

## 9. Local strategies to maintain cultural integrity

### The vernacularization of state law among the Bashada and Hamar of southern Ethiopia

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#### Introduction

The Bashada and Hamar people, like many of their ethnic neighbours in the southern peripheries of the country, have continued to adhere to their customs, beliefs and lifestyle, and have a reputation for being rather resistant to change and development. Being agro-pastoralists, until recently they lived in relative isolation from the centre. Although encounters between the agro-pastoralists of South Omo Zone and the government occurred also under earlier regimes, intensified and continuous interaction began only in the mid 1990s, when large-scale investment and development projects (such as the creation of sugarcane plantations and sugar factories, and commercial farming) were implemented.<sup>1</sup> Together with a modernized infrastructure (asphalt roads, mobile and internet networks, health centres, etc.), and

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- 1 According to government documents, Ethiopia aims to become a middle-income country by 2025. It is focusing on 'rapid, broad-based and inclusive economic growth with the aim of eradicating poverty' (FDRE 2015:2). This is to be achieved through the implementation of four successive national development plans by the Ministry of Finance and Economic Development (MoFED, renamed the Ministry of Finance and Economic Cooperation in 2015). From 2002, the focus has been on the transformation and growth of the rural economy, and particularly the agricultural sector (FDRE 2002:iii); the development of the private sector and commercialization of agriculture, industry and urban development (MoFED 2007:1); and the improvement to both the quantity and quality of social services, especially education, health and other infrastructural developments. These initiatives have led to several mega development projects. In South Omo, these include the construction of the Gibe dams for hydro-electric power, the construction of sugar and cotton plantations as well as sugar factories (Yohannes forthcoming). The search for oil, which continued for several years, ultimately without success (see <http://www.oilnewskeny.com/africa-oil-relinquishes-ethiopias-south-omo-block>). In 2017, Jinka University was inaugurated, and there are plans to build a railway linking Ethiopia with Kenya in the near future. Throughout all these projects, the government has aimed to improve the standard of living of the agro-pastoral communities by integrating them into the mainstream national economy. The relocation of Bodi and Mursi communities

an expansion of the educational system (construction of schools and educational projects), there came also a stricter implementation and enforcement of state law.<sup>2</sup>

The government's efforts to integrate the southern communities culturally, economically and legally into the Ethiopian nation state have caused a wide range of local reactions. Many of these have been interpreted as signs of the resistance of local communities to development, modernity and cultural change. Little recognition has been given to the efforts made by indigenous communities to adapt to and make sense of the state law in ways that do not force them to completely abandon practices and values that lie at the hearts of their cultures. Many dynamics have remained unnoticed and/or under-appreciated, both with regard to the local communities who have to deal with the new realities on the ground, and also with regard to lower-level government officials.

The reorganization of the Ethiopian state into an ethnic-based federal structure in 1995 came with greater representation of the local communities in local and zonal administration, as well as in regional and national politics. Cultural diversity and local practices were officially acknowledged in the new constitution of 1995, and are celebrated during national, regional and local events. In the 1995 constitution, Ethiopia explicitly granted every ethno-linguistic community 'the right to express, to develop and to promote its culture' (Art 34:2), recognized customary laws and allowed their application in civil and family cases (Art 34:5). However, this has been accompanied by intensified state intrusion, even in the remotest areas, intensive awareness-raising activities designed to inform the population about national law, and stricter enforcement of the state law, with the aim of resolving all criminal matters through state law and eliminating cultural practices that contradict human rights and gender equality. These moves are part of the more general aim of promoting development and modernization, which are among the top priorities of the country.

The implementation of national and international law is leading to conflict and confrontation in many places of the world. Contradictions between local customs or values and human rights are proving difficult to resolve. What is central to a group's identity may not be easily understood from the outside, or may be contradictory to

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to small irrigation farms along the Omo River can be seen as part of these efforts (Abbink 2012, Turton 2011).

2 While the number of children attending school has increased in the last two decades, so far only a few of them have completed higher education. The number of university or college graduates from Hamar differs from *kebele* to *kebele*. The first Bashada student graduated from university with a BA degree only in 2018. Generally speaking, the first generation of Hamar graduates (together with graduates from Arbore and Kara with whom they share the district) now dominates the district administration, while non-local officials are underrepresented.

the national law. Keeping the balance between integrating culturally diverse communities into a nation state and allowing them to maintain their cultural integrity is a major challenge. Today, it is internationally recognized that cultural values and the ways of life of indigenous peoples deserve to be protected – not only for the romantic reasons of preserving cultural diversity and cultural integrity, but out of a necessity to ensure the wellbeing of individuals, the survival of communities and, to some extent, even as a precondition for participation in other cultural contexts and change (Gilbert 2009, Tierney 1999). Hence, the protection of cultural rights has been included in the list of human rights, and has entered national constitutions in one way or the other. However, the protection of cultural rights is limited by the protection of the individual given by the Universal Declaration of Human Rights (UDHR), which has likewise entered into many constitutions.

This paper shows that people's efforts to maintain control over their values, beliefs and cultural practices are reflected in many adaptive strategies. To enable their cultures to survive through slow and partial adaptation, people reinterpret and use state institutions as they deem necessary and as suits them and their local context. Strategies to maintain group identity and integrity range from silent avoidance and circumvention of state institutions, to creative ways of adapting to or customizing state law, to open rejection and violent resistance. All are based on a fundamental wish to stay in control and maintain cultural integrity.

## Cultural integrity and the vernacularization of law

Cultural integrity or control over culture has become one of the key claims of indigenous peoples in their international efforts to gain recognition and accommodation of their interests in legal systems that have, in the past, ignored or excluded those interests.

