girl usually conceded to their choices to avoid a fall-out with close relations. Additionally, when violations occur against Kunama women by other communities such as the Tigrigna or the host population, there is no avenue for re-dress through the Kunama traditional justice system, making such incidents fall through the cracks in terms of reporting.

According to the respondents, when no precedent exists to learn from, 'It-kishe' can consult with 'Sang nena' and come up with a punishment they deem suitable. This is open to abuse as the punishment will be a product of the kind of bias the 'It-kishe' has been socialized into. Though all the women agreed to the possibility of bias, they all felt that consultations with 'Sang nena', who were highly respected, would eliminate the bias.

Case filing requirements

In cases, where family mediation is used for SGBV incidents, the victim's family is expected to prepare a meal for the perpetrator's representatives, who are expected to visit her house laden with gifts for her parents in the form of tobacco, food stuff or livestock. The victim also receives a piece of garment as a gift. These symbolize the regret of the perpetrator's actions and his willingness to turn over a new leaf. A traditional form of alcohol is also presented to the girl/woman's household and is drunk at the end of the ceremony to symbolize a new beginning.

When 'It-kishe' are used for mediation, a token of appreciation is given to them by the side that wins the case, be it the accused or the victim. This takes the form of tobacco, foodstuff or poultry. Though no minimum requirement is laid out, the winning side is expected to be generous because of the ruling going in their favor. This methodology is clearly fraught with abuse as the asset-base of the two families is already known by the 'It-kishe'. Additionally, for cases of domestic violence, the payment will come from the same household, in effect punishing the woman as her contribution will be used to effect payment even when she is the aggrieved party. This will lower her economic base, punishing her for seeking justice. 100% of the respondents were in agreement with this limitation and felt that this needed to be looked into by the highest level of mediators – 'sang nena'.

It was noted that most of the gifts were in the form of foodstuff and tobacco as hardly any refugees kept livestock or poultry due to the space constraints in the camp as well as the lack of livelihood assets owned by the refugees due to the speed of displacement.

Dealing with false accusations

The FGDs highlighted the issue of false accusations in the following manner. When a person falsely accuses another without substantial evidence or the evidence is found not to be true, this is also considered as 'Koseda'usa' and punishment is in the form of 2 meters of garment ('abu'jedi) and some tobacco.

Dealing with denial by the accused

In a case of premarital pregnancy caused by rape or resulting from sexual relationship but denied by the perpetrator or partner, the It-kishe will pass judgment after the guilt/innocence of the perpetrator has been determined. If the perpetrator is found responsible for the pregnancy, he will be subject to the penalty of 'Shinota'. The process starts from the girl/woman telling her mother. Then the mother consults with her father if he is around or she can directly take the case to any It-kishe of her preference. It-kishe will approach the family of the alleged perpetrator and fix a date, time and place for the mediation process. In the mediation process the two families are expected to bring the survivor/complainant and the alleged perpetrator to the hearing. The perpetrator is asked by It-kishe whether or not the girl/woman is pregnant with his baby. If the perpetrator denies the offense and there are no witnesses, then It-kishe will take the mediation process to the level of 'Araba'¹², the process of swearing over 'Kaska Girbaba'¹³. In this case, in order to carry out the 'Araba', It-kishe will take the 'Kaska Girbaba' of the survivor/victim and put it on the alleged perpetrator's head. If the person refuses to go through this process, it means he is guilty, but if he accepts the Araba, it means that he is innocent.

According to key informants, in the majority of cases, parents of the alleged perpetrator will not allow their son to go through 'Araba', instead they will accept guilt on his behalf and offer to pay the 'Shinota'.

¹² 'Araba' is swearing over something or sometimes in God's name to prove innocence of an alleged crime. In the Kunama culture, 'Araba' is a serious issue. Unless the person is sure of his/her innocence no-one will take the risk to going through with 'Araba'. There is a strong belief that something bad will happen if the person lies during 'Araba'.

