AN ANALYSIS OF COMMISSIVE SPEECH ACTS IN SULHA TRIBUNALS AMONG BEDOUINS OF JORDAN

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by

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LIST OF ABBREVIATIONS

SL   Source Language

SAT   Speech Act Theory

TL   Target Language

LIST OF ARABIC ALPHABETS AND THEIR TRANSCRIPTION

Arabic Alphabets	Phonetic Transcription
أ	A
ب	B
ت	T
ث	Th
ج	J
ح	ḥ
خ	Kh
د	D
ذ	Dh
ر	R
ز	Z
س	S
ش	Sh
ص	ṣ
ض	ḍ
ط	ṭ
ظ	ẓ
ع	؟
غ	Gh
ف	F
ق	Q
ك	K
ل	L
م	M
ن	N
ه	H
و	W
ي	Y

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ABSTRAK

Kajian ini ditetapkan untuk menganalisis tindakan ucapan komisif dalam penetapan sistem perundangan *Sulha*. Analisis dilakukan dengan tujuan: pertama, mengenal pasti lakuan komisif yang digunakan dalam tribunal Sulha; kedua, untuk mengkaji lakuan ilokusi dalam ucapan komisif yang dikenal pasti; ketiga untuk menentukan tindakan perlokusi yang terhasil daripada tindakan ilokusi komisif dan keempat, untuk mendokumenkan bentuk langsung dan tidak langsung tindakan ilokusi yang digunakan semasa tribunal *Sulha*. Untuk memenuhi empat objektif kajian, reka bentuk penyelidikan deskriptif bersifat kualitatif telah diguna pakai di mana 14 sampeltribunal *Sulha* yang mudah telah tertakluk kepada analisis tematik. Dalam analisis rakaman ucapan peserta secara langsungdi 14 tribunal *Sulha*, rakaman pertama ditranskripsikan selepas itu data tersebut dikodkan ke dalam nod yang akan dikumpulkan ke dalam pelbagai tema yang menjawab setiap empat persoalan kajian.Penemuan mendedahkan bahawa peserta *Sulha* sentiasa menggunakan ucapankomisif untuk melaksanakan komitmen mereka terhadap aktiviti undang-undang seterusnya mengekalkan undang-undang dan ketenteraman berdasarkan tradisi Badwi. Komisif ini direalisasikan sebagai tindakan ilokusi janji, penerimaan, tawaran, jaminan, penolakan, ikrar, pengakuan, ancaman dan sumpah. Perbuatan ilokusi ini didapati mempunyai kebolehan untuk memulakan lakuan perlokusi iaitu mencerahkan, memuaskan, meyakinkan, menakutkan dan memujuk pendengar. Lima lakuan perlokusi akan diwujudkan berdasarkan jenis tindak ilokusi yang akan digubal oleh tindak balas lisan pendengar kepada penutur. Dicatat dalam kajian ini

bahawa sembilan lakuan ilokusi mengambil dua bentuk wacana iaitu secara langsung dan tidak langsung dalam perlaksanaan lakuan komisif .Kajian ini diakhiri dengan cadangan untuk menjalankan penyelidikan lanjut mengenai jenis performatif lain yang dikodkan dalam sistem perundangan tidak formal; untuk menjalankan kajian tentang peranan strategi bukan lisan terhadap prestasi komitmen oleh peserta *Sulha* dan untuk menjalankan kajian perbandingan antara lakuan komisif dan lakuan lain yang berfungsi saling beroperasi dengan komisif dalam menggubal komitmen. Akhir sekali, implikasi utama termasuk menyusun manual perkataan dan ungkapan yang boleh digunakan dalam penggubalan komitmen dalam sistem berinstitusi seperti *Sulha* .

AN ANALYSIS OF COMMISSIVE SPEECH ACTS IN SULHA TRIBUNALS AMONG BEDOUINS OF JORDAN

ABSTRACT

This study undertakes an analysis of commissive speech acts in Arabic speeches in sampled trials in tribal structures of Sulha. Sulha, as other tribal structures, is formed with an intent of promoting social cohesion through exercising tradition based customary laws. Sulha is, therefore, meant to provide an informal legal ground for the enactment of the laws. Common during the law enactment in Sulha is the presentation of competing claims between disputants, representatives and informal leaders. Previous studies informing the current study hold that for a success in presenting claims in a legal setting, a legal language enriched with speech acts must be engaged. Some of the legal activities performed by speech acts in legal discourses is that of commitment to rules of law under which a legal system operate . The speech act that find use in the performance of such commitments is commissive speech act. The current study, therefore, sought to analyse the commissive speech acts used in Sulha tribunals under four objectives: first, to investigate how Arabic speeches are used to perform a pragmatic function of commitment during *Sulha* tribunals; second, to examine illocutionary acts performed by Arabic speeches in the adoption and discharge of commitment during *Sulha* tribunals; third, to determine perlocutionary acts resulting from commissive Arabic speeches used in *Sulha* tribunals and fourth, to document direct and indirect speech acts of Arabic speeches used in enactment of commitment during Sulha tribunals. The study adopted a descriptive research design and, therefore, qualitative methods were used to sample qualitative data and analysis of the data. Data were extracted from speeches from