(Weatherall 2001:240)

As Karl-Heinz Kohl (this volume) notes, indigenous groups (especially in former colonies) are still suffering from disregard and neglect. And, on the African continent, smaller groups are particularly under threat. Many scholars working on the education of minorities (Tierney 1999, Deyhle 1995), rights over intellectual (Weatherall 2001) or common property (Amos 2004), cultural self-determination and land rights (Gilbert 2009) have emphasized that there is a need to protect minorities' right to determine their own way of life. Maintaining their cultural integrity, so the argument goes, not only helps ensure the survival of minorities as

cultural groups, and the well-being of individual members, but also their successful participation in other cultural contexts.<sup>3</sup> In the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the need for cultural integrity is also emphasized:<sup>4</sup>

States shall provide effective mechanisms for prevention of and redress for a) any action, which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities (Art. 8:2a)

The protection of cultural integrity does not mean 'freezing' a culture to protect a kind of 'historical authenticity of certain cultural practices'. Rather it refers to the safeguarding of the 'distinct existence of a multi-dimensional culture' that is 'dynamic by nature and undergoing self-determined changes' (Weatherall 2001:225). This, as Gilbert (2009:13) has expressed, should lead to the formulation of a 'right to cultural integrity', which he defines as a right 'to subsistence, livelihood, cultural diversity and heritage', or, as Weatherall (2001:ibid.) puts it, the 'continued distinct existence of that culture without unwanted interference'. In short, in protecting cultural integrity, the emphasis is on the right of people to make decisions for themselves. This could involve the rejection, but also the (partial) acceptance of new values and practices, which are accommodated in the local context through a process of appropriation.

Cultural appropriation<sup>5</sup> is most often understood as a dominant group taking something from a subordinate group. Yet, appropriation also occurs in the opposite direction, for example, when less powerful groups adopt certain ideas or practices from a dominant group, and reinterpret and use them to their own advantage.

Cultural appropriation means adopting a cultural product in terms of local meanings and practices. In its broadest sense the term means taking an existing cul-

3 Tierney (1999), for example, argues that enabling students of colour in the US to maintain their cultural integrity in college (as opposed to 'committing cultural suicide') will enable them not only to develop a sense of self and achieve an 'embodied and objectified capital' (Tierney 1999:89), but also to act as social agents and produce the conditions for change and improvements in opportunity (*ibid.*:85).

4 The Declaration was signed in September 2007 by 143 members of the UN General Assembly. Fourteen member states, including Nigeria and Kenya, abstained, and four (Australia, Canada, New Zealand, and the United States) voted against. Thirty-four countries did not participate in the vote at all. Out of these, fifteen were African states, including Ethiopia (see Kohl, this volume).

5 While the concept of cultural appropriation was originally developed in the field of intellectual property to refer to processes by which dominant groups take, and often profit from, the artistic, musical, and knowledge productions of subordinate groups, it actually encompasses a very broad and pervasive phenomenon, as cultural influences blend and merge in constantly layered ways.

tural form from one social group and replaying it in another with different meanings or practices: perhaps taking the tune and playing it in a different key or at a different tempo so that it becomes something different, yet still the same (Merry 1998:585).

In the widest sense, this is what happened during the colonial period. As is known from various publications, the various norms and conflict resolution mechanisms and institutions on the African continent were greatly influenced by imported law and the colonial situation. So, what is today called 'customary law' is not the same as the law in use in precolonial times (Snyder 1981, Gordon and Meggitt 1985, Moore 1986). This change to local legal systems occurred not only by force and imposition, but also through the creative responses of local communities that had to adapt to the unavoidable. As such, it was to a limited extent led by the African people, who sought to secure their own interests and agency (Chanock 1985).

This process has continued, albeit in a different form. Today, the transnational flow of law is exerting a similar pressure to that of colonial law in its time on developing countries and local communities striving to keep pace with the international discourse of democracy and development (Merry 2003). In their study on the translation of global ideas about women's rights into local contexts, Levitt and Merry (2009) have shown how ordinary women in different cultural contexts understand and made sense of them. The vernacularization of the notions of women's rights, the authors argue, led to diverse social responses in the respective communities because, while some of the original formulations of women's rights were kept, local ideological and social attributes were also added. The local women were acting as *bricoleurs* (Levitt and Merry 2009:446), e.g. as creators of something new out of bits and pieces of what was available. This scrutinization and re-interpretation of external values and laws in their own logic allows local actors to create a sense of ownership over newly created 'custom(ary law)' (Scheele 2009, see also Beyer 2015 and her detailed study on elders' courts in Kyrgyzstan).

Besides creating a feeling of ownership, accepting and adapting state law into their own system can also be a way by which communities can present themselves to the outside world as 'modern'. As Franz von Benda-Beckmann (1989), for example, has reported, the Minankabau developed a legalistic version of their customary *adat* system, which they present and refer to when they communicate with state bureaucrats. By claiming that certain practices (such as land ownership or transfer) violated one of their customary laws, they could defend their interests against the dominant state in a convincing way. Had they simply claimed that land ownership did not exist or was disliked among the Minankabau, they would have appeared as backward and uncivilized.

## Co-existence of state and local institutions in Bashada and Hamar

The Hamar people are one of the sixteen registered ethnic groups in South Omo Zone. The Bashada people are officially considered as a subsection of the Hamar, though they claim to have a slightly different history and identity.<sup>6</sup>

Most Bashada and Hamar local institutions continue to function today. Like many of their ethnic neighbours, the Bashada and Hamar do not have any political leaders or chiefs. Instead, they have ritual authorities who are responsible for the wellbeing of the people, land and animals. The most powerful ritual functionaries are the *bitta* (a ritual leader who blesses the community, animals and land) and the *parko* (a ritual expert who blesses the people, cattle and bees).<sup>7</sup> Though traditionally not endowed with political power, some of these ritual experts assumed a double role by adopting additional functions from the government, in the past,<sup>8</sup> and, more recently, by engaging with state politics (see below).