¹³ 'Kaska Girbaba' is a kind of underwear which girls/women wear under their main dress, similar to a petticoat. Sometimes it is also known as 'Kaska Sesa'

As part of the punishment/compensation, the perpetrator/his family will slaughter one young ox for the woman before she gives birth. The color of this ox must be either red, or, white, or, gray but not black. Additionally, this ox should not have any blemish on it. The practice of slaughtering the ox for the girl/woman is called 'Meshkebera'¹⁴. After she gives birth, the perpetrator and his family will bring eight cows for her. This practice is also known as 'Shinota'. While a 'Meshkebera' is a compulsory payment involving ox, 'Shinota' is not necessarily paid in full at one go. A person is allowed to complete his punishment of 'Shinota' by paying one cow on a yearly basis or on any agreed terms with the woman or her family. All the respondents were in agreement that this compensation was adhered to the most, though 45 respondents all aged below 26 felt that this compensation was not sufficient. On further inquiry, it came to light that these respondents had been exposed to various trainings on SGBV and human rights by IRC and thus were aware of international standards.

Contacts between suspects and victims

The traditional justice system does not have any rule in place to regulate contact between suspects and victims of SGBV incidents. For cases of domestic violence, the perpetrator – husband and victim – wife, still live together in the same house, during the hearing of the case as well as after the verdict is passed. This further endangers the life of the victim was the case of Hawa, whose hearing was in progress during the period of the research. She, like many women had suffered domestic violence silently for several years until one evening her husband came home drunk and hit her with a jagged plank of wood, giving her a concussion and scarring her forehead deeply. Several neighbors heard the commotion and came to her aid. She forwarded the case to the traditional justice system and the hearing began. Since the husband denied the allegations, the couple were sent on their way as witnesses were being summoned, some of whom were not in the camp for various reasons. It's during this waiting period for witnesses that the research was on-going. Hawa still lived with her husband and was constantly being threatened with other more serious beatings for embarrassing him publicly with the allegations.

Though there existed an option for a safe house for Hawa, she was reluctant to take it as she feared the accompanying stigma of being labeled as well as leaving her children behind in the care of their father. All the respondents were in agreement that the traditional mediation system

¹⁴ In some clan's this practice is called 'Kela'. In the case of Kela, a black goat is slaughtered for a woman before she gives birth.

did not handle contact between an alleged perpetrator and victim with the seriousness it deserved.

Methodology of arbitration

The FGD and SSI respondents stated that the process of arbitration starts from the girl/woman telling her mother of the incident. The mother then consults with her father if he is around or she can directly take the case to any 'It-kishe' of her preference. 'It-kishe' will approach the family of the alleged perpetrator and fix a date, time and place for the mediation process. The alleged perpetrator will also approach 'It-kishe' of his choice and conveys the date, time and venue of the mediation as explained by the victim's 'It-kishe'. In the mediation process the two families are expected to bring the survivor/complainant and the alleged perpetrator to the venue. The victim gives her version of the story first; this is then followed by the accused's version of the events that took place.

The complainant's 'It-kishe' interrogates both the complainant and the accused. The perpetrator's, 'It-kishe' is also permitted to question both the victim and the accused to bring out any details that may have been left out.

The perpetrator is then asked by the 'It-kishe' if the allegations are true.

- a) If he accepts his guilt, he is told of his punishment and arrangements are made about the payment modalities.
- b) If he denies the allegations, witnesses, who had earlier been informed of the proceedings by the 'It-kishe' are summoned to give evidence. If all evidence points to the perpetrator, he is considered guilty of the offence and fined.
- c) If the witnesses are not available at the time of the hearing, the case is adjourned till such a time as they will be available. The longest time a case can run for is 1 year. After 1 year, a ruling has to be made with or without the witnesses, depending on the weight of the complainant's testimony, previous credibility and character.
- d) If he denies the allegations and there are no witnesses, then It-kishe will take the mediation process to the level of 'Araba', the swearing over 'Kaska Girbaba'. In this case, in order to carry out the 'Araba', It-kishes will take the 'Kaska Girbaba' of the survivor/victim and put it on the alleged perpetrator's head. If the person refuses to go through this process, it means he is responsible, but if he accepts the Araba, it means that he has nothing to do with it, and the case is dismissed.

e) For cases of serious/visible injuries resulting from domestic violence, no witnesses are required, as the injuries speak for themselves.

f) For injuries not visible to the naked eye, or those deemed not serious by the 'It-kishe', a minimum of 2 witnesses are required to corroborate the complainant's story.