sampled 14 Sulha trials from North and Central Badia. To arrive at the speeches for study, sessional audio-recording was done for each of the 14 Sulha trials. The audio-recordings were then transcribed using Arabic orthographies. It is from the transcripts that corpus for analysis was constructed using Hymes' (1974) S.P.E.A.K.I.N.G. model. Various language features for commitment were thereafter coded using Miles and Huberman's (1994) model. Coded data were analysed using conversation analysis approach. The conversation analysis was deemed important for this study, as the researcher aimed at understanding forms and meanings of discourses used in enactment of commitment in naturally occurring interactions in Sulha tribunals. Theoretical framework informing the data analysis was Speech Act Theory by Searle (1976) under the fundamental concepts of context and illocutionary acts. Searle and Vanderveken's (1985) concepts of logics and propositional content was also used especially in meaning evaluation of the corpus for the study. From the analyses in chapter four, it is established that Arabic dialect of Bedouins under constraints of Bedouins customary laws adopts commissive speech acts in performance of commitment to these customary laws through sequential implicativeness. The novelty in this study is that it will be among the first linguistic approaches to the study of operation of Sulha legal system thus providing an insight to language use in the performance of legal activities in informal legal systems. From the elicited raw data, corpora associated with commitment in the informal legal setting of Sulha are going to be developed for future references. The study concludes with a number of recommendations and future research suggestions.

CHAPTER 1

INTRODUCTION

1.1   Introduction

This chapter provides an exploration of language use majorly in formal legal contexts alongside establishing the need why the current study is necessary. The chapter gives the research objectives, research questions followed by significance of the study. Scope and limitation of the study is provided in this chapter as well.

1.2   Background of the Study

Linguistics, as a social science, has been approached in two broad spectrums namely theoretical linguistics, biased towards structural description of language and applied linguistics focusing on the language use in the society. Descriptive studies on natural languages have focused on four linguistic universals of phonetics and phonology, of morphology as well as of syntax establishing their unique display by natural languages in the formation of the languages' structures. Structural approach to language description, according to Crystal (2011), Fillmore (1973) as well as Gumper and Hymes (1974), has been found to be abstract and idealistic and, therefore, does not take care of pragmatic aspect which is a practical approach to language study hence the call for pragmatic approach. Pragmatic approach is tuned towards the study of language use in different contexts. Variation in contexts of language use explains disparity in forces a discourse can enact in an event of causing changes in the world (Austin, 1962 & Searle, 1976). Focusing on legal context, for instance, Danet (1980) establishes that discourses used in legal contexts are

structurally different from discourses used in daily life activities and he attributes this to statutes upon which speeches operate.

A number of studies have been conducted on legal discourses within legal context concentrating on how these discourses structurally behave and how performative they are in such contexts. Brouwer (1981), for instance, argues that form of speeches in courtrooms follow formal linguistic patterns that seem to be applied, understood and followed by force of judicial system that governs the country. These patterns are witnessed in every phase of the judicial process. The phases of judicial process, as reported by Kiguru (2014), are mainly four: first, is the presentation of the case against the defendant by the prosecutor. This happens after a plaintiff has raised their complaint. Second, is the placement of charges on the defendant by the court. Third includes a defendant's answers on charges placed on them by the court and fourth, is delivering of ruling by judges. The four phases are wholly defined as trial which in itself is a speech event (Kiguru, 2014). As a speech event, a trial is characterised by verbal interactions among the participants following a defined system hence the descriptiom of of speech events in courtrooms as systematic characterised by acts called statutes that govern courts or tribunals in their administration of justice (Acemoglu & Matthew, 2014). It is this systematic operation of courts, as observed by Aronsson, Johnson and Linell (1987) as well as Kiguru (2014), that shapes discourses in ways that they can invoke the rules or conventions of the laws thus enacting different forces including those of obligations, of permissions and of prohibitions in courtrooms (Danet, 1980).

Differences in forces that speeches can enact in a legal setting explain the categorial approaches by linguists in analyses of speech acts in legal settings. One of the most commonly identified categories of speech acts in legal systems is the

commissive speech act (Fiorito, 2006). Commissive speech acts are achieved by a speaker's commitment to fulfill something in future using contractual agreements and guarantees (Danet, 1980; O'Barr; 1982; Coulthard, 1998; Fletcher, 2003;Kusumawati, 2007; Kiguru, 2014). According to Coulthard (1998) and Kusumawati (2007), in any commitments, a speaker should be able to produce appropriate types of commissives with regard to the intended function since commissives can be conveyed in variety of ways including guaranteeing, betting, opposing, swearing, offering, agreeing, volunteering, pledging, vowing, undertaking and threatening. These acts have been found to be important in legal systems as they enhance operationalisation of laws in legal systems.

Legal system exists as either formal or informal with the former applying written laws and the latter applying unwritten law (Schärf & Nina, 2001). According to Schärf and Nina (2001), the fact that informal legal system apply unwritten law, there is need for use of common sense, considering community's consensus and tradition. Studies existing on informal legal system focus on its non-linguistic features including its composition, its role in the society and its structural organisation with scanty study on linguistic aspects defining the system. Sulha system, which the current study focuses on, is an informal legal system common in Arabic countries purposely for dispute resolution (Doron, 2009; Furr & Al-Serhan, 2008). Specific types of cases namely *Taqti al-wajh*, *Ird* and homicides are handled by Sulha with an aim of restoring justice hence promoting peace among members of the community in dispute (Oweidi, 1982). Oweidi (1982) explains the three types of cases as follow: *Taqti al-wajh* is a case dealing with breaching of a community's security through threats and immoral practices; *Ird* refers to cases related to honor of

women and their reputations while homicide cases are the ones that involve cases of quarrel or battles and sometimes murder.