Public decisions are made through consensus by the *zarsi*, 'the community of competent adult men' (Strecker 1976).<sup>9</sup> Depending on the issue to be discussed or decided,<sup>10</sup> the *zarsi*'s gatherings range from small meetings (*assaua*) of the men of

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- 6 Hamar Woreda (district) is one of nine districts in South Omo Zone, which is located in the very south of the Southern Nations Nationalities and Peoples Region (SNNPR). Three officially recognized ethnic groups share the thirty-eight *kebeles* of the district. These include the Hamar people – the largest in number – who have twenty-eight *kebeles*, the Arbore people who have four, and the Kara people who have three. The Bashada people have their own *kebele* in Hamar Woreda. Each of the three small towns in the district (Turmi and Dimeka in Hamar, and Tabia in Arbore) constitutes also its own *kebele*. In the 2007 report of the Central Statistical Agency (CSA) the total population in Hamar district was estimated to be 59,572 (CSA 2008:8). Out of this the Hamar number 46,129, the Kara 1,368, and the Arbore 5,926 (CSA 2008:135).
  - 7 There are two *bittas* in Hamar, and one in Bashada; each has their own territory. There is a *parko* in Bashada, but there has not been one in office in Hamar for some time. Other ritual offices include the *gudili* (blesses the fields, earth priest), and the *k'ogo* (ritual fire maker, blesses the cattle). Seasonally, these ritual experts perform their rituals and bless the people, their animals and fields and protect them against disease and misfortune. In return, they receive gifts or communal work services (see Epple 2010).
  - 8 Nakwa Dal'o, for example, was known not only to be a powerful ritual expert (Bashada *parko*) and diviner (*moara*), but also acted as a spokesman (*likamamber*, *ayo*) between the local population and the government.
  - 9 In its widest sense, the term *zarsi* refers to all inhabitants, i.e. all men, women and children, of a neighbourhood, a settlement area, a territorial segment, or the whole population of Bashada, depending on the context in which it is used. Literally, *zarsi* is a patch of grass that has interconnected roots, just as the people of the community should ideally be connected with each other.
  - 10 As the *zarsi* do not consist of a fixed group of elders, but is composed depending on the scope and kind of conflict (involving families, neighbours, a whole settlement area or the whole *kebele*), the term should not be translated as 'customary court'.

one neighbourhood, during which smaller conflicts are resolved or decisions concerning the settlement area are made, to large public meetings (*osh*), during which major conflicts are addressed or issues concerning the wider community decided. As the *zarsi* have the power to curse, bless, exclude and rehabilitate any members of the society, they are the most powerful institution of social control at the communal level. Seniority is important within the *zarsi*. It is expressed in the sitting order during meetings, coffee sessions in the house, and public dances. The most senior men have the right to bless and speak first at public meetings, and deserve the highest respect. Senior men are responsible for advising and guiding their juniors, have the right to give juniors orders and be served by them during meetings and festivities<sup>11</sup>, and sanction wrongdoers and criminals. Age-mates also play a significant role in controlling and sanctioning men's behaviour: wrongdoers are advised, scolded and sanctioned by members of the same age-set or those of the age-set directly senior to them (see Epplé 2010, 2014). Women do not attend the men's public meetings. However, as the men usually discuss things at length while sharing food and coffee at various houses before and after such meetings, women are usually well informed about what is going on in the community. Conflicts among women are often resolved by women, who constitute their own women's *zarsi* (*ma-zarsi*). Certain conflicts between men and women are also addressed by the *ma-zarsi*.<sup>12</sup>

Delinquents, both male and female, are locally called *d'abbi*, a term used for a wrongdoer whose relationship to the community has been disturbed. As a *d'abbi*, one is expected to submit to the *zarsi*'s judgement and decisions. Depending on the case, sanctions range from giving advice and scolding to public whipping and demanding a goat, cow or beer as redress. Individuals who do not submit to the *zarsi* can be excluded from community activities or even cursed. To be re-included or healed from a curse, *d'abbi* have to approach the *zarsi* through a go-between (*motal*), ask for forgiveness, express the willingness to accept any fine imposed, and convincingly promise to improve in the future. The overall aim of sanctions is to 'guide and bless' the wrongdoer, that is, to bring him or her to the right behaviour and to re-establish social peace and understanding between conflicting parties (see Epplé 2014). Therefore, any sanctioning usually ends with a blessing and the re-inclusion of the wrongdoer into the society.

11 In Bashada, the senior-junior relationships as well as those among age-mates are structured more formally than in Hamar: while in Hamar age-sets are said to have been given up a while ago, they continue to exist in Bashada (see Epplé 2010).

12 This is the case, for example, when a woman has been insulted or treated disrespectfully by a man. In such a case, the *ma-zarsi*, i.e. the women of the neighborhood, may refuse to participate in rites of passage and thereby block the ritual's continuation until the wrongdoer has asked for forgiveness and given them compensation (see Epplé 2010:51–52, 2018).

## State institutions in Bashada and Hamar

The south of Ethiopia was included into the Ethiopian Empire at the end of the nineteenth century under Emperor Menelik II, and the people living there have been administered and dominated by the highland Ethiopian centre since then. It was only with the downfall of the socialist Derg regime in 1991, that the people were given the right to self-administration. Under previous regimes, both administrative personnel and legal practitioners belonged to ethnic groups from highland Ethiopia, and were either sent from the centre to the regions or were descendants of earlier migrants to the area.<sup>13</sup> Over the last decades, people from local communities have increasingly replaced these highland officials, and since the end of the Derg regime (1974–1991), all Hamar district administrators have been from Hamar, Banna, Bashada or Kara.<sup>14</sup> Because many more locals have undergone formal education with the intent of achieving ethnic self-administration since the introduction of ‘ethnic federalism’ in 1995, today most heads of the district sub-offices and the police, many of the legal practitioners at the *woreda* court and some of the staff at the police office are from Hamar, Bashada, Arbore or Kara.

Today, the small town of Dimeka is the administrative capital of Hamar Woreda, and the seat of the district administration and of various government offices, including the Justice Office, the Women and Children’s Affairs Office, the Culture and Tourism Office, the Education Office, the Health Office and others. The district court is also located in Dimeka. In 2017, it had three judges and two prosecutors. The court handles civil and family cases as well as minor criminal cases, while major criminal cases, and all cases of homicide are sent to the zonal court at Jinka, the capital of South Omo Zone. The head office of the district police is also in Dimeka. It has three sub offices in Turmi/Hamar, Dus/Kara, and Tabia/Arbore. Minor conflict cases are sometimes handled in the police office, and sometimes sent back from there to be resolved at the village level.

Alongside the government institutions, Dimeka is home to the offices of several international NGOs.<sup>15</sup> These NGOs cooperate with the government in certain areas of legal concern (such as women and children’s rights), in the improvement of social services such as education, health, food aid, and in various development activities.

13 There were mostly descended from *neftenya* (lit.: ‘gunmen’, Amharic), i.e. soldier-settlers assigned by Emperor Menelik II to administer the regions in southern Ethiopia after his armies had conquered them at the end of the nineteenth century. They were rewarded with legal rights to exploit the indigenous population inhabiting large parcels of land (Schaefer 2012:193–194).