The floor is then open for debate between the 'It-kishe'. The victim and the perpetrator are not allowed to join in the debate and are reduced to mere spectators in the speculation that follows. Judgment is then passed by the 'It-kishe' composed of a minimum of 2 panelists so as to make 'democratic choices'. No consensus was arrived at by the respondents concerning the debate before the passing of judgment. 67% of the respondents felt that once they had told their version of an incident, they did not need to be involved in the debate that followed, while the remaining fraction was interested in joining the debate.

In case of a deadlock by the 'It-kishe', any precedents in judgment will be used to determine the case. In the event that no precedents exist, further counsel is sought from other 'wise men' namely the 'Sang nena'.

Identification procedures for perpetrators/offenders

If a victim is able to positively identify the perpetrator of a crime, the methodology described above is used to mediate the case. For cases where the victim is unable to give a positive identification, an alleged perpetrator is taken through 'Arada', while in instances where the victim has no idea who the perpetrator is, the case is thrown out. Though some of the women were not happy that cases were thrown out when the perpetrator was unknown, they agreed all that it was difficult to charge someone without evidence.

Evidence handling

All evidence collected in relation to a case is held in custody by the 'It-kishe' of the complainant. With the absence of an office, the evidence ends up in the 'It-kishe's' house where issues of tampering and lack confidentiality could arise. All respondents agreed that this was an issue that needed to be dealt with, but still felt that their 'It-kishe' had their best interests at heart.

The perpetrator's 'It-kishe' is under obligation to surrender any evidence he has collected to the complainant's 'It-kishe'. In the event that this doesn't happen and it comes to light, the 'It-kishe' is withdrawn from the case and is sanctioned by the 'Sang nena' who are viewed as the

ultimate authority in mediation. The perpetrator is then free to choose another 'It-kishe' as a replacement.

Right to appeal

According to the women interviewed, the right to appeal a judgment existed in as far as the case was consulted at the level of the 'Sang nena'. As they are viewed as the carriers of wisdom, their verdict stood and could not be appealed against. This applies to both the victim and the perpetrator. All the respondents stated that they would accept the verdict of a 'sang nena' and would not pursue the matter further eg with the police as this was highly disapproved of in the community. Thus the appeals chain was as follows:

Family mediator ----->It-kishe----->Sang nena verdict.

Setting of proceedings

"Awra Ferda" represents a forum or a session where the complainant explains her issue and the alleged offender/perpetrator tells his side of story after which debate among the 'It-kishe' ensues. In the Kunama culture 'Awra Ferda' is open to any observer. It is reflected in one of their traditional proverbs: "*Awra Maja*"; which means 'do not walk away from Awra Ferda because you will learn a lot'. Accordingly, the mediation of any disputes, conflicts and violence are open to any member of the Kunama community, while non-community members are not permitted to sit through the proceedings as they are considered "outsiders". The proceedings are held in any block in the Kunama portion of the camp, locking out other Eritrean ethnicities such as the Tigrigna and Saho. Kunama youths are posted as sentries to ensure no unwanted visitors access the site. This carries us to one of the key principles of holding and mediating incidents of SGBV i.e. confidentiality. Since 'Awra Ferda' is open to the Kunama community, confidentiality ceases to exist. All the respondents agreed that there lacked privacy and confidentiality when the cases went for mediation, hence the negligible reporting for incidents of rape.

Repeat offenders

According to the respondents, repeat offenders get cautioned by the 'It-kishe' who heard their case. If they do not mend their ways, an additional fine is imposed on them and their family patriarchs are informed to pressurize the errant perpetrator. If that doesn't work, the 'Sang nena's' counsel is sought. The repeat offender could be barred from attending the social cultural activities that unite the community.

All the women felt that one inherent weakness of the system lay in its in-ability to prevent repeat offenders from striking again.

