



## Customary Procedure of Homicide Dispute Settlement among the Tulama Oromo of Ethiopia

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### Abstract

Based on fieldwork among the Tulama Oromo of Ethiopia, this article explores the procedure of customary dispute settlement in homicide. Data for this study were generated through observation, interview, focus group discussion and written documents. The study shows that the council of elders (*jaarsummaa*) is the main local forum in dealing with homicide. Examination of the procedure of *jaarsummaa* in homicide takes over long periods and follows complex procedures. When homicide happens, the procedures are generally divided into four major phases. First, there should be a pleading ceremony for several days. After the deceased family agrees to the plea, the next phase is peace talks by the elders of both sides. This is followed by the day of reconciliation ritual and payment of blood money (*gumaa*). Lastly, there is a reintegration phase by which the former families in dispute come together in each other's home. In the context of methods of dispute handling (negotiation, mediation, arbitration and adjudication), one can inquire under which method does the Oromo council of elders (*jaarsummaa*) fit while settling homicide. The findings show that *jaarsummaa* procedure does not reflect the features of negotiation and adjudication. Rather, it reveals the combined features of mediation and arbitration. During the plea for reconciliation, elders start as passive mediators or act as a go-between in order to bring the parties in dispute into reconciliation table. They gradually move into active mediators during peace talks and then they become arbitrators on the day of reconciliation ritual.

### 1. Introduction

Several studies have shown that customary dispute settlement mechanisms are widely used in different parts of Ethiopia. They have a great place among the Ethiopians (see Yntiso *et al.*, 2012, 2011; Pankhurst & Assefa, 2008). Like many Ethiopians, the Oromo have strong customary laws of dispute settlement. The major focus of this paper is the council of elders (*jaarsummaa*) rather than the customary law as a whole<sup>3</sup>. This is because currently, *jaarsummaa* is the main dispute settlement mechanism in dealing with a variety of disputes ranging from civil to criminal matters among the Tulama at the *kebele*<sup>4</sup> and district levels in the study area.

There are studies on the operation of customary dispute settlement mechanisms in Ethiopia. The present paper on the operation of customary law is in line with recommendations of previous scholars who suggested the need for a further investigation on customary laws in Ethiopia (Yntiso *et al.*, 2011; Pankhurst & Assefa, 2008). According to our investigation, many areas inhabited by the Oromo in general and the Tulama in particular were not researched so far. Handful studies on the Tulama Oromo of Shewa by Abebe (2013), Negassa (2011), Girum (2008), Guida (2005), and Morton (1973) have not adequately addressed the procedure of customary dispute settlement mechanisms in disputes. For instance, Nicolas's anthropological book (2011) provided a detailed description of customary mediation. By using linguistic pragmatic theory, her work investigated how the council of elders mediated marital, abduction, bodily injuries and homicide disputes in Ada'a Liban district of eastern Shewa, where the majority of the Oromo and the minority Amhara ethnic groups live.

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<sup>3</sup> The other customary law that deals with disputes in the area is spirit medium (*qaalluu*). Comparing to spirit mediums located in other districts of North Shewa of Oromia Region, its role in dispute settlement in Jidda is very limited. Therefore, dealing with this institution is not the major objective of this study.

<sup>4</sup> The lowest administrative unit in the formal state structure.

Based on our investigation, we believe that there should be more studies on customary dispute settlement mechanisms between individuals and groups within the Tulama Oromo. By associating with methods of dispute handling strategy (negotiation, mediation, arbitration and adjudication), this study goes beyond a mere description of the procedure of customary law in homicide so as to make an in-depth analysis of its operation.

The paper is based mainly on several months of ethnographic fieldwork distributed between 2014 to 2016. Data was collected through participant observation of customary dispute settlement. Interviews and focus group discussions were also held with elders, women, youth, *kebele* officials and legal practitioners of the formal law. Written documents were consulted to augment primary methods of data collection. For ethical reasons, the privacy of informants was kept anonymous.

## 2. The Tulama Oromo

The Oromo are one of the largest ethnic groups in Eastern Africa (Legesse, 1973), constituting nearly 34.5% (a little over 25 million) of the Ethiopian population (CSA 2007). Most of them reside in Oromia National Regional State. Geographically, Oromia is bordered with all the regional states of Ethiopia except Tigray. The region is the largest of all the states in terms of population and land size. Currently, the region is divided into 20 administrative zones, with North Shewa being one of them. Jidda, the study area, is one of the thirteen districts in North Shewa zone (see figure 1 below).