14 Among the three administrators of what was by then called Hamar *Awraja* (province), there were two from the south of the country: one from Banna (son of a *bitta*, educated under Haile Selassie) and one from Basketto.

15 For example AMREF and Save the Children.

## Customization of government institutions

The Hamar and Bashada people's customary institutions now co-exist with the state institutions, and the local understanding of state law is influenced by the local people's own values and practices. In the following, examples are given of how the community reinterprets and makes use of state law, and how state law is to some extent customized to the local needs and rationalities, customary structures, institutions, concepts and values.

## Customization of government offices

Each *kebele*<sup>16</sup> has its own spokesman, locally called *ayo*. Officially, these representatives are called *likamenber* (Amharic: 'leader'), the local people pronounce it as *likamamber*. An *ayo* represents the interests of his locality during local public meetings and meetings with the government.<sup>17</sup>

In his own *kebele*, the *ayo* works with a group of assistants (the *kebele* speaker, his secretary, a *seraskaj*/manager),<sup>18</sup> several committees (such as the health committee, the education committee, and the development committee). In addition, the *ayo* keeps communication between the government and the local population alive. He informs and calls elders to meetings organized by the government, both in town and in the villages, attends government meetings at the zonal or sometimes regional level, and reports back to his people on what the government has to say. In cases of interethnic conflict, the *ayos* are also invited to act as a mediator during peace meetings organized by the government.<sup>19</sup>

Together with a groups of local men selected as *militias*, the *ayos* are also responsible for security and the application of state law in the communities: they must report on crimes and hand over wrongdoers to the police, and follow up cases

16 Smallest administrative unit.

17 Strecker (1976:60) translated the term the *ayo* as 'in the widest sense a kind of leader, but more specifically he is a spokesman'. The term *ayo* derives from the verb *aya*, 'to do', and the social symbol of an '*ayo*' in Hamar is his spear 'which signifies the right and duty to speak at a public meeting' (*ibid.*).

18 Most *ayos* are not formally educated and they therefore need educated assistants to help with formal communication with the government, as, for example, when letters have to be written or documents signed.

19 The members of these committees are respected (usually non-educated) individuals from the community who are made responsible for certain aspects of community life. Members of the education committee, for example, are there to motivate parents to send their children to school, to communicate with the teachers when there are problems, and to report to the government. The health committee is there to follow up pregnancies and call the ambulance if necessary, to spread information on hygiene and modern health care, and to convince people to participate in vaccination campaigns or meetings on HIV prevention.

that the court or police have sent back to the villages to be resolved through customary mechanisms. Despite his close connection with government officials and his respected position within the community, the *ayo* cannot make any decisions without the consent of the community.

The *ayo* is chosen by the community on the basis of his reputation, but is officially appointed by the government. Although the *likamamber* is a government office, his appointment has been customized to local beliefs, and the community thereby has control over it: On the day of his appointment, he is given certain insignia, including a jacket, a spear and a cap, together with blessings by the outgoing office holder. The *likamamber's* cap has been an important item since Haile Selassie's reign, when the first *likamambers* were installed and received jackets and caps from government officials.<sup>20</sup> Originally simply a sign of recognition, the caps were locally bestowed with magic and only *likamambers* were allowed to wear them. Even today, a *likamamber's* cap (together with a spear and a whipping wand)<sup>21</sup> can only be formally handed over to a successor on the *likamamber's* death or voluntary resignation, as it is believed that a *likamamber* is protected by his cap's magic. People claim that if taken without the consent of the previous owner, the cap would kill the new spokesman. Many of the government officials in Hamar Woreda are originally from Hamar or Bashada. They know about the strong belief in the cap's magic (and some of them share the belief), and they know that they cannot impose an unacceptable person on the community. As the former representative of the Hamar in the Ethiopian national parliament explained,

It is like a monarchy (...). Someone might say, 'I will be an *ayo*! I want to have the cap!' But if the cap is given to him against the acting *ayo's* will, that person will die! (...) Therefore, even if a new *likamamber* is appointed by the government, that person will not accept if the acting *likamamber* does not want to hand over the office to him. (Interview, 10 November 2016)

Similarly, candidates for the militia are recruited by the community on the basis of their reputation for trustworthiness and self-control. As for the office of the *ayo*, militiamen do not need to be formally educated. They are officially appointed during a public meeting, and given a uniform and a gun by the government as a sign of their position. The elders and the *ayo* bless them and thereby confirm their acceptance. If the elders and *ayo* reject a candidate, they withhold their blessing.

20 While the office of the *likamamber* was officially abandoned under the Derg regime (1974–1991), it continued to be active in Hamar Woreda. Under the Derg regime, the *likamambers* were also given pants, jackets and other clothes, so that wearing a cap has lost its symbolic weight and nowadays anyone can wear one. The belief in the cap's magic, however, has persisted until today.

21 Local insignia used for blessing and cursing during public meetings.

Both, the *likamamber* and the militia are government offices that have been to some extent customized to the local context. Just as the magic of the *ayo's* caps ensures that the local population retains ultimate control over who represents them before the government, the elders' blessing represents control over who can join the militia. Government officials have to respect the choices and the ritualization of these offices if they want to secure the cooperation of the local communities.

## Prison and imprisonment re-interpreted

Conflict resolution in Bashada and Hamar, as indicated above, focuses on the restoration of social relations rather than on punishment. The common sanctions of scolding, whipping, fines, exclusion or cursing by age-mates and/or *zarsi* are meant to intimidate wrongdoers and are, along with the giving of advice, considered as elements of a learning process that will keep individuals 'on the right and straight track'.<sup>22</sup> Once a wrongdoer shows repentance, he is blessed by the elders or his age-mates and thereby fully rehabilitated and re-included into the community.

The state's imprisonment of wrongdoers emphasizes retribution and is, as such, alien to the local customs. People refer to prison as *daxe* (lit.: 'a place to tie up'). Until recently, to many in Bashada and Hamar, prison was a much-feared place, and the government an uncontrollable external power. Officials belonged to different ethnic groups and looked down upon the local communities, and many people in Bashada recall how, under previous regimes, prisoners were beaten up and sent to far-away places, where relatives could never visit and prisoners were not sure if and when they would return home.<sup>23</sup>

This situation has changed, as has the image of prison and imprisonment. Nowadays, most criminals are taken to Jinka prison (about 100 km north of Dimeka), which has become easy to reach with public transport in the last 10–15 years. Living conditions are much better than in the past and relatives can come to visit.