Non-payment of fines

Concerning non-payment of fines, a sizeable portion of the respondents stated that they had faith in their traditional mediation system –for them, the problem simply rests with the accused, who does not follow the verdict passed by the mediators. The lack of competence of community mediators to follow-through on payment of penalties for example is seen to be the fault of the accused only. The women attributed the problem to the existing poverty as many of the traditional punishments are to be made in the form of cattle, camel and goats.

Structural support to the traditional justice system by the formal legal system

As previously mentioned, the Kunama only bring incidents of SGBV to ARRA or the police only when the incident is between a Kunama and the others ie the local population or the Tigigna. Other disputes, conflicts and violence, including issues of SGBV happening among the Kunama are mediated using their own traditional mediation practices. According to the respondents, reporting such cases to “outsiders” is a disgrace and will bring shame to the community. This explains the single case reported to the police. During the SSI, the respondent, Mary, explained that she had been raped by a local when she had gone to collect firewood. The case did not go to court as there were no witnesses to corroborate her story.

4. Effectiveness of justice for women victims of sexual and gender based violence.

Willingness to share information

Many of the women interviewed cited the lack of confidentiality as the key reason why they were often reluctant to approach the traditional mediators at the first sign of trouble, and only reported their cases as a last resort. For cases of marital rape which more-often than not happen in conjunction with domestic violence, the open nature of the hearings prevents the women from seeking justice. Those who decide to go through the system leave doubly traumatized for having to re-count the ordeal in an open forum. The social workers confirmed that 15 women counseled in August 09 were victims of marital rape and none had approached the traditional mediators for dispute resolution.

Family support mechanisms

The involvement and influence of family is instrumental in a woman's access to and achievement of justice. The family is usually the first place that a woman turns to for help, and it is usually the family that will take the decision as to whether to utilize family or local justice structures. Without family support, a lot of women did not feel confident or empowered to approach local justice.

According to Asina, it is her mother who went in search of 'It-kishe' when her husband, beat her up and locked her in-doors for 2 days with neither food nor water.

By contrast, a number of women stated that their in-laws, especially mothers or sisters, were responsible for domestic violence cases not being seen by 'It-kishe'. This is due to their use of persuasion, threats and coercion to intimidate the victim.

Support from significant male relatives

When Mihretie was raped during her 'Kishe etagada', (when a girl is ready for marriage, her parents build her a separate house to enable her to identify and choose her future husband), her father and uncle went in search of the traditional mediators, who compelled the perpetrator's family to pay up the required fine. This may not have happened had her father and uncle not been actively involved in the case. This is because the word of a male family member is weighted heavier than that of a woman.

Additionally, cases of sexual abuse, especially for an un-married female usually generate a lot of support from significant male relatives. This is because of the perception that the honor of the family has been brought into dis-repute and needs to be fought for. The level of support for the married females pales in comparison as her honor is not at stake.

Compliance with decisions of the panel

As indicated earlier, concerning the non-payment of fines, some of the women stated that they had faith in their traditional mediation system –for them, the problem simply rests with the accused, who does not follow the verdict passed by the mediators. The lack of competence of community mediators to follow-through on payment of penalties for example is seen to be the fault of the accused only. The women attributed the problem to the existing poverty as many of the traditional punishments are to be made in the form of cattle, camel and goats.

However, all the women unanimously agreed, that another inherent weakness of the system lay in its in-ability to enforce the payment of fines by the perpetrators.

Future marital prospects for young females

When Kunama women go for firewood collection, the locals ask them to pay for the firewood in different forms; either in cash, or the confiscation of the firewood. Some beat and chase them, while still others want to sexually assault them. Here, it is very important to note that while all the informants agreed on the existence of those verbal abuses and sometimes physical assaults, the majority of them do not corroborate the existence of rape perpetrated by the locals on the Kunama while they are collecting firewood. Some of the FGD respondents argued that reporting such types of rape incidents is very difficult for two reasons: first, girls/women are afraid of reporting such incidents because of the subsequent stigma and shame, and second, even if they want to report such cases, one should have a witness.