The Oromo are divided into two major groups: the Borana (senior) and the Barentu (junior) (Melba, 1988:8). The descendants of these two main groups later formed major Oromo clans and sub-clans. The Borana section of the Oromo is divided into three main branches, namely the Southern Borana, the Guji and the Macha-Tulama (also called Northern Borana) (Hassen, 1990:18). The Tulama Oromo largely settles on the Shewan plateau extending over vast areas between Lake Zeway in the south and Wallo in the north, Macha lands in the west and the territory of Karayu in the east (Haile *et al.*, 2006:137-145). Thus, the Tulama Oromo who occupy the present-day Jidda district are part of the Borana Oromo group and are the focus of this study.

Jidda district, the study area, is far from the main highway road connecting Addis Ababa with Bahir Dar and Dessie towns. Its administrative seat, Sirti, is located at about 110 km from Addis Ababa and 70 km from Fiche, the administrative capital of North Shewa Zone of Oromia Region. The town is the place where the formal legal institutions like the district police, public prosecutor and court are found. In 2007, the total population of Jidda district was 53658 with the overwhelming majority of the inhabitants being the followers of Orthodox Christianity (CSA 2007).<sup>5</sup> Almost all inhabitants of the district are Oromo and speak *Afaan Oromo* as their first language. According to the Jidda Agriculture office, the district is located at a high altitude ranging from 2600-3500 meter above sea level. Topographically, it is largely plain with some plateaus, mountains, valleys and rugged terrains. The same office disclosed that Jidda from North Shewa is the leading district in animal population such as cattle, sheep, horses, donkeys, and mules. Because of its altitude and climate, wheat, barley, *teff*, beans, peas, and lentils are important crops grown in Jidda.

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<sup>5</sup> Although the central statistics show that the majority of the Oromo of the area claim to be followers of Orthodox Christianity, most of them actually mix it with their indigenous faith, *Waaqeffannaa*. In their everyday social life, they make oaths in the name of their traditional belief system, calling upon the *qaalluu* instead of Christian Orthodox saints and the Ark of the Covenant (*tabot*). When they face serious difficulties such as lack of rain and natural disaster, they often go to their indigenous ritual sites (rivers and hills) to slaughter a bull, pray and make a pleading (*izgoota*).