Sulha system, according to Furr and Al-Serhan (2008), is characterised by procedural structuring of trials where the complainant stages his complaint, building facts on why the defendant should be proved guilty of the offence. This is followed by the defendant's attempt to discredit the fact. Witnesses or guarantors may be called in between for their support or dispute of the facts. These phases of trial in Sulha system are conducted by linguistic means. Language use to meet the demands of these phases provides an interesting area of study that needs investigation hence the current study.

1.2.1 Speech Act

Speech act theory was built from Austin's (1962) ideas which were published under the title "How to Do Things with Words". "He was reacting to the popular view then among philosophers of language that all utterances could be classified as verifiable true or false statements" (cited in Kiguru, 2014: p.56). Austin (1962) adds that there are utterances that cannot be verified as true or false and yet uttering them is part of doing an action. He calls these utterances performatives. These utterances as Austin further argues are characterised by performative verbs namely 'declare', 'promise', offer, and accept. Utterances that can be analysed in terms of truth or false values he labels them constatives (cited in Kiguru, 2014: p.56). According to Austin (1962), it is sometimes possible to express performative utterances through non performative verbs. He calls those performatives without performative verbs implicit performatives. For example, in saying "I did it", Austin argues that the utterance lacks a verb naming the action that is being performed but still comprise the act of

convicting. Austin (1962) posits that an utterance only becomes explicitly performative if it has performative verbs. For instance, using the utterance, 'I promise you', Austin (1962) argues that the verb 'promise' is itself an action hence the classification of the utterance as an explicit performative.

Contained within aforementioned performatives, are three distinct actions: the locutionary, illocutionary and perlocutionary acts. Austin (1962) defines these acts as follow: Locutionary act refers to the act of uttering something meaningful; illocutionary act is what an utterance does when uttered while perlocutionary act is the effect an utterance has on the audience. In the utterance 'Do not come close to me', Austin (1962) describes the utterance as meaningful since it conveys an illocutionary act of warning to the target person. Once the targeted person receives this warning, they respond by staying away from the speaker hence a perlocutionary act. Complexity in a single utterance attributed to the three actions is what makes speech act a minimal functional unit in human communication.

As a dispute resolution mechanism, communication skills are highly needed for the conduct of the tribunals in informal justice systems (Awawda, 2008). In fact, according to Awawda (2008), a whole process of a dispute resolution will be a never-ending conflict of argumentation and disrespect without communication skills. It is out of these communication skills that the right action is performed by interlocutors picking the rightful words or expressions for intended speech act in their interactions. These speech acts are performed in different categories during judicial processes (Fiorito, 2006). These categories are defined within the domain of basic classes of speech act.

There are five basic classes of speech acts distinguished in accordance with the taxonomic criteria proposed by Searle (1969). As observed by Searle, identification of speech acts into these five basic classes is based on the functions assigned to them. The five classes are assertives, directives, expressives, declaratives and commissives. Searle (1969) classifies a speech into any of the five classes depending on the meaning the speech conveys. These meanings are explained by Searle (1969) as follow: first, any speech that expresses truth or falsity of something is referred to as assertive. Second, a speech which constitutes attempt by the speaker to get the listener to do something is called directive. Third, that speech that expresses the psychological state of the speaker is called expressive. Fourth, declaratives as a speech act brings about a correspondence between the propositional content of the statement and reality. Fifth speech act, according to Searle, is referred to as commissive speech act. This act is attained by the speaker on condition that the speaker obliges the listener to perform an action described by the propositional content of an utterance.

The current study focused on discourses a speaker uses to make commitments to future course of legal actions thus making the situation (case) in hand fit words the speaker uses to make such commitments.As a peace enhancing informal legal system, *Sulha* needs commitment by participants to win each other's trust and to ensure satisfaction of each participant by the outcome of cases (Furr & Al-Serhan, 2008). One of the main ways in which this commitment is attained is through proper use of forms of language(Phillips, 2011). The study was therefore geared towards analysis of pragmatic functions of commitment by Arabic speeches; the illocutionary and perlocutionary acts within these speeches; the forms the speeches take namely direct and indirect in performing commitment.

The choice of commissive speech acts among other speech acts was based on; first, Marwati's (2010) argument that in the context of conflict resolution, commissive speech acts are seen to be useful in reducing misunderstanding as well as reducing a possibility of conflict. Sulha being an informal justice system meant to restore peace would, therefore, need commissive speech act in the performance of judicial activities geared towards peace restoration. Second reason for the choice of commissive speech act was anchored on Fiorito's (2006) argument on role of commissive speech acts in enacting law. In respect to Fiorito's view, a language applied in any judicial setting to enact law should adopt and discharge an obligation and commitments thus effecting justice. As an informal justice system and as argued by Furr and Al-Serhan (2008), participants in Sulha tribunals are expected to show commitment to traditional law during the tribunals and as argued previously, commissive speech act is the best speech act in the performance of commitment.

1.2.2   The Bedouins Tribe

Bedouins tribe is established in Jordan, Iraq, Saudi Arabia, Yemen, Oman and Egypt (Gardner, 2000). The term Bedouins has been given a number of interpretations: Furr and Al-Serhan (2008), for instance, argue that Bedouins is a derivative of anArabic word *badawiyin*, interpreted as "inhabitants of the desert" — the *Badia*. These inhabitants are mainly nomadic Arabs depending on camel-herding as the main economic activity. Furr and Al-Serhan (2008), Khalil (2009) as well as Philips (2011) interprets Bedouins as an object of romance which is associated with the freedom for Arabs whose life is not easy. Thesinger (1959) describes this life as 'hard and merciless and always accompanied with hunger and thirst.