It is this stigma and shame that prevents many young girls from reporting rape incidents and accessing much needed PEP treatment to prevent HIV transmission. According to the respondents, the girl would be considered “dirty” and may end up with no husband if word got out. Her chances of motherhood would be reduced drastically, while her chance of perpetuating her lineage would not exist. The Kunama being a matrilineal society would treat her like a pariah. All the respondents wholeheartedly agreed with these sentiments.

Level of ostracism before and after judgment

Due to the lack of confidentiality of traditional mediation, many women victims of SGBV have been ostracized for bringing the perpetrator to book. This is especially true for married women with in-laws who support their kin ie the perpetrator. These in-laws, especially sisters and mothers-in-law have been reported to pressurize the survivors to withdraw the cases from mediation. All the respondents reported having been ostracized at varying degrees before and after judgment.

Confidence of victims on panels

Women’s strongest complaint was that in the traditional mediation process women are usually the ones blamed, and therefore they do not get a fair hearing within the process. This has dented their confidence in the system resulting in their un-willingness to seek justice.

Compensation to the victim

In many cases, the female who is the victim of the crime, hardly receives any compensation, even when a verdict has been passed on the same. This is because the perpetrator and his family are more interested in restoring the cordial relationship with the victim’s family, than making peace with her through adequate compensation. As a result, a large portion of the fine will go to

her family, while she receives a smaller portion in the form of garments, or a small number of cows. The younger respondents, below 30 yrs felt that they should be compensated more, while the older ones saw nothing wrong with the level of compensation currently at play. For them, restoring family relations was more important than individual restitution.

Attitudes of mediators to violence

Attitudes to violence as a whole are debilitating to women's chances of achieving justice. Crimes of sexual assault and physical violence are often hidden behind the ways in which administrators of local justice oversee hearings. An administrator of justice resolves cases by focusing on the events which occurred prior to the act of violence. Whoever is seen to be at fault during that time is therefore blamed for the violence. This will not always just be the guilty party – it can be the accused, the victim or both. A large portion of the women were resigned to this fate as they felt that it was too late to try and change the attitude of the mediators. Only the younger respondents were positive that change could be effected through awareness raising activities targeting the mediators.

The harm which a violent act has on a woman is not addressed, nor is the need for the perpetrator to take responsibility for his actions and reform his ways. In cases of sexual assault or rape for example, the need to cover a woman's and her family's shame and find support for a child born out of wedlock supersedes the act of violence which may have taken place. The research team met with many women who had been sexually exploited outside of the marriage relationship and were 'abandoned' by these men, to bring up children alone and live with a shame which may prevent any future marriage options. Domestic violence is similarly invalidated as an act causing damage and harm to a woman through the way the administrators of local justice place responsibility on women to manage and prevent violence in their homes.

Women's rights

In consideration of international human rights standards, it is evident that women's rights are not given adequate consideration in their search for justice, especially in local justice proceedings. Local beliefs systems stipulate the power which individuals may possess, and women are not attributed any of this power, especially in regard to the decision making power in local justice settings. According to the cultural systems this research approached, women have never had and can never possess such power - in this way the possibility of them receiving equal participation and hearing within justice processes is minimal. The systems are inherently

biased towards women's status, decision making capabilities and their roles within their communities according to FGDs with both the women victims and the social workers.

Table 10. Table comparing women's opinions on the traditional & formal justice systems against 4 criteria suggested by them

Criteria	Traditional Justice System	Formal Justice System
1. Accessible	Yes	No
2. Affordable	Yes	No
3. Timely	Yes	No
4. Fair	No	Yes

<u>Criteria</u>	Perceptions of the women				
Justice System					
Speed	Very satisfactory	Moderately satisfactory	Satisfactory	Un-satisfactory	Very unsatisfactory
Traditional justice system	19	3			
Formal justice system				4	18
Fairness	Very fair	Moderately fair	Fair	Unfair	Very unfair
Traditional justice system		1	19	2	
Formal justice system	6	13	3		
Friendly environment	Very friendly	Moderately friendly	Friendly	Unfriendly	Very unfriendly
Traditional justice system		3	14	4	1
Formal justice system				10	12
Confidentiality	Very confidential	Moderately confidential	Confidential	Un-Confidential	Very un-confidential
Traditional justice system					22
Formal justice system			17	5	

Though all the respondents agreed that the traditional justice mediation mechanism had a number of weaknesses, they stated that it was the only viable avenue for them as taking the cases to ‘outsiders’ would be frowned about and expose them to worse stigma and ostracism from their community.

