1. Introduction

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Ethiopia is currently facing a delicate challenge, as it attempts to balance different priorities in the country: respecting religious and cultural diversity, ensuring the implementation of state law throughout its territorial domain, and committing itself to international standards of human rights through the ratification of global conventions and agreements.

With more than eighty officially listed ethnic groups (Central Statistical Agency/CSA 2008) and languages (Lewis 2009), there exists a great plurality of livelihoods, social organisations, belief systems, and political and legal systems in the country. For the first time in Ethiopian history, this cultural diversity has been officially acknowledged and respected in the new Constitution of 1995. Through the Constitution, each ethnic group has been given the space to promote its own culture and language, and legal pluralism is officially recognized. Today, conflicts in the areas of family and civil law can legally be resolved using local laws, procedures and mechanisms, as long as the Constitution is not contradicted, international humans rights standards are not violated and all the parties in conflict have agreed. The same rights and respect have been given to religious laws, so that Sharia law and courts have received a special place in contemporary Ethiopia.[1]

The existing legal arrangement seems to offer many advantages, as it seeks to combine the diverse interests of its inhabitants and the government. It is, therefore, generally welcomed and appreciated by many people, especially as previous

1 See the Ethiopian Constitution (FDRE 1995), especially Art. 34(5) which says that 'the adjudication of disputes relating to personal and family laws in accordance with [religious or] customary laws, with the consent of the parties to the dispute' shall not be precluded by the Constitution, and Art. 78(5), which grants the right to 'establish or give official recognition to religious and customary courts' to the House of Peoples' Representatives and State Councils. See also the Cultural Policy (endorsed in 1997), in which the government clearly distances itself from previous governments, who are said to have followed a discriminatory policy by seeding enmity among peoples and promoting the domination of the culture of one nation or nationality at the expense of others (http://www.ethioembassy.org.uk/fact%20file/a-z/culture.htm), and the recent publication by Getachew, Yonas and Muradu (2016) on *Economic, social and cultural rights in Ethiopia*.

Ethiopian governments ignored and forbade the application of customary law, though it nonetheless continued to operate unofficially and partly in hiding. However, in practice, the multiplicity of the often opposing and competing norms of the different legal forums poses a challenge to both legal practitioners and justice seekers. As will be shown in this volume, certain gaps in the law have left the system open to abuse and exploitation for personal advantage. There are also examples of power being accumulated by individuals who hold prominent positions in more than one legal system, and in some places offenders are being sanctioned more than once for the same wrongdoing. The criminalization of certain cultural practices that contradict the state law and international human rights - labelled as 'harmful traditional practices' – has caused disappointment among local communities and occasionally led to avoidance of and resistance to the state law. At the same time, state institutions have remained difficult to access especially in rural areas, not only because police stations and courts do not exist everywhere and often lack staff and equipment where they do, but also because local acceptance is still low. In addition, in some places pressure is put on individuals to not take their cases outside the community.

A lot of the existing literature on legal pluralism places an emphasis on contradictions between the legal systems, and on the problems arising from the implementation of state law and international law in local communities. However, as one can see from the case studies in this volume, in places where the communication between the different legal forums is open and respectful, the various stakeholders do cooperate and the legal institutions and procedures complement rather than contradict each other – at least to some extent. Where mutual distrust and insufficient communication prevail, problems among the customary, religious and state legal forums are abundant, and many complaints arise.

The intention of this volume is therefore not only to shed light on the diverse connections between various legal actors and their day-to-day experiences, but also – and particularly – to highlight the conditions that contribute to the cooperative co-existence of different legal systems. It includes the views, perspectives and opinions of government representatives (e.g. legal practitioners, administrative personnel, other officials), various representatives of local communities (both customers seeking legal services and practitioners of customary law and administration), and religious actors (Muslim and Christian legal practitioners and communities). The case studies examine how state law is implemented locally, partly accepted, combined with local and/or religious law, or rejected. They also look at how state officials make use of local institutions, norms and actors in order to 'make things work' and apply state law in their daily practice. While friction, contradictions and clashes are not denied, a closer look is taken at the potential of legal pluralism, in the hope of identifying how the existing and inevitably plural legal setting can become a win–win situation for all.

The interplay of plural legal orders

Legal pluralism

Early studies in legal anthropology looked at 'traditional law', that is, at the question of how people maintained social order without Western law (Malinowski 1926, Nader 1969). Later, the focus shifted to the co-existence and intersections of customary and European law in the colonial context, nowadays referred to as 'classical legal pluralism'. Studies in the 'new legal pluralism', in which scholars looked at the existence of plural normative orders in non-colonized states, emerged in the late 1970s, mainly in the USA and Europe (Merry 1988:873).