Looking at their migration and settlement, Bedouins first settled in the southern edge of the arid Syrian steppe in 6000 BC (Furr & Al-Serhan, 2008). They add that Holy Land was the Bedouinss' point of departure. Furr and Al-Serhan (2008) in fact ascertain that Abraham, Isaac, and Jacob were Bedouinss thus confirming Holy Land as their point of departure. In about 850 BC, *A'raab* ancestors of modern Arabs had established network of oasis settlements and pastoralist camps and they were considered as one of many stock-breeding societies settling in the region (Furr & Al-Serhan, 2008). *A'raab* ancestors were distinguished from Assyrian neighbors to the north by their language and their domestication of camels which they used in trade and in warfare (Lancaster, 1981).

Focusing on the migration and settlement of Bedouinss, by the first century BC, as observed by Khalil (2009), they migrated to westwards into Jordan and Sinai Peninsula and Southwestward along the coast of Red Sea. They got converted to Islam in the 7th century (Khalil, 2009). Khalil (2009) adds that during the Muslim conquest, thousand Muslims majority being Bedouinss left the Arabian Peninsula and settled in newly conquered land nearby and later spread across much of the middle-east and North Africa.

In terms of economic development, Bedouinss have raised livestock for sedentary Arabs. Main animals kept by Bedouinss were camels, horses, and donkeys. These animals were kept as beasts of burden. Bedouinss also used camels and donkeys to transport goods between villages and towns. The goods included raw materials which were transported to towns and manufactured goods moved to villages (Gardner, 2000). Other animals raised by Bedouinss were sheep and goats meant for food, clothing and manure (Gardner, 2000).

According to Avinoam (1997), reduction in the number of nomadic Bedouinss has been reported with many now settled in that most Bedouinss no longer rely on animals; they involve in barter trade and subsistence crop farming as well. Focus has been shifted towards monetary system which has undermined their traditional ways of life by creating centralized authority borders. Roads have decreased their isolation and increased their contacts with outsiders; the oil industry has changed the lives of many who have to work in oil fields, trucks and other vehicles and machines in areas that were once deserted. Their adoption of modern world has not made them abandon their culture and language (Suwaed, 2015)

Many Bedouinss are currently settled in Northern Africa and in the Middle East in countries like Sudan, Morocco, Mauritania, Tunisia, Algeria, Egypt, Libya, Saudi Arabia, Jordan, Palestine Authority, Lebanon, Iraq, Iran, Kuwait, Bahrain, Qatar, United Arab Emirates, Yemen and Oman (Suwaed, 2015). An estimated population of 1.3 million Bedouinss, according to Suwaed, lives in Jordan, an Arab country and an estimate of 6 million people are traditional tribes.

Tribes in the Middle East are commonly structured around kinship affiliation, with a leadership that is partially ascribed and achieved (Browning, 2013). Browning (2013) also observes that these tribes had developed majority of traditional laws (also called customary laws) that helped govern the region socially, politically and economically in the early years. In case of Bedouins tribe, as observed by Khalil (2009), traditional laws were aimed at establishing greater social and political control over the tribe. Social and political controls are key to the Bedouins's tribal practice of resolving conflict and regulating social relations (Khalil, 2009). The Bedouins traditional laws,as observed by Khalil (2009), have been derived from different

cultural sources namely Islamic roles, Bedouins traditional life and proverbs and then transmitted from fathers to sons (Khalil, 2009).

As seen by (Khalil, 2019), Bedouins traditional laws have remained to this day entirely unwritten thus dependent upon verbal instruction handed down from father to son. Following Khalil's (2009) observation on the laws' dependence on verbal instruction, these laws cannot be exercised without employing language. The employed language must be performative in which case appropriate speech acts are used to instigate some forces in the interlocutors relevant in the enactment of law (O'Barr, 1982; Bogoch, 1981; Supardi, 2016).Geurts (2019) posits that the chief purpose of speech acts is to enable speakers to undertake commitments for action coordination necessary in enacting laws. Khalil's (2009) observation on Sulha system as verbal dependant on its operation, justify the choice of linguistic approach to the study of Sulha in this research.

1.2.3   The Bedouins Tradition

A community's tradition has been viewed in different perspectives although with a common core meaning, for instance, Horner (1990) defines tradition as a process of handing down customs from generation to generation or thought process that is passed on over time. Graburn (2001), with incline to Horner's (1990) definition, refers to tradition as the name given to those cultural features which, in situations of change, are to be continued to be handed on, thought about, preserved and not lost – it is the means of making a living and the symbols, stories and memories which gave one both identity and status. Common in the two definitions is the view of tradition as cultural practices anchored on socio-political and economic activities aimed at bringing unity and order in a community. Bedouins's tradition, as

observed by Khalil (2009), is built on education, religion, celebrations and cultural feasts, marriage, medication and hospitality collected from ancestors. Unique conduction (reflected on their environment) of these practices is what defines Bedouinss and gives them status.

Even though affected by migrations, Bedouinss gained their life style through a traditionally defined ways of life (Khalil, 2009). As reported by Khalil (2009), education among the Bedouinss, for instance, was informal and not widely developed within this community since they were nomadic. Their informal system of education was based on observation and participation in the life activities. Children, therefore, received an education that prepared them for the life in the adulthood. History, moral and religious values were passed on orally by respected elders, poets and storytellers (Khalil, 2009). Girls excluded, Bedouinss who were accessible to schools were provided with formal education (Furr & Al-Serhan, 2008; Khalil, 2009). The Bedouins customs and traditions forbade girls from leaving the house under any circumstances.