The police in their FGD stated that they had only dealt with one case brought to them by a woman from the Kunama community. It was the rape case mentioned earlier that had been committed by someone from the host community, which eventually got thrown out for lack of evidence as no-one had witnessed the incident and the victim couldn’t identify the perpetrator. This serves to strengthen the notion that all SGBV cases among the Kunama are mediated through the traditional justice system.

Based on the experiences of the respondents, 83% of the respondents, (184) were in agreement that the following response to the research question is true of the traditional justice system.

The use of a traditional justice framework is not an effective tool against sexual and gender based violence among the Kunama people of Ethiopia.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

It is evident from the above findings, that the traditional justice system is being used on a daily basis to resolve cases of violence against women. Through their practical use, users (female victims of SGBV) of the traditional justice process have identified what is strong and weak about the system, and what needs to happen in terms of strengthening and standardizing the local justice process within their camp.

Given that the traditional justice councils are composed of the male Kunama community members only, contacts between perpetrators and victims are not managed through the option of confinement of the perpetrator during the proceedings, the methodology of arbitration, handling of evidence, witness summoning and interviewing, dealings with repeat offenders, the enforcement of the compensation to be given to the victim as well as the attitudes of the mediators to violence, the traditional system is seen to have inherent weaknesses.

As a result of our analysis, it can be concluded that the traditional justice system is not adequately dealing with cases of SGBV among the Kunama community in the camp, thus the research answer that the use of a traditional justice framework is not an effective tool against sexual and gender based violence among the Kunama people of Ethiopia has been proven.

The process is fraught with bias and lack of consistency in the judgments meted out. It is based on cultural systems and beliefs that are inherently discriminatory to women, both as users of the system and as potential administrators of justice. These cultural practices and beliefs both oppress and depress women through a lack of understanding of the act of violence and the impact this violence has on women and their families and communities. People who judge these cases are people who reinforce practices which impinge on women's rights.

However, the traditional justice system has positive characteristics which are both meaningful and important to the Kunama community. The speed of determination of the cases was viewed positively by the Kunama women compared to that of the formal justice system, the council mediators were also viewed as more friendly to the women during the hearings as opposed to the police who were seen as cold and unfriendly.

Additionally, the location of the hearing in the camp was closer for the women victims in terms of distance compared to the courts based in Shiraro. The fact that some form of compensation was determined by the traditional council to the victim further persuaded the women to report

to the ethnic council as the formal court system did not offer anything in way of compensation to the victim and her family.

It is these positive characteristics which need to be highlighted and focused on. In that way women's rights can be protected and promoted through the local justice system in order to achieve justice for incidences of SGBV.

The Kunama people have varying levels of respect and fear of the local justice process. Personal and cultural investment in 'It-kishe' will ensure that this system continues to be used. Since women victims of SGBV are going to keep using this system, then those aspects of it which are damaging to their needs and rights need to be reformed. This process however, needs to come from within.

As long as any engagement with local justice practices is done in an inclusive and open manner, communities will gladly embrace the opportunity to formalize the means through which members can be disciplined in a way that is appropriate and fair to all.

Women's involvement is of-course integral to this process. Their involvement however should not be undertaken in the way of placement of women on community committees and panels as a token effort/symbol. Culture cannot be used as an excuse to demean women's decision making abilities or the power they may or may not have to effect change on the processes that oppress them. Unfortunately, customary systems have enforced the belief, especially with rural women, that they have no capacity or right to make decisions in their communities. They have been socialized by a patriarchal system and a culture that has been suppressed socially and politically for centuries.