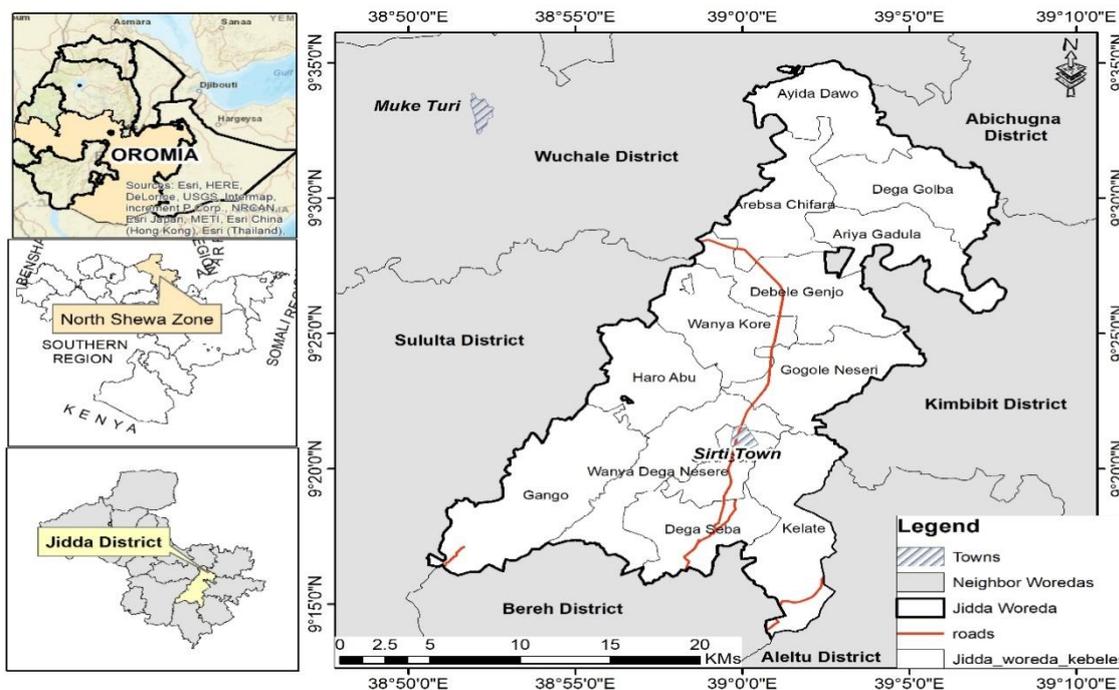


Figure 1: Map of Jidda District (CSA 2007).

Social and political organization among the Tulama Oromo is structured and organized by the *gadaa* system (Knutsson 1967). Despite their inclusion into the Ethiopian nation-state, many Tulama groups have sustained the *gadaa* system, or at least elements of it, and activate it in religious, ritual and also legal contexts. In the study area (and among other Tulama groups), the *gadaa* system still survives though it is not strong as it was before.

In the study area, there are two major customary legal institutions under the *gadaa* system. The first is the *jaarsummaa* (the council of elders). The most important task of the *jaarsummaa* is dispute settlement, besides other services.<sup>6</sup> The *jaarsummaa* is formed by males of different age groups but serves both sexes in the community. It is not a permanent council, but rather the elders meet on an ad hoc basis whenever a certain dispute occurs. After achieving its mission of dispute settlement, the council is disbanded. The *qaalluu* (spirit medium) is another customary institution involved in dispute settlement<sup>7</sup>. Compared to the *qaalluu* located in other areas of the Tulama, its role in dispute settlement is very limited in Jidda. Therefore, this study looks specifically at the council of elders (*jaarsummaa*), which is currently the main local forum in dealing with a variety of disputes including homicide.

### 3. Methods of Dispute Handling

The present section in the following paragraphs discusses the various methods that are applied to the process of ending dispute/conflict. The goal is not to present a comprehensive overview of the many different methods of dispute handling. Rather, we seek to present those methods which are central to this paper. These are negotiation, mediation, arbitration and adjudication.

According to Avruch (1998), negotiation is the most familiar form of dispute handling. The parties to the dispute participate directly in the process and decision that affect their respective interests. Garner (2009) argues that negotiation is a consensual bargaining process in which the parties attempt to reach agreement on a dispute without the involvement of the third party.

<sup>6</sup> Elders play also important roles as go-betweens during marriage negotiations, and in times of drought, disease and other disasters.

<sup>7</sup> The *Qaalluu* believes to be the intermediary between the people and supernatural power called *Waaqa*. He exercises considerable influence in the economic, political and social life of the Oromo people, as he is responsible for their spiritual well-being. His activities include healing, center of worshipping, child naming by which children are given Oromo names and center of administration.

According to him, the approach usually involves the complete independence of the parties involved in the dispute. Yntiso (2014:35) writes, "[i]f conducted without influence and intimidation, negotiation is known to be the most efficient and costless approach to handle a dispute/conflict." Roberts (1994) calls such mode of dispute handling by which disputants settle their matter through discussion "bilateral negotiation". For him, this method of settlement is common by which the disputing parties settle their dispute through face to face negotiation without the involvement of third parties. However, Avruch (1998:80) argues that negotiation does not always work, and describes its fragility as follows:

It requires that the two contending parties recognize their joint interdependence and be willing and able to remain in communication. But often, one party uses the dialogue established in negotiation simply to coerce the other. Or negotiations may break down if the relationship between the parties is characterized by a larger power discrepancy, by a history of enmity or violence, by previous failed negotiations, or by a general mistrust.

When parties in dispute fail to reach negotiation by themselves, third party interventions are employed. The first one is mediation. Avruch (1980) characterizes mediation as a non-coercive intervention. For him, mediation is an extension of dyadic negotiation. For Garner (2009:1070), mediation is "a method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution." Similarly, Singer (1990) describes mediation as helping disputants to reach a mutually acceptable solution on their own. The presence of mediators does not deprive the disputants of the final ability or need to make their individual choices and to reach an agreed decision. This means the contending parties maintain considerable control over the process and the outcome. Yntiso argues that "the mediator is expected to understand the perspectives of the parties, set ground rules for improved communication, encourage them to discuss in good faith and articulate their interests or concerns, remind them to make decisions on their own, and convince them to remain committed to peaceful result (2014:36).