Other than education, Bedouins are characterized by hospitality as part of their life system and this hospitality is rooted in the tough desert life, that no traveler is ever turned away (Khalil, 2009). In addition, members of community are obliged to visit relatives and friends after performance of certain events or occasions such as marriage, child birth, illness which also involve food sharing. During such events, guests are expected to bring a gift of coffee beans; sugar or home reared chickens and served with a meal as well as tea and coffee by the host. Even after changing from their nomadic way of life to a settled life, Bedouins, as reported by Furr and Al-Serhan (2008), succumbed and modified their life to the new situation by settling in

specific areas according to the tribe and clan affiliations. These settlements were facilitated by state services such as education and medical clinics.

Tribe has been considered the building block of the Bedouins society (Furr & Al-Serhan, 2008). In the tribe, each family member is traditionally bound to mutually assist immediate relatives and the tribe as a whole – tribe is a structure of extended families, a patrilineal kinship structure of many generations that characterised by a wide network of blood relations descended through the male line (Furr & Al-Serhan, 2008). With regard to Furr and Al-Serhan's (2008) findings, Bedouin tribes are divided into clans and clans divided into family groups known as *ha'mulah* socially controlled. The tribal social control is evident in marriage which is conducted through a well-organized wedding ceremony. The wedding is done after a prospective bridegroom has paid a dowry part of which is used to buy jewelry for his daughter by bride's father and prepare for the daughter wedding clothes (Khalil, 2009). As asserted by Khalil (2009), "Marriages are organised by senior kinsmen and sexuality is never emphasized as an orientation of social life, but this allows the development of the cultural ideals and independence" (p.116). Marriages among Bedouinss, as observed by Khalil (2009), nowadays follow Islamic tradition. For example, women have right of refusal; a woman cannot also not marry without the approval of her male cousin to whom she is always betrothed. If she has no male cousin, her nearest kinsman is rendered marital rights over her (Furr & Al-Serhan, 2008). Also adopted from Islamic tradition by Bedouins, is the practice of polygamy which is allowed upto four wives (Khalil, 2009). All these social practices, as argued by Khalil (2009), are meant to maintain social structure of the Bedouins.

Maintaining the social structure in Bedouins communities, as argued by Furr and Al-Serhan (2008), is important as individuals are expected to be disciplined towards older men and to show loyalty to the collective goals and interest of the tribe. Parliamentary elections in Jordan, according to Furr and Al-Serhan (2008), have also enhanced the role of the tribe. This is marked by allocation of separate seats in the chamber to Bedouins's elders and under the current election law; representatives are drawn from the southern, northern and central Bedouins tribes whereby each tribe seeks to reaffirm its identity through election process (Furr & Al-Serhan, 2008).

Bedouins tradition are found to be worthy in the operationalisation of Bedouins's *Sulha* justice systems. This is based on the fact that the *Sulha* systems are governed by Bedouins traditional laws (Alon, 2008;Khalil, 2009; Browning, 2013). As previously explained, these laws have been derived from different cultural sources, Bedouins traditional life and proverbs and are geared towards controlling Bedouins' social lives. Observation of these laws by Sulha participants during Sulha tribunals provides control on the structural behaviour of discourses used in enacting the laws hence an appropriate context for this study.

1.2.4   The Bedouins Traditional Law

Bedouins' traditional (tribal) law is a tribal unwritten law that operates under informal legal system (Furr & Al-Serhan, 2008). According to Khalil (2009), this law is built on traditional and cultural principles of the Bedouins. As discussed in section 1.2.3, the law exists upon verbal instruction derived from different sources as Islamic roles, Bedouins traditional life, proverbs, transmitted aphorisms and it is also handed down from father to son. A point to note in the Bedouins is the fact that the Bedouins

traditional law is not learned by judges in educational institutions but they learn the laws through their travels between the tribes, inheritance and from other relevance or similar cases (Khalil, 2009).

Bedouins' law is purposely meant for collective tribal and family responsibility and the treatment of all conflicts as civil disputes to be settled between man and his fellow or between the families concerned (Furr & Al-Serhan, 2008). Other than dispute related cases, Sulha also handles criminal cases though in a different way from the way formal legal systems handle them, for example, as explained in Furr and Al-Serhan's (2018) study on the judicial status of the Sulha in the criminal law of the state of Israel, the Sulha process differs from the formal criminal process in that the formal criminal process is concerned principally with determining whether criminal law has been breached and by whom and with penalizing law breaker. Furr and Al-Serhan (2018) add that formal criminal process is not intended to resolve the conflict between the offender and the victim that has been engendered by the offense instead it aims at punishing the guilty/offender. This is unlike Sulha system which aims at restoring justice after crime has been committed by permitting the victim of the crime, the offender and representatives of the community to arrive at a consensual solution to the conflict that resulted from the criminal act. In fact, the strongest point in the tribal judicial system is that it has more flexibility in discovering solution to conflicts (Furr & Al-Serhan, 2008). These tribal conflicts are resolved by *Ja'ha* which is a tribal mediation system that seeks to resolve matters by consensus (Furr & Al-Serhan, 2008). In this case, the possible solutions are limited only by the creativity of those participating in the *Jaha*.

Bedouins' traditional law is also focused on the control of women and family issues and it is in this form that it has become an integral part of the judicial system of Jordan (Khalil, 2009). As earlier argued by Oweidi (1982), the Bedouins traditional law protects women from harsh and oppressive practices the society may subject her to such as raping, molestation and any other practices likely to dishonor women thus losing dignity.To satisfy Bedouins tradition in case of the dishonor, the injured party's (woman) dignity has to be redeemed and the esteem restored through Sulha process (Furr &Al-Serhan, 2008).