It is only through long term exploration of cultural 'traditions' that power holders will be able to recognize their attitudes towards women are unacceptable by international standards. Education and awareness raising on concepts of gender, masculinity, violence, respect for the person and issues of equality need to start from the basis of the culture which has developed to control women's agency. People with investments in the bride price system and local justice process need to be given the opportunity to analyze their own views and look at why oppression of women arises from these systems. It is only when this occurs that genuine support for women's rights and their status as equal to that of men in their community will come into fruition. This will take a long time. As will any efforts to reform or incorporate the local justice systems into formal justice systems – which obviously should be concurrent with strengthening of the police forces.

It is in keeping with requests from respondents for those in higher levels to “place their eyes towards the base and look to what already exists”, that this paper concludes with some ideas which might enable a sound and wholly inclusive approach to local justice and the possibilities within them for the promotion and protection of women’s rights.

RECOMMENDATIONS:

The high prevalence of “Sexual & Gender Based Violence” in the Kunama community needs to be addressed. While information may exist on its form and presence, understanding the investments of power holders in perpetuating such practices will enable a holistic approach to eradicating violence against women.

Education and training programs on rights and equality targeting the traditional justice holders should be implemented, though these on their own and are not sufficient to create the fundamental shift in mentality which is needed. Education programs need to pose a challenge to participants on their present acceptance of levels of violence in their lives, and the justifications they use to normalize these. Such an approach would enable people to question their own beliefs and practices, especially towards violence and the status of women in the Kunama society. Education and research needs to be done in a way that simultaneously allows people to analyze their own attitudes to women and violence and assists them to identify where these have developed from. It is only with this kind of approach and self-analysis that ordinary Kunama people may become catalysts for their own perceived needs for change in their community.

The establishment of a well-functioning accessible formal court system, with the necessary support such as affordable legal advice should be put in place to broaden the range of options for Kunama women victims of SGBV.

The attempt to place a formal justice system working on top of a local justice system based on cultural law clearly has not worked. The Kunama women do not seek formal justice when incidents of SGBV occur. This will not change soon and according to respondents, any attempt to abolish or ignore the local system will certainly make matters worse. In a third of the FGDs held with women, they proposed some form of engagement with the formal justice system. IRC currently implementing a GBV program in the camp has embarked on an awareness raising

campaign on concepts of gender, masculinity and human rights among the Kunama community through coffee discussions. An initial step towards this could be locally based community conversations (debate forums) in which holders of local justice could come together to openly debate and discuss the issue. This should involve those who have the cultural power to rule in local justice processes, not just elected community representatives. These panels for discussion will allow holders of local justice to present what they perceive to be the positive and negative aspects of their law, and where they think the two systems might meet, and vice-versa. This will afford the opportunity to hear their perspectives and work from there in a way which is acceptable to them and which will be of optimum benefit to any process attempting to initiate formal cooperation between the two systems. It is also through such a forum that an opportunity will exist to tease out information on the belief systems that lead to discriminatory practices that so much affect women's access to justice. Critical analysis of their own belief systems and where they and the formal system see the need for change can then be established and developed.

While the deeply entrenched culture of the Kunama needs to be respected in any endeavors made to bring about positive change, culture cannot be used as an excuse to maintain the status quo which is debilitating to women's development.

A stronger effort needs to be made to cultivate a police force which is ready to deliver police services to distressed women in a humanitarian and supportive manner. While police officers obviously need further training, it is the methods used and the duration of this training that will determine the success or failures of its services. Again, presentation of training modules does not guarantee that individual prejudices are eradicated in the practice of police work. Officers need to be facilitated to examine their own attitudes towards women and violence so that a culture of police enforcement which is both protective to women and prohibitive to any forms of minor or serious violence is fostered. Specialist training should be given to all police officers who deal with cases of SGBV. Developing specialist sections of police, such as the women and children's desks, are commendable and imperative to assisting vulnerable persons.

It should be noted that any improvements to the justice systems as suggested above are going to take a long time.

In particular, young girls need protection from sexual abuse and exploitation, in a preventative rather than curative manner. Social and sexual education is essential, especially in light of the

impact of porn literature and films now widely available in Shimelba camp through the video show businesses.