Although local communities still hide certain criminal cases from the police (see below), the pressure from government institutions to handle criminal cases in state courts has made prison to some extent inevitable. The Bashada and Hamar community has made efforts to reinterpret and customize the idea of prison and imprisonment so that it does not contradict and disturb local handling of conflicts, and in certain contexts even complements it. This has led to situation where, on the

22 See Epple 2012b on the meaning of whipping as 'guidance and blessing'.

23 People were sent to prison in Arbaminch (about 300 km from Hamar) and further away, and public transport was not available.

one hand, prison is talked about as something positive, as a place to learn and mature, and on the other hand it is used as a last resort, a place where uncontrollable individuals that the community does not want to deal with are sent.

### Prison as a place of learning and maturing

The image of prison as an institution of *timirte* (Amharic: 'learning/education') emerged in the last couple of decades under the influence of the rhetoric used by the courts during awareness-raising campaigns on modern state law and sanctioning. However, it does relate to some practical realities and also to local ideas about sanctioning of wrongdoers.

First, Jinka prison has educational facilities where many prisoners attend school. Almost all learn to speak Amharic, read and write during their time in prison, and some receive vocational training in handicrafts or even attend the Jinka Industrial College.<sup>24</sup> For this reason, many people in Hamar joke that going to Jinka prison is comparable to securing a scholarship. Second, with regard to prison being a place where people mature, being imprisoned is intimidating and scary, and imprisonment leaves an imprint on those who are away from home for a long time. That means that the expectation is that many become better people after their return. Unlike in many western societies, there is no permanent stigma attached to a wrongdoer once he has admitted his mistake, accepted the sanction and ritually been re-included into society: any wrongdoing (even homicide) is forgiven and forgotten, at least socially if not emotionally, with the blessing given at the end of a reconciliation ritual. People who show remorse serve as living examples to the community. Thus, people returning from prison are also often fully integrated into society and live respected lives. However, there is an expectation that returnees will talk about their experiences in prison as a way to help keep others from making similar mistakes. Individuals who do so are locally appreciated, while those who return and play down the suffering they experience in prison are considered arrogant and those who do wrong repeatedly and never improve are despised.

24 Jinka prison was founded in 1950 (Ethiopian Calendar). In 2016, it had 1,721 prisoners, most of whom were men (only 82 were women). Among the prison facilities are a kindergarten for the children and a school that runs from 1<sup>st</sup> to 10<sup>th</sup> grade. As the head of the prison told me, almost all prisoners join the adult schooling programme. Some of the 10<sup>th</sup> grade graduates attend a college in Jinka. Others are interested in the woodwork and basketry workshops, which are part of the prisoners' cooperative. The cooperative also runs a shop and a cafeteria in the prison. With the income, the cooperative has recently purchased three vehicles (one four-wheel drive, one minibus, one large bus), which are used to take prisoners to court, college or the hospital (from fieldnotes after visiting Jinka prison, 14 November 2016). A new prison, which was under construction in 2016, has recently opened a few kilometres outside of Jinka. It occupies a large space and several modern buildings.

## Prison as a last resort for obstinate wrongdoers

Many informants in Bashada and Hamar seemed to resent the fact that some young people are becoming disrespectful when it comes to listening to the elders. While this seems a common complaint among the senior generation worldwide, the prohibition of certain cultural practices in Ethiopia is believed to have contributed to the phenomenon. The traditional, rather authoritative socialization, which included physical punishment of children, assured a general respect towards senior people and their orders among them, but recent awareness-raising programmes have meant that whipping within the family has decreased, and whipping as a means of sanctioning wrongdoers has become less common. Many thus complain that the *zarsi's* authority has also been diminished, and that local mechanisms for controlling the youth and sanctioning wrongdoers sustainably have become ineffective. Consequently, sending wrongdoers to prison as a last resort has become acceptable,<sup>25</sup> as Shada, a young educated man from Bashada, explained:

Nowadays, when the *zarsi* has exhausted its entire means [to deal with a wrongdoer], they call the police. (...) Maybe first the elders thought they could manage him, but if someone never stops and never listens to them, he is given to the police. They say, 'Let him get their kind of *timirte* (education) and see!' (21<sup>st</sup> September 2016)

A wrongdoer's refusal to give in to the *zarsi* is seen as a threat to the whole community, because it might lead to dangerous and harmful behaviour and community disruption. Imprisonment is therefore sometimes used as an additional threat or a way to get rid of an unrepentant individual.

While communities generally still prefer to handle conflicts locally, in urban contexts it has become more common to involve the police. On market days in town, the consumption of alcohol often leads to quarrels and physical encounters. While friends and age-mates prevent conflicts from escalating in the face-to-face context of rural life, in the towns, insults are easily taken seriously and end up in fights when people who do not know each other drink together. In the countryside, the re-establishment of friendship among age-mates after such quarrels is very important; in town, it has become important to provide financial recompense for damaged property or injuries incurred, and re-establishing a good relationship is not a priority.

25 I heard this complaint not only in Bashada and Hamar, but also by elders from other ethnic groups during a conference at the South Omo Research Center in 2017. During this conference, elder from almost all groups in South Omo participated. In discussions with government officials, the elders from the lowland pastoralist groups, especially, from Nyangatom, Arbore, Dassanech, Kara, Hamar and Bashada blamed the prohibition of whipping delinquents for the many wrongdoing of young men in the area.

## Strategic interaction with state institutions

The Bashada and Hamar have developed certain strategies for dealing with government institutions and representatives. These strategic interactions include 'shopping' among state legal forums, limiting and controlling individuals' access to state institutions, delaying the apprehension of delinquents, negotiating and bargaining with officials, avoidance and hiding, pretending cooperation, and other more open forms of resistance. These strategies should not automatically be considered as opposition, but rather as variations of efforts to stay in control.

### 'Forum shopping' at government institutions

As elaborated above, the police and the courts are sometimes addressed in cases where local institutions have failed to sustainably improve a wrongdoer's behaviour. They are also increasingly being used to obtain financial compensation in cases of physical injury, especially in cases involving incidents in town. These are the locally acceptable contexts for making use of state law. For most other cases, it is preferred that they are handled locally or, at least, that the *zarsi* discuss such cases before handing them over to the police through the militia and *ayo*. The local communities strongly disapprove of, and will sanction, direct access to state institutions.