There are a number of cases – including guard of honorand cases of rape– in which Sulha judicial system and formal justice system work in cooperation(Furr &Al-Serhan, 2008). For example, if a matter arises in a village concerning the honor of a female, the police will attempt to move her to safe location so that she does not become the victim of an honor killing;then the matter will be resolved within the Sulha system (Khalil, 2009).

As previously discussed, Bedouins traditional law exists upon verbal instruction and whenever a verbal instruction is carried out, according to Austin (1962) and Searle (1969), a speech act is enacted. Linguists such as Danet (1980); O'Barr (1982) and Kiguru (2014) in their analysis of language use in judicial contexts explain the link between language and law – that enactment of law is language dependant. The current study was, therefore, purposed to add to the existing literature on the language use on enactment of law with the focus being on the commissive speech act, one of the linguistic concepts used to adopt and discharge commitment in judicial contexts (Fiorito, 2006).

1.2.5   The *Sulha* Tribunal

Sulha as explained by Furr and Al-Serhan (2008) and Suwaed (2015) is an arbitration mechanism designed to facilitate dispute resolution in the Arab society in which an Arabic dialect Bedouins is used as the language for communication. The *Sulha* mechanism, according to Furr and Al-Serhan (2008), is called for when a dispute arises in the Bedouins society. Disputes can be as a result of crimes such as murder and rape; breaching of a community's security; quarrel or battles and violation of women's right by men (Oweidi, 1982). According to Phillips (2011), the peace agreement after the dispute follows a resolution process, *Sulha*. Phillips (2011) explains how *Sulha* came into existence. According to him, *Sulha* is a derivative of *Sulh* which is a peace concept. The abstract concept of peace is *Salaam*, while the literal act of stopping conflict and settling into peace is *Sulh*. The word can also mean reconciliation, cooperation or forgiveness (Phillips, 2011). The resolution may involve compensation, sometimes in the form of blood money *Me'da* or banishment *Ja'lwa* or revenge for the murder of a nearby member (Furr & Al-Serhan, 2008; Khalil, 2009). Despite little variation in their understanding of *Sulh* and *Sulha*, Furr and Al-Serhan (2008) and Phillips (2011) consistently agree that *Sulha* is a conflict resolution process whose operation may be different from that civil court. For instance, where judicial proceedings lead to punishment or proof of innocence by the offenders in civil courts, the primary aim of *Sulha* is forgiveness where guilt has been proved (Suwaed, 2006; Furr & Al-Serhan, 2008; Philips, 2010).

The traditional restorative justice movements, *Sulha* included, have grown rapidly in the world. In countries such as India and Pakistan, Bangladesh, Sri Lanka, Trinidad and Tobago and Nepal, a traditional restorative justice movement referred to as *Panchayats* was created as a mechanism of alternative dispute resolution

(Sisodia, 1971). Sisodia (1971) and Mitra (2001) observe that the litigants in Himachal Pradesh in India noted a positive response regarding the role of the informal judicial system. *Panchayats* system is similar to the informal legal system *Jirgas* in Afghanistan which was also used to settle disputes among the Pashtun people in Afghanistan and tribal areas of Pakistan (Sisodia, 1971; Mitra, 2001). The *panchayats* traditionally consisted of wise and respected elders chosen and accepted by the local community. These assemblies, according to Mitra (2001) settled disputes between individuals and between villages. *Panchayats* system has been restructured by the government of India to encourage governance at local levels (Mitra, 2001). This restructuring was due to the overwhelming number of suits pending before the civil and criminal courts (state justice system). The restructuring follows the discovery by the government of India that *panchayats* was a speedier and inexpensive mechanism of justice delivery for those living in rural areas that could not access courts (Sisodia, 1971 & Mitra, 2001).

One of the objectives of *panchayats* was to empower women by providing reservation for women to be elected in *panchayats* hence gender equality (Singh, 2003). As seen by Singh (2003), in a patriarchal system, women are often ignored and the male family members known as *panchpatis* (husbands of elected women representatives) attend meetings taking important decisions. Other than women empowerment, *panchayats* has been used as a channel to resolve disputes that arise in families (Singh, 2003). This system like other non-state judicial system has been looked upon as a way to make the local people self-sufficient and to improve access to justice by providing them with cheaper means of dispute settlement (Sisodia, 1971; Mitra, 2001 & Singh, 2003). This system is rooted in culture of the Indians (Sisodia, 1971 &Mitra, 2001).

Another country that traditional justice restoration system has been used to resolve dispute is China. In China, as reported by Liu and Palermo (2009), Confucianism has been used as an alternative means of dispute resolution among the Chinese. Confucianism is understood as a broad system of thought consisting of many concepts and ideas in which case the most fundamental concept is *Ren* (Liu & Palermo, 2009). *Ren*, according to Liu and Palermo (2009), reflects the fundamental idea of humanity and secularity in Confucianism. According to Glenn (2000) Confucian judicial system was secular and largely informal and that the humanity and human world were the focus of Confucian philosophy. As a foundation of judicial culture in China, the Confucianism has been viewed as a mechanism to seek ideal harmonious human society relationships and human-nature relationships (Liu & Palermo, 2009). It is worth to note that traditional Chinese did not typically apply law in their lives (Liu & Palermo, 2009). Chinese were not interested on what the law had set forth but were more used to applying common sense rules from their tradition and to look for solutions that were consistent with their feelings (Liu & Palermo, 2009). With this cultural tradition, Liu and Palermo (2009) observe that mediation was the most extensively developed and used with all villages familiar with various types of mediation and the rules of arbitration. The rules included asking for intervention from elders, to investigate and discuss matters among parties followed by admission of guilt and apology according to the traditional rules (Liu & Palermo, 2009).