Taking the degree of intervention in a dispute settlement, Roberts (1994) divides a form of mediation into two: passive and active. In the former, the third party acts as a "go-between", a "link", or a "medium" between the disputants. His/her role does not go beyond carrying messages forward and backward between the disputants who reach some kinds of settlement by themselves. In the latter form of mediation, the neutral third party plays an active role in assisting a settlement while remaining neutral and seeking no authority to impose a settlement on the parties.

Arbitration is another dispute handling method that involves a third party decision-maker. Roberts (1994) regards it as a settlement by which a neutral party seeks to resolve the dispute by making a decision rather than assisting the disputants towards their own solution. Kestner and Ray (2002) on their part describe arbitration as the submission of a dispute to a third party who makes binding or non-binding decision based on available evidence and the rules of arbitration. Singer (1990) identifies three factors that differentiate arbitration from adjudication. First, disputing parties mostly submit their matter to the arbitrator for decision voluntarily. However, there are cases when arbitration can also be ordered by a court or be compelled by a statute. Second, the parties often agree on the selection of the arbitrator and on the draft of the rules that govern the process. Third, rules of evidence and procedure are generally more relaxed than the rules of court.

The last method of dispute handling is adjudication, which is characterized by the presence of a third-party decision-maker. According to Nader and Todd (1978), adjudication refers to "the presence of a third party who has the authority to intervene in a dispute whether or not the parties wish it, and to render a decision with means at his or her disposal, and furthermore to enforce compliance with decision." Likewise, Roberts (1994) writes that the power of the adjudicator is obtained from some offices rather than from the consent of the parties in disputes. Similarly, Avruch (1998:124) notes that "the adjudicator (for example, the court) can impose itself on the parties and their dispute whether or not they call for it; and the adjudicator possesses an authority structure (police-broadly, the state) that has the power independently to enforce a party's compliance with its decisions." This means people directly involved in disputes have little control over the process or outcome in adjudication. An adjudicator determines the outcome of a dispute by making a decision for the parties that is final, legally binding, and enforceable through the law enforcement agencies of the state (Best, 2006).

The above description of the various dispute handling methods is mainly aimed at creating a context within which the procedure of the Tulama Oromo customary council of elders (*jaarsummaa*) in homicide is examined. Nevertheless, I agree with von Benda Beckmann's (2002) statement that empirical phenomena may not fit into analytical/conceptual categories in a one-to-one manner.

#### 4. Procedure of *Jaarsummaa* in Homicide Dispute Settlement

*Jaarsummaa* is an assembly of elders (*jaarsa* or *jaarsa biyyaa*). The institution provides different services to the local community. Dispute settlement (the subject of this paper) is one of its roles<sup>8</sup>. *Jaarsummaa* settles most dispute cases regardless of their severity and seriousness. The examination of the council of elders (*jaarsummaa*) among the Tulama Oromo illustrates that the institution settles disputes ranging from minor ones to those involved loss of human life. For this paper as stated in the previous sections, we deal only with its procedure in homicide cases. In other words, cases other than homicide are not discussed in this paper. When homicide happens deliberately or accidentally, the Tulama Oromo customary peacemaking procedure for reconciliation is generally divided into four major phases.

##### *First phase: Pleading*

When a homicide occurs, pleading (*izgoota*) is conducted by the killer's family, relatives, and neighbors of the killer to the family of the deceased and God (*Waaqa*). The plea lasts for at least three days and may extend up to nine days until the family of the deceased shows a sign of their readiness for reconciliation. Plateau or hillside is chosen as a place for pleading. The location of the killer's family and mediating elders must be within sight to be seen and heard by the family of the deceased.