### Limiting direct access to police and state court

While in principle everyone can choose which of the available legal forums they want to handle a case – the police, state court, government office or local system – in practice individuals are not that free to make the choice. Locally, it is considered inappropriate and disloyal to take a case outside the community, and it is expected that any issue should be taken to the *zarsi* first and then, if need be, through the *militia* or the *likamamber* to a government institution. Anyone who addresses the police or court directly risks being locally sanctioned and fined by the elders. Women who directly report abuse or mistreatment by their husbands to the police are commonly sanctioned by the other women in the neighbourhood.

A former court officer in Dimeka Woreda court confirmed that very few individuals address the police directly. Those who did, she said, were mostly individuals who were sure that their case would not be listened to locally because local customs were contradictory to their personal interests.<sup>26</sup> Such cases sometimes involve women who have decided to leave their husbands and the community and have moved to town. In most instances, they involve adolescent girls, who use the

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26 Interview on 12 November 2016.

protection offered by the state to escape arranged or forced marriages. Claiming they want to gain a formal education, the girls enter the police stations from where, with the support of the Women and Children's Affairs Office, they are usually sent to school hostels. The government's protection of runaway girls has caused a lot of resistance among the Bashada, Banna, Hamar and Kara (see Epple 2012a, Masuda n.y., Maurus 2016, Niebling 2010, Yohannes this volume), especially because some of the girls involved have already been betrothed, and bride wealth been given. Parents are also concerned about the inadequate supervision of the girls in the town hostels, as unwanted pregnancies and sexually transmitted disease are not uncommon. Moreover, many of the girls, especially those who were already adolescents when they arrived, drop out of school after a few years; they do not usually return home, but stay in town, working in bars or restaurants.

### Delaying the handover of criminals

In certain contexts, the local people delay the handover of perpetrators to the police in order to make time to make peace and perform reconciliatory rituals between the conflicting parties.

As among many other Ethiopian groups, intra-ethnic homicide in Bashada and Hamar is considered harmful to the victim, the perpetrator and their families: it affects the relationship between the families of killer and victim not only emotionally, but also metaphysically. It is believed that if members of the two families eat or drink together before peace has been re-established and ritually sealed, disease and a quick death will follow for anyone who consumed anything that was produced by the other party. If a killer is convicted by the court and goes to prison before reconciliation rituals can be held, members of the two families remain at risk for many years. As even distant relatives are said to die if they eat food provided by the other family, even unknowingly,<sup>27</sup> the performance of a reconciliation ritual is imperative. Therefore, the community usually holds back on handing over a killer to the police by pretending that they cannot find them.

When the police or the court hears of a serious crime in the villages, strong efforts are initially made to get hold of the perpetrator. However, as the Bashada and Hamar territory is a large and bushy area where people are armed with guns, the police cannot easily get hold of a criminal if the local community does not co-operate. Therefore, the police usually choose to follow up a case only occasionally.

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27 During my stay in 2017, I was told about a herding boy who unknowingly drank milk from a cow belonging to a family with whom his own family had not made peace. The alleged reason for his death came out during a consultation with the sandal oracle. After this sad event, the reconciliation, which had been delayed for several decades as the two families lived far apart, was quickly enforced.

Furthermore, many government officials are now native to the area and know the local customs. Consequently, many people in Bashada are convinced that the police tolerate delayed handovers in order to give the community a chance to settle the case locally before formal law is enforced, as a young married Bashada man explained:

The *woreda* administrator [originally from Bashada/Banna] and those working with him know our tradition. When people say, 'The culprit did not come to us, we have not heard anything, the guy did not come!', he knows that people are doing their rituals. (...) When everything has been finished, they will say to the government, 'Now we have heard about it, people came to us.' Then they say to the culprit, 'Now you have to go, everything is finished, go!' and send him. It is the *gal* (non-Hamar), who do not know.... (Interview, 21 November 2016)

What he describes seems to be a kind of silent agreement between the government and the locals, and so it is difficult to get a statement on the issue from legal practitioners, who officially must prosecute any case of homicide immediately. Many confirmed, however, that getting hold of and prosecuting anyone in the bush against the will of the community was impossible.

### **Negotiations with government officials on the application of state law**

People in Bashada know that there is room for negotiation even after a case has been handed over to the police or court. This applies in less serious cases, such as quarrels, insults, family issues and minor criminal cases, when a case can officially be returned to the local community for resolution with the agreement of all parties involved (following article 34(5) of the Constitution). The initiative for negotiation can come from the local people's side, but may also come from the government side. Sometimes, negotiations also take place in more serious contexts, when it seems more promising to resolve cases outside the courtroom. Such as when adolescent girls run away from home to escape an unwanted marriage. Instead of punishing the families who may have forced a girl into marriage, other offices, such as the Women and Children's Affairs Office get involved in mediating between the parties. Social background of a perpetrator may also be taken into account. When a perpetrator comes from a poor background or has very few relatives, elders sometimes approach the court and plead for a fine for the wrongdoer rather than imprisonment, arguing that his family would suffer without him. As the former president of Hamar Woreda court explained, judges may use the legal room available in the law and decide on a fine or communal work instead of imprisonment in such contexts. They understand that the wife and children of a man who has no brothers to

support his family during his absence would not be able to sustain themselves.<sup>28</sup> Generally, however, legal practitioners want to be seen to be loyal to state law. One of the prosecutors<sup>29</sup> at Hamar Woreda court emphasized,

Wrongdoing is wrongdoing. The law treats all: whether someone steals a needle or a cow, both is theft and it is treated here. (...) The provision we have in the law is that when small problems, like insult or so, can be sent back and solved locally. But theft and murder, these are treated only in court. (...) If there is a theft, somewhere in the bush, and we don't hear about it, it might be solved there, that is fine. But when we hear about it, we have to follow up. (Interview 28 March 2017)

### Keeping silent, avoiding and hiding

In the last couple of decades, representatives of the Bashada and Hamar people have been increasingly invited to meetings in town organized by NGOs or government offices to inform the population on issues such as health, education and development, but also gender equality, HTPs and state law in general. At the same time, government officials, NGO representatives, health officers, agricultural extension workers have been visiting the villages with the same agenda. In the early years of this education programme, certain individuals were appointed by the local government as members of committees (such as health committee, education committee) and taken to meetings in different parts of southern Ethiopia, where they met with members of other ethnic groups. Today, some of them remember that they enjoyed the free travel, the chance to see other places and other people, and the *per diems* and other incentives.