Uniqueness of the informal justice restorative mechanisms is that they provide recognized, accepted and practiced platform for transition from revenge to forgiveness (Liu & Palermo 2009). As previously discussed, the existing studies on informal legal system focus on how these systems are structured and the way their

structuring aids in justice restoration process. Studies of language use in the enactment of these legal acts are scanty. Related studies on language use in enactment of legal actsi n informal legal system, Sulha is that by Alidmat and Ayassrah (2019) who established that participants in *Sulha* tribunals use verbal means to express their commitment to customary laws. They attest commissive language in Sulha tribunals using the commissive speech acts of offer and acceptance with analysis within the framework of speech acts theory.

According to Austin (1962) and Searle (1969), an utterance attains its intended meaning by contextualising the utterance by interlocutors. The context in this case is what surrounds the utterance determining its meaning (Austin, 1962). In the context of formal judicial setting, one of the circumstances that surround utterances used in carrying out judicial activities is the statute. It is this statute that governs the conduct (including verbal expressions) of the parties in a trial (Kiguru, 2014). In the context of informal legal system, it is the community's traditions that govern the verbal conduct of the parties in a trial (Alidmat & Ayassrah, 2019). Community's tradition, therefore, defines the context in informal legal system.

The need to study language use in informal legal systems like Sulha and Panchayat, operating under informal legal setting, is based on the fact that these contexts have conditions set by traditions upon which they operate that affects the way meaning of an utterance is achieved. Based on this line of thought, the study of a speech act in informal legal systems such as Sulha will, therefore, be significant based on the fact that the study establishes possible illocutionary acts and their resultant perlocutionary acts that the Sulha informal legal setting can generate and the forms expressions take in enacting the illocutionary acts. This will be relevant to

the field of applied linguistics as the study will add to the existing literature on the impact of a community's traditions on performativeness of speeches.

As observed by Phillips (2011) and Stewart (2006), there are established customs strictly adhered to by participants during the *Sulha* judicial process. For instance, according to the customs, a family has the right as well as commitment to protect its members (Stewart, 2006 &Phillips, 2011). Depending on how a case is handled in the *Sulha*, the case may cause danger to a whole community (Furr & Al-Serhan, 2008). For example, to revenge for a murder of a nearby member is very important; neglecting the revenge is considered dishonorable (Furr & Al-Serhan, 2008). Success of *Sulha* proceedings, as observed by Stewart (2006), is also based on time factor. Being observant on time by the participants in *Sulha* proceedings ensures fast and smooth running of the proceedings. Time factor is important in such crimes as murder since the protector of the accused family for the murder must immediately go or send a group of notable persons to the aggrieved party's house with a *Jaha* to demand *Atwa*, that is, a truce or a period of time in which the aggrieved family promises not to get revenge until the *Sulha* council makes a ruling on the murder case (Furr & Al-Serhan, 2008).

For aggrieved party's approval in the tribunal, Phillips (2011) observes that there are certain commitments used including what translates to "We are in your house and you should help us. Our son has committed a crime and our family is in your hand" (pp. 413). Upon acceptance of mediation by the aggrieved family, Phillips (2011) argues that the family must respond with the questions such as "Have you been requested to come here by the accused party, and have they given you *Tafweeth*, the authority to accept any decision we make?" (p. 414). The *Tafweeth* is a written letter given to the *Jaha* by the aggressor's family to approve the *Jaha*'s

mediation in the case (Phillips, 2011). The approved *Jaha* sometimes pay many visits to the family's house until *Atwa* is issued and the frequency of the visit depends on the nature of crime. During the *Atwa* time, the *Jaha* visits the aggrieved family several times to convince them to accept *Sulha* (Furr & Al-Serhan, 2008 &Phillips, 2011).

The aforementioned legal system of *Sulha*, according to Furr and Al-Serhan (2008) and Khalil (2009), is procedural in which case the final stage involves action of punishment accompanied with honor or the alleviation of the financial implications for the convicted. If there is a dispute between the parties or misunderstanding between men, women or children, the tradition is that the elder of the defendant's family makes a visit to the plaintiff (Khalil, 2009). Elders, as reported by Furr & Al-Serhan (2008) and Khalil (2009), acknowledge the conviction and apologize to the plaintiff's family under the accompaniment of the *Jaha*. All this is done to build up reconciliation between the plaintiff and defendant. The chart below summarizes the flow of events during the *Sulha* tribunal.
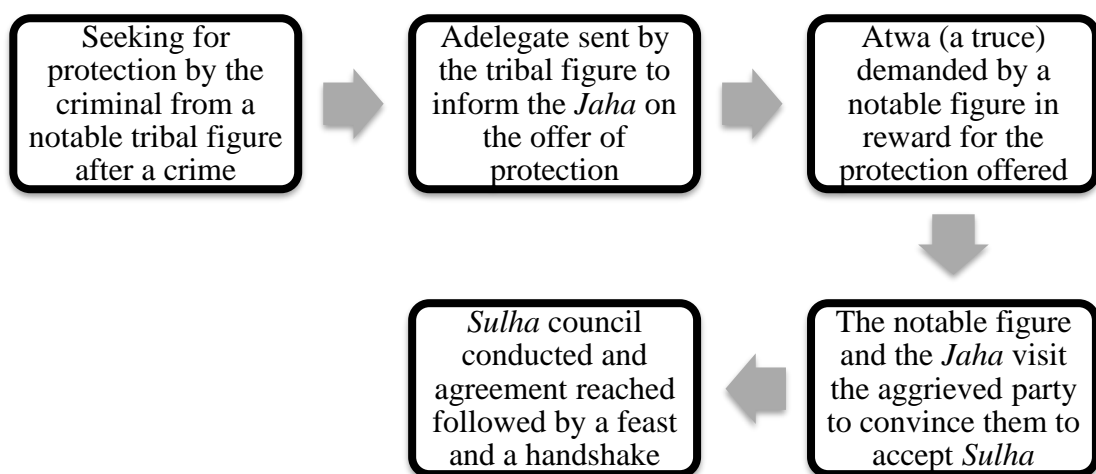