Different cultural objects are brought on the pleading days. These are sacred cultural objects that include a holy metal (*kallacha*) and a decorated leather band (*caaccuu*). The *kallacha* is carried by men, while the *caaccuu* is carried by the wives of the *kallacha* holder. Cross (*masqal*), carried by an Orthodox priest, is also present. Other items such as uncarved gourd (*buqqee duudaa*) and thorn (*qoree*) are also presented. The former is carried by a young virgin girl and the latter by the father of the killer. In addition to these objects, there are also animals brought to the petitioning process: oxen tied with a yoke (*qotiyyoo qonnaa xamadamee*) and a horse which wears a bridle (*farad luugamaamee*).



Photo taken on 1 July 2014. Homicide pleading (*Izgoota*)

<sup>8</sup> Elders in the area have many roles than just dispute settlement. They are needed, for instance, at the time of drought, outbreak of diseases and marriage.

According to our informants and focus group discussants, it is very difficult for the deceased family to reject the plea if these sacred objects, and yoked oxen and harnessed horses are brought to the place of pleading. Many such pleadings end with the willingness of the family of the deceased to start the peace talks. The family of the deceased sends elders to reply to the elders of the killer side saying the following: Let's *Caaccuu* and *Kallacha* back home; let the cross returns to the church; let the harnessed horses and yoked oxen be released and provided with grass. When a victim's side agrees to the procedure of settlement, the second phase starts.

### **Second phase: Peace talk**

This phase involves deliberation on the issue by the elders of both sides. Mediating elders of both sides sit along or on the edge of the riverside if both groups of elders come from different locations. Sometimes they could use a big tree for the meeting. One major activity of elders of both sides is to discuss the cause of the dispute and homicide. In addition to discussing the circumstances of a person's death, elders fix the amount of money (*gumaa*) to be paid by the family and close relatives of the killer to the deceased's family. Mostly, it is 2000 Ethiopian *birr* (125 dollars) and will be paid during the third phase. The other is costs associated with money spent for burial, forensic examination and other purposes spent by the family of the deceased. Overall, it ranges between 6,000 (375 dollars) to 8,000 *birr* (500 dollars) depending on the nature of homicide case (accidental or deliberate). This has to be paid before the final reconciliation day.

Since the slayer is to spend some years in state prison, the process of reconciliation will be interrupted for some times. To avoid any possible further killing, the Tulama elders set certain rules (*seera tumuu*) of what the disputants should and should not do until the day of reconciliation. Accordingly, the family of the slayer is expected to avoid direct contact with the family of the victim. Both sides do not eat together. The two parties never fetch the water from the same spring; never graze their cattle side by side, and not to drink from the same house on the market day. Anyone who violates the law will be punished.

### **Third phase: Reconciliation (*araara*)**

This phase is the day of reconciliation (*guyaa araara*) on which blood price (*gumaa*) is paid. On this day, both the killer's family and the family of the victim appear. Indeed, it is for the first time that the victim's family meets face to face with the killer of their person. Once again, on the day of reconciliation, the venue where the reconciliation ritual takes place is changed into the land of the victim either near the riverside or on infertile gully land. It is customary that the blood price is paid on the land of the victim. Every Oromo meeting begins with a blessing (*eebba*) and prayer (*kadhaa*). Senior elders give the blessing (*eebba*) and praying (*kadha*) for successful completion of dispute settlement.

According to our informants, it is during this phase that for the first time a large number of people from different age groups both from the families and relatives of the deceased and slayer face against each other. These include a killer, women<sup>9</sup>, men, children and young adults and elders. On this day, different items used for reconciliation are brought by the killer and his family. These are a knife (*ablee*) used to slaughter sheep, pot with water, soap used to wash hand and cloth used to dried up the hand. Barley (*garbuu*), grain flour (*daakuu*) and cow dung (*dhoqqe*) are also presented for ritual purposes.

The various rituals like slaughtering a sheep, hand holding, washing of hand and pot throwing would follow the praying. Based on our own observation and interview, the killer, whose head and face are covered with cloth, accompanied by his close relatives comes to the site where animal slaughtering takes place. The sheep is thrown on the ground, and the *Fugaa*<sup>10</sup> cuts the neck of the sheep with the knife. The *Fugaa* then pierces the belly of the sheep on each side with knives under the order of elders. This is followed by left-hand holding ceremony (*harka bitaan walqabuu*) through the belly of the pierced sheep between the killer, and loved ones of the deceased (sons, father, brothers, unmarried girls and uncles). At this time, the killer asks the family of the deceased to forgive him. Following this, washing of hand ceremony takes place.