While such journeys have become less common, meetings in the villages or local towns (Dimeka and Turmi) have become so frequent that people complain they are a hindrance to their daily duties. While the *likamambers* and the members of their committees are expected to attend these village and town meetings, for others participation is voluntary. Nevertheless, meetings often start with the organizers complaining about low attendance, little change or improvement, and low motivation. Though participants are encouraged to express their views, opinions and complaints, most attendants keep silent when they disagree with what has been said, or when they are scolded for having been late or absent, or for not fulfilling

28 This could include working for the district administration for some months in construction, watering plants, cleaning offices and the like (interview 24 June 2017).

29 Originally from Kara.

what they promised to do during an earlier meeting.<sup>30</sup> Instead of airing their views during the meetings, as I observed, they discuss them when walking home.

The silence of participants during meetings is a common sign of withdrawal from a conversation that, from a local perspective, has taken an inappropriate turn; in this case, when the tone of government officials is perceived as paternalistic, dominant or arrogant. When discussions are held face to face, they are often quite lively and direct. The reasons for people's silence is common knowledge, as the head of the Education Office in Hamar Woreda, himself from Hamar, explained:

When we explain things slowly, people listen. Especially, when they do not like the work of the government, we explain things again slowly... [means here also: 'we repeat things several times with patience']. If you tell them the hard way, people stay silent. That means that they have not accepted it, they don't speak it out loud. (interview 28 March 2017)

Government officials meet this passive behaviour with patience and continuous and repeated effort in the hope that their message will be accepted in time.

## Hiding crimes

Minor offences, such as insult, physical injury or theft are often not reported to the police; if they are, they are sometimes sent back to be resolved locally. Serious offences such as forced marriage and abduction are not considered locally as crimes, but rather as part of local custom. Therefore, such cases are usually kept with the community, and the *zarsi* prevent victims reporting to the police, arguing that it is better to handle such things locally.

Fathers commonly complain when their daughters are forced into marriage or abducted. Relatives and elders usually calm such a father down. They remind him of the reciprocity between generations: though it might be painful now to let the daughter go, he himself may have abducted his own wife, and his own son might do so in the future. One Bashada elder recounted how a father is stopped from going to the police:

'It is our tradition. Yih, tomorrow you might also abduct a girl! Today, if you send this guy (the abductor) to prison, tomorrow, will you go to prison too then? What if tomorrow you will go to prison? What if your son is going to prison? Who would tomorrow talk in favour of you or your son? Don't do it!!' This is how the elders

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30 The health officers, for example, have been urging the community to build pit latrines in their settlement areas. Many Bashada and Hamar people feel disgusted by the latrines in towns, which are usually very dirty and smelly. They prefer to use the bush where there is no smell and any remains usually disappear by themselves after a few days.

talk and stop him from going to the police!’ (...) [Then he will respond] ‘Eh, if this is what the *zarsi* is saying, it is good. I will not go.’ (25 January 2017)

Only when a girl decides to seek protection in town does abduction and forced marriage become a matter of law, most cases remain hidden.<sup>31</sup> This shows that with regard to marriage, custom is locally rated higher than state law.

### Faking cooperation

The highest priority in combatting harmful traditional practices (HTPs) in Bashada and Hamar is to eliminate infanticide, the ritual whipping of girls and women during male initiation, and forced and early marriage and abduction. As many initiatives have proved unsuccessful, more recently, the *bittas* (ritual leaders) have been asked by the government to get involved with the hope that through the performance of a ritual of abandonment these practices could be given up.

After several meetings and lengthy discussions between government and local elders, the Hamar and Bashada *bittas* were convinced, albeit under pressure, to ritually curse and abandon whipping, abduction and infanticide. However, when these rituals were performed – in the presence of government officials and local elders – certain elements were changed so that the rituals were in fact non-binding.<sup>32</sup> While the situation was clear to the local participants, it was not to most of the officials who learned only later that the rituals had been incomplete and therefore ineffective.

### Resistance through magic, curses, verbal and physical violence

The Bashada and Hamar also use magic and curses against individuals to protect their interests. Cursing is commonly used to sanction those who do not listen and submit to the *zarsi*. Locally, persistent wrongdoers, those who act disloyally or have angered senior relatives can be targets of curses, which affect the health and sometimes even the lives of the cursed through disease or accidents. The community has turned cursing on government officials in the past, as the following stories show.

In the early 1990s the first administrator of Bashada and Hamar was chosen from the local communities. He was known as someone who took state law very seriously, employed very strict measures whenever the law was broken, and ignored the needs and interests of his people. The Bashada vividly remember that this particular administrator, tasked with protecting the wildlife there, asked them and the Hamar to remove their cattle from Mago Park. As they had taken their

31 See also Epple (forthcoming) on details about forced marriage and abduction in Bashada and Hamar.

32 See Epple (this volume) for details on the handling of infanticide in Bashada and Hamar.

animals to the park to graze during a drought, the people refused to comply with the request for fear their animals would starve. The administrator then loaded the cows and calves onto trucks and moved them elsewhere. He also insulted the elders with whom he had discussed his request, and ordered that some of the small houses and cattle enclosures built by the herders be burnt down. This behaviour angered the community so much that they cursed him. As a result, people say, he turned crazy, lost his job and never recovered. Today, he lives in Dimeka, his mind still broken.<sup>33</sup>

His successor, also a Hamar, was also a strict supporter of government interests. He strongly supported the government's wish to get girls into education, and willingly accepted all runaway girls who came to town to go to school. At that time, many parents were set against their daughters being educated, and some even withdrew them from the hostels by force (see Masuda n.d.). People felt betrayed when the administrator helped girls to escape to Jinka without consulting their parents or any elders.<sup>34</sup> While he was on a visit to southern Hamar, an *edi arti* (magician) offered him a goat and fresh milk in a traditional container as a gift, as is common for honoured guests. Both milk and goat were bestowed with magic, and many people recount how the administrator became very sick when he ate the meat and drank the milk. He remained half paralyzed, unable to walk or talk properly. When after some years, he asked the elders for forgiveness, they performed a ritual for him and his health slightly improved. Later, however, he was said to have acted against the interests of the Hamar again, so the curse was renewed and he died.