Figure 1.1   The *Sulha* tribunal process

As demonstrated in the chart above, every actions in a Sulha tribunal is procedural – that every stage of the action results from and into another. This establishes a pattern adopted by illocutionary acts during the conduct of Sulha process and the most preferable illocutionary acts by the Sulha participants during the Sulha tribunal.

1.2.6   The *Sulha* and Commissive Speech Acts

For the purposes of this study it was necessary to identify speech acts by reference to the commissive forces they instigate among interlocutors during Sulha tribunal processes. The commissive forces may include the forces of: promise, offer, refusal, vow and pledge. In identification of specific speech acts, the context of utterance is factored in, its direction of fit and speech forces effected by the utterances (Austin, 1962 & Searle, 1969). Commissive speech act, as observed by Austin (1962), is purposely meant to commit a speaker to a course of action through, offering, promising, vowing, pledging, making a covenant, contracting and so on (Searle, 1976).

The current study focused on analysis of commissive speech acts used in the *Sulha* tribunal in the process of performing commitment to the rule of law anchored on Bedouins' traditions. Bedouins' traditions are understood to define the just and the unjust practices among the Bedouinss thus bringing order in the community (Furr & Al-Serhan, 2008; Khalil, 2009). In enactment of a particular force, a specific commissive speech act is invited hence the variety of classes which include promising, vowing, offering, refusing, threatening, volunteering, agreeing, guaranteeing, inviting and swearing (Searle, 1976). Commissive speech acts sometimes operate with bias given that they are always used to perform some actions

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in favor of the addressee rather than addresser (Natkare, 2015). To minimise the bias, there are established customs strictly adhered to by participants during *Sulha* tribunals. These customs are defined by Bedouins' traditions. These traditions provide a neutral ground for the operation of Bedouins laws during trials (Khalil, 2009). The neutrality of the ground minimises the possible misinterpretation of commissive speech acts by interlocutors during trials.

According to Bernal (2007), a study of speech acts in the language used in judicial systems has helped to explain how courts make their jurisdictions as discourses used in such systems are full of speech acts. Bernal's (2007) is in line with Fiorito's (2006) earlier observation that for an enactment of a particular legal force, a specific speech act is involved hence a specificity in the speech act in language performativeness. Bernal(2007) and Fiorito's (2006) studies on the use of speech acts in performance of legal actions are inclined to formal judicial system thus opening a study gap for the study of speech acts in informal judicial system. A tradition defined context in this case means an inherited patterns of behaviour that a judicial system works towards maintaining. These traditions have become the informal corner stone of the tribal law because of their conventionality. Accordingly, such system is widely seen as a parallel to the existing formal judicial system in the country.

1.3   Statement of the Problem

Legal activities within legal settings are largely linguistic based whereby language is employed by antagonistic parties to express facts and challenge the facts. Language is, therefore, a means of achieving control by antagonizing parties during trials in any legal systems. Studies done on language use in legal settings reveal that

discourses used in performance of legal activities in such settings is oriented to particular speech acts that are performatively judicial. This linguistic oriented means of performing legal activities has mostly been attested in formal legal systems with extremely limited research on informal legal systems *Sulha* included. Though there are some studies on Sulha legal system focusing on its structure, its value to communities and conventions under which it operates, scanty studies exist on the concept of linguistics in the operation of Sulha system hence the current study. It is worth noting that from the documented studies on linguistic activities in Sulha tribunals only a study by Alidmat and Ayassrah (2019) exists. In their linguistic approach to the study of Sulha system, Alidmat and Ayassrah (2019), selectively describe two commissive speech acts of offer and of acceptance and their commissive implication during Sulha tribunals. From their findings on the use of acts of offer and of acceptance, the current study is informed on the commissive orientation of Arabic speeches used during Sulha tribunals thus showing the need for further study of Sulha system using linguistic approach.

Informal legal systems, as seen in formal ones, are established with a purpose of resolving disputes among members of a community through judicial processes of restoring justice (Abiad, 2008; Górska & Klakla, 2017). Worth noting is that the informal legal systems, unlike formal ones, are not necessarily to punish offender but to amend the harm done to the victim and the community in a peaceful way (Górska&Klakla, 2017). To achieve this, appropriate linguistic activities need to be employed by participants in the judicial process (Luchjenbroers, 1993; Eades, 2000; Gibbons, 2003;Conley & O' Barr, 2005). The linguistic activities include proper use of language to enact an intended speech act by the speaker to induce appropriate perlocutionary act in the hearer (Austin, 1962 & Searle, 1969).