The traditional justice system members should be lobbied by the implementing partners and government officials in the camp to notify them when a case is up for hearing, and to allow their participation as observers initially. This is to ensure that gross human rights violations are held in check, while also giving the partners a say in how the compensation should be carried out.

The hearings of the traditional mediators should be held in an official structure where the privacy of the victim is respected. This will de-stigmatize the victim and will encourage her to come forward to seek justice when her rights are violated.

Other methods of passing down wisdom to the Kunama youth should be explored to bar their participation in the hearings unless they are the witnesses or the perpetrators. This will go into enhancing confidential nature of the hearings and will enhance the credibility resulting in willingness to forward information on the part of the female victim.

Area for further research

An analysis of how children's rights are affected by local justice rulings and ways in which they can be protected from its harmful effects should be done. Additionally, the research should include the impact of violence they are experiencing and witnessing in the home to find out the coping strategies developed. Such information collection and analysis will afford a more informed and appropriate approach to facilitating the achievement of respect for children's rights which is so urgently needed.

APPENDIX 1: FOCUS GROUP DISCUSSION GUIDE – 1

(Survivors of SGBV whose cases have been or are currently being mediated)

- 1) Who is part of the traditional court deciding on SGBV cases?
- 2) When a case is reported to the traditional court, is the suspect confined to ensure no contact with the survivor? If yes, for how long? If no, is the survivor offered protection to ensure that the suspect does not cause her further harm?
- 3) How was evidence collected by the members of the traditional court?
- 4) Was the hearing held privately or publicly?
- 5) Who was summoned as a witness to the case?
- 6) Was the witness interviewed in public or private?
- 7) Was the presence of the survivor required during the interview? If not, is the survivor informed of the proceedings of the interview?
- 8) Did the police offer any support before, during or after the traditional mediation? If yes, which type?
- 9) What type of verdict was passed?
- 10) Was a fine imposed?
- 11) Did the survivor think it was fair?
- 12) Was confidentiality maintained?
- 13) How is the survivor treated now by the rest of the community?
- 14) Did the perpetrator comply with the decision of the traditional court?
- 15) If not, was further action taken against him?
- 16) Did the verdict stop other incidents of SGBV?
- 17) Did the survivor get any compensation for the crime? If so, which type?
- 18) Did the survivor think justice was delivered?
- 19) Did the traditional court resolve the problem?
- 20) What were the good and bad aspects of the traditional court?
- 21) Who do the survivors prefer to handle their case – the police or the traditional court? Why

APPENDIX 2: FOCUS GROUP DISCUSSION GUIDE – 2

(Refugee social workers)

- 1) What are the services available in the camp for victims of SGBV?
- 2) What types of SGBV are commonly reported?
- 3) How many women have forwarded their cases to the traditional court?
- 4) How many women have been offered protection from the perpetrators?
- 5) How many women still live with the perpetrators in their homes?
- 6) When SGBV incidents are they reported, how fast is action taken?
- 7) What is the frequency of meetings held to rule over the cases?
- 8) As a counselor, are you ever called to act as a witness by the traditional courts because of your follow-up with the victims?
- 9) Does the victim of the crime receive any compensation? If so, which one?
- 10) Are the police involved when capital offences are committed?
- 11) What action do the police take?
- 12) Is confidentiality maintained during the hearings? How?

APPENDIX 3: FOCUS GROUP DISCUSSION GUIDE – 3

(Police)

- 1) What types of SGBV are commonly reported to you?
- 2) When SGBV incidents are they reported, how fast is action taken?
- 3) What preliminary actions /restrictions are taken against suspects?
- 4) If investigations are to be carried out, how long do they take?
- 5) How is evidence collected?
- 6) How is collected evidence handled?
- 7) Is the victim given legal counseling?
- 8) Is confidentiality maintained?
- 9) Are cases referred to the police from the traditional courts?
- 10) Do the police refer cases to the traditional courts?
- 11) How far is the courthouse?
- 12) Who transports the victim to court for the hearings?
- 13) How long does it take the court to give a judgment?
- 14) Does the victim receive legal aid?

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