All subsequent local administrators and other officials have heard about these curses and all educated Hamar – including those who have converted to Christianity – I talked to consider the magic and curses of Hamar elders as powerful and effective.

### Open confrontation: Physical violence and revitalization of HTPs

Some court officials reported that they experienced verbal threats and intimidations by individuals who felt that the court had treated them unfairly. One of the administrators (in power from 2010 to 2014) who had gained a reputation for being rough and very disrespectful was in fact beaten so severely he almost died. This happened during a time of extreme tension between the Hamar and the government that ultimately lead to a violent and open conflict erupting in some Hamar *kebeles* and in was a reaction to continuous pressure from government officials on the local

33 From a scientific perspective he probably had a stroke, which may have damaged his brain.

34 During my research in the late 1990s one of the popular songs to which the youth danced in the night was about the first Bashada girl who ran away and escaped secretly by Dagne's car, defying the will of the elders.

communities. As Yohannes has shown (this volume), the main underlying reasons for the violence were the continuous demands to send more children (especially girls) to school, the prohibition on hunting wild game and the legal prosecution of hunters, and the efforts to end certain cultural practices labelled as harmful. The communities' usual strategies – of avoidance, partial acceptance and pretending to cooperate – had failed to stave off the pressure, so the situation escalated at the end of 2014: the Hamar physically attacked the district administrator, police and other government representatives, destroyed schools and health posts and thereby clearly demonstrated their rejection of government intervention. As a strong sign of their position, they even revived one of the HTPs that had been most strongly addressed by the government: the abortion or postnatal killing of allegedly impure children. Several allegedly impure children, who had grown up and were attending school, were killed (see Epplé this volume).

## Summary and conclusion

Local communities use a variety of strategies by to cope with changes – here in the form of the implementation of state law – offered by or imposed on them by the state. As the example of the Bashada and Hamar people has shown, these strategies range from customizing institutions and official positions and avoiding state institutions, to hiding crimes, pretending cooperation, trying to influence court decisions and – as a last resort – openly resisting.

In Hamar *Woreda*, both customary and state legal institutions are available and, in theory, individuals can freely decide which legal forum they want to address (except in criminal cases, which have to be dealt with by the state). In practice, individuals are not always free to choose, and the law is not always followed so clearly. Instead, the communities make many efforts to stay in control and preserve their cultural integrity.

First, individuals are not free to report crime to the police because they are expected to first address the elders, the *ayo* (spokesman) or the militia. These local representatives then discuss a case before deciding whether to report it to officials. Individuals who go directly to the police risk being considered disloyal to the community and face local sanctions. Usually, only individuals who are determined not to submit to cultural expectations – such as girls who want to escape an unwanted marriage – take that risk.

Second, certain government institutions have been customized and to some extent brought under local control. These include the office of the *ayo/likamamber* (the local representatives of each *kebele*) and the local militia. While the government created these positions to extend its control into the communities, they are indirectly controlled by the local communities through the ritualized installation

of the office holders. To reach the communities more effectively, the government is also making use of local practices. For example, meetings between government officials and local elders begin and end with the elders' blessings. Additionally, the ritual leaders' influence is used to give more weight to decisions reached during such meetings, and 'harmful traditional practices' are not only combatted through awareness-raising and legal prosecution, but also by asking the ritual leaders to ritually ban them.

Third, it can be observed that while, in principle, individuals can 'shop', i.e. choose between legal forums, the communities selectively 'shop' elements of state law and institutions that are suitable to them, and strategically reinterpret, avoid, manipulate or reject and resist others that contradict local values. For example, although imprisonment is alien to the local culture, which favours reconciliation over punishment, it is nowadays used by the communities as a threat or to get rid of wrongdoers who can no longer be handled by traditional mechanisms. When the police hear of a crime and do get hold of the perpetrator, the community rhetorically changes the meaning of imprisonment. Rather than being a place of suffering far away from home, prison is reimagined as a place of learning and maturing (with actual offers of schooling and vocational training) from which wrongdoers return as better people. This image was promoted by the government and has been locally picked up, but it is only evoked when someone is convicted and imprisoned. In individual cases, elders try to influence court decisions with the intention of having imprisonment changed to a fine by reporting to the prosecutors or judges on family background, emphasizing that their family would suffer greatly if the person goes to prison. When communication fails and/or government pressure is high, people tend to pretend or fake their cooperation: when the elders or the militia are asked to hand over a criminal, they often claim they cannot get hold of him. When ritual leaders are pressurized into performing rituals to abandon certain cultural practices, they may do it wrongly, so that the ritual looks real to outsiders, but is locally ineffective. Open resistance and violence is the last resort to which people turn when the pressure gets too much, communication between government and communities is imbalanced and unsuccessful, and cultural key values are felt to be severely under threat. As the recent conflict in Hamar Woreda shows, people will not only defend themselves with weapons, but will also attack innocent government employees (such as teachers or nurses), and revitalize prohibited and formerly abandoned practices (such as infanticide) as an additional provocation.

Many of the local government officials are now native to the area and have a good knowledge of local customs and values. Having been through a modern education system, these officials may not share all the views of the local population, but most of them do have a good understanding of local needs related to the local culture and values. Therefore, many indirectly support the vernacularization of state law and institutions, and accept that people avoid or circumvent state law

sometimes. The delayed handover of perpetrators in cases of homicide, for example, which gives communities time to perform reconciliation rituals, is informally tolerated, and pragmatic given that the vastness of the territory makes it practically impossible to get hold of any perpetrator without the cooperation of the community. When communicating with local elders, government officials – who are often much younger – display the expected respect. Most of them marry a local wife to achieve local acceptance, and they often take the threat of being cursed seriously. They also place great emphasis on information and awareness-raising about the state law, human rights and gender equality, and tolerate violations of state law in the hope that a gentler approach will slowly bring about cultural change. And indeed, it appears that the will to cooperate is much higher when people feel that the cultural integrity of their community is not violated.

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