Since then it has been widely agreed that legal pluralism is a 'situation in which two or more legal systems coexist in the same social field' (Pospisil 1971, Griffiths 1986, Moore 1986). Concepts of legal pluralism and law have been debated and redefined in the last decades by anthropologists, sociologists, lawyers and others. In the social sciences, most scholars now generally agree that every society is legally plural 'whether or not it has a colonial past' (Merry 1988:869), as official and unofficial social orderings operate side by side everywhere (Macaulay 1986 in Merry 1988:868–869). While there has been intense debate on whether the term 'law' should be reserved for state law only (Woodman 1996, Griffith 1986, Tamanaha 2007), the concept of 'semi-autonomous social fields' introduced by Moore in 1973 focuses instead on the arenas (economic, social, political etc.) that operate with their own specific sets of formal and informal norms. These norms are partly newly created within the given social field itself. They originate partly from the specific environment (formal laws, rules determined by the economic system, cultural norms etc.), and partly from other social fields with which they are interconnected and interdependent (Moore 1973:720). As Moore emphasizes (1973:723), there is no presupposed hierarchy between different normative orders interacting in the same social field. This means that state law is not necessarily or automatically dominant over other normative orders, and other social arrangements can be stronger in determining individuals' actions. It also implies that new legal systems brought into or imposed on a specific social field can have unpredictable results.

Human rights and local contexts

Legal systems have always been dynamic and have always influenced each other. Since the mid-1990s, the transnational flows of legal models in the context of globalization have become a focus of scholarly interest (F. and K. von Benda-Beckmann 2006, Tamanaha 2007, Nader 1969). In particular, the promotion and implementation of human rights standards have been widely discussed. Since human rights standards have become a kind of benchmark for the quality of governments in the

developing world, national and international NGOs have begun exerting direct and indirect pressure to ensure that such rights are enforced (F. von Benda-Beckmann 2009). Issues pertaining to gender equality and the protection of women and children (number 5 in the Sustainable Development Goals) have been given high priority. Indeed, they were already strongly addressed in the 'Convention on the Elimination of all Forms of Discrimination against Women' (CEDAW) adopted by the UN General Assembly in 1975, which gave a clear priority to women's rights over the protection of cultural diversity.[2]

Running parallel to discussions on the implementation of human rights standards has been concern about the universality of human rights (Goodale 2009).[3] The widespread incompatibilities of human rights and customary laws and values have been discussed in various theoretical publications (Eriksen 2001, Kinley 2012, Preis 1996), and some authors have accused human rights of Western bias (An-Na'im 1992, 2002). Merry (2003a) has even identified certain parallels between the transnational transfer of law in times of globalization and during colonialism. She argues that, in both instances, the transfer of legal ideas, institutions and technologies was justified with the argument that it would contribute to an improved society. Moreover, the 'reformers' involved – both colonial and contemporary – were convinced they were doing a morally right thing: contributing to a better life and more civilized society by overcoming primitivism in the colonial context, and promoting the rule of law, democracy and human rights today. Merry also points out that the diffusion of new legal ideas has been taking place among countries and peoples of extremely unequal power and resources, e.g. in relations where economic, political and cultural considerations also play a role (Merry 2003a:570).

Scholars who have studied how law and human rights are discussed in international forums have complained that, especially in reference to rural communities or developing countries, 'culture' is still presented as something static and a hindrance to change and development.[4] As such, 'culture' appears to be an obstacle to

2 The Convention is very clear about its aims to eradicate all practices discriminating against women, even if that means changing cultural values, and even if women belonging to a specific culture do not perceive them as harmful (see www.un.org/womenwatch/daw/cedaw).

3 Anthropologists were long aware of but only marginally involved in the debate on how 'global law can be translated into the vernacular' (Merry 2006:2). It was only after the end of the Cold War in the late 1980s that anthropology engaged actively in research and debates around International Human Rights (Goodale 2009:2). The 'Declaration on Anthropology and Human Rights', voted on and approved by the general membership of the American Anthropologists Association (AAA) in 1999, clearly expressed the 'commitment to human rights consistent with international principles' and declared it mandatory for anthropologists 'to be involved in the debate on enlarging our understanding of human rights on the basis of anthropological knowledge and research' (Goodale 2009:7).