<sup>9</sup> According to the Oromo of the study area, women are allowed to participate in homicide settlement not only at the pleading ceremony but also on the day of reconciliation held at the gully.

<sup>10</sup> Marginalized individual who has a low status in the society.

First, one of the relatives of the victim washes the hand of the killer to be followed by washing of hand of the close relatives of the victim (father, brothers, sons, unmarried girls, daughters, uncles and aunts) by the slayer one by one. Then, the killer throws the pot with the remaining water on the ground. The throwing and breaking symbolize as their feeling of animosity are broken.



Photo taken on 5 May 2015. Washing hand ritual between the killer and the family of the victim. The killer (right) while pouring water on the hands of the son of the deceased (left).

Afterwards, the ritual of taking an oath takes place to express commitment to the agreement. The gathered people from both parties under the leadership of the elders take an oath (*kakuu kakachuu*). Both groups take a promise to abstain from future dispute and to abide by the agreement turn by turn.

Following the end of swearing and praying, the killer's family pays blood price (*gumaa baasuu*) for the 'soul' of the deceased which equals to 2000 Ethiopian *birr* (125 dollars). Following the end of the ceremony at the gully, the people accompany the killer and the victim's families to their respective homes. This is to attend the feast prepared in the homes of the deceased and slayer.

#### ***Fourth phase: Re-integration***

This phase is the ritual of reintegration in both houses of the killer and deceased. Following the reconciliation, among the Tulama, the ritual of bringing the former opponent families together in each other's home may be conducted after several months or a year or more. First, elders and relatives of the killer and the deceased should go to the house of the killer's family. On the next or another designated day, the same group should visit the house of the deceased's family. Foods and drinks are prepared for the guests. Animal slaughtering is performed. Peace has been publicly reached following both sides enter the house of one another and eating and drinking together. In addition to mutual feeding in both houses, the opponents make a final swearing and blessing under the leadership of elders.

The invitation to each other's house is to strengthen the strong relationship between the two groups. After this blessing, if the two groups are non-relatives, they are told to give each other daughters in marriage. All this is to bring lasting peace, to make them relatives and to end enmity between the two groups. Finally, every attendant should stand up by carrying a cup filled with home-brewed beer and answer what the elders speak a sequence of blessing.

#### **4. Conclusion**

The findings of this study have shown the procedures of customary law in dispute settlement from the occurrence of homicide to its eventual settlement can be generally divided into four major phases. When killing happens intentionally or accidentally, there should be a pleading ceremony for several days by the relatives of the killer to the family of the victim.

After the family of the deceased agrees to the plea, the second phase is peace talks by the elders of both sides. This is followed by the third phase, the day of reconciliation ritual and payment of blood money (*gumaa*), attended by the members of both sides and a significant number of elders. Finally, there is a reintegration phase: the ritual of bringing the former opponent families together in each other's home.

There are four major methods of dispute handling discussed in section three. The first one is negotiation by which disputants settle their dispute by themselves without the involvement of a third party. The second is mediation which involves a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. The third one is arbitration that involves a third-party decision-maker with the consent of the disputants that seeks to resolve the dispute by making a decision rather than assisting the disputants towards their own solution. The last but not the least one is adjudication which involves the third party who obtains the power to intervene in a dispute from some offices rather than from the parties in disputes and determines the outcome of a dispute by making a decision for the parties that is final, legally binding, and enforceable through the law enforcement agencies of the state.

Then, one can ask under which method of dispute handling *jaarsummaa* belongs in homicide settlement. For us, *jaarsummaa* procedure in dispute settlement does not reflect the features of negotiation and adjudication. Rather, it reflects the combined features of the procedures of mediation and arbitration. But, it does not fit neatly to any of the dichotomies. The roles of elders in *jaarsummaa* change over the course of homicide procedure in dispute settlement. During the plea for reconciliation, elders start as passive mediators or act as a go-between to bring both parties in dispute into reconciliation table. They gradually move into active mediators (during peace talk) and then become arbitrators (on the day of reconciliation ritual). Therefore, in real life situation elders in homicide dispute settlement combine the techniques of mediation and arbitration to settle such complex disputes.

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