4 Conversely, in anthropology it has long been agreed that culture is something fluid, contested, dynamic, and fundamentally hybrid.

the realization of human rights (Merry 2003b). In viewing culture as the source of all problems, attention is drawn away from other sources of subordinate groups' suffering, such as economic or political problems, which might actually be caused by Western countries' domination (Merry 2003b:63). Only in the context of heritage management are 'culture' or 'cultural diversity' internationally declared as worth protecting. The 2003 UNESCO 'Convention for the safeguarding of intangible heritage' promoted the idea of 'cultural rights' and declared the right to live according to one's own traditions as a form of human right, albeit only provided that those traditions do not contradict existing human rights instruments and meet the requirement for mutual respect among communities, groups and individuals (Langfield *et al.* 2010). Once the rights of less powerful individuals like women and children, stateless persons, the weak or destitute are violated, cultural rights are no longer protected (Logan *et al.* 2010:14).

Many case studies have looked at the problems of implementing human rights in local contexts (Cowan *et al.* 2001, Foblets and Yassari 2013, Langfield *et al.* 2010), and have uncovered how women's rights and gender equality in particular are often contradictory to local values and customs (Merry 2006, Hodgson 2011). One of the main reasons why human rights and local culture do not easily converge is that there is a contradiction between individual rights and group rights. As Foblets *et al.* (2018:6) have elaborated, a general principle in human rights is that an individual cannot renounce his or her fundamental human rights. This rule is especially applied in cases involving the interests of children, gender equality and fair trials. In the name of human rights, any practices considered as deviant or contentious can be prohibited under state law. This 'imposed protection' can lead to individuals being prevented from following their traditions. This, in turn, can mean that they are denied the capacity to renew and adapt their cultural practices in their own way and at their own pace. In practice, Foblets *et al.* (2018:6–7) conclude, this is itself a denial of personal autonomy[5] that can – as a side effect – give rise to the unintended marginalization of those who decide to avoid courts in order to be able to follow their own traditions.

As certain cultures do not support personal autonomy, Foblets *et al.* (2018:8) question whether individual autonomy should realistically be a universal goal. Individuals feel strongly attached to their groups and often find it impossible to make a decision independent of, or against, the interests of their family, clan or community. This explains why people refrain from abandoning certain aspects of their culture (*ibid.*:2). When an individual in a case voluntarily renounces the freedom granted to them by international law, the legal practitioners involved face an ethical

5 Foblets *et al.* (2018:2, fn9) define 'autonomy' as a 'person's capacity to make independent decisions and exercise choice', and differentiate it from 'agency', which refers to a person's 'acting on decisions made'.

dilemma in deciding how to deal with someone who has personally chosen a path prohibited by law (*ibid.*:5).

The dilemma of government officials

Within any given legally plural social field, diverse actors operate and pursue their individual interests. Many studies on legal pluralism have investigated the decision-making processes of justice-seeking members of local communities, and have explored how the specific background, gender, age, or profession of individuals influences their decisions about which legal forum to choose or 'shop from' (K. von Benda-Beckmann 1981).[6] However, the perspective of state actors, the 'paradox' (Zenker and Hoehne 2018) of their having to deal with custom in order to get their work for the state done, their background and personal interests, their actions and choices, and the contexts in which they work have only become of interest in the decade (Lentz 2010, Bierschenk 2014, Olivier de Sardan 2008, 2015; de Herdt and Olivier de Sardan 2015, Beek *et al.* 2017).

In their day-to-day work, government officials act in 'complex normative universes', and they undergo an informal professional socialization in order to be able to navigate in a rather unpredictable environment (Bierschenk 2014). They have to comply with contradictory messages stemming from official norms – including rules of law, conventions, local regulations, professional or administrative procedures, all of which are *formalized* or *codified* in public action or professional practice – (Olivier de Sardan 2008:4, fn 15) and from practical norms that are 'absent from the public discourse, absent from the official moral rhetorics and absent from the teaching' but that are nevertheless important to know (ibid.:15). State officials therefore flexibly orient themselves towards these 'rules of the game' to get their daily work done. At the same time, they also change them strategically. They play the 'game of the rules' in a way that can be seen as 'skilful and flexible manoeuvring within and between norms and modes of engagement' (De Herdt and Olivier de Sardan 2015:25). Aside from the external framework and constraints, the personal backgrounds of the individual officials influences their behaviour and decisions as they put state law into practice locally, determining their way of interpreting, implementing and also innovating norms 'in the interest of accomplishing the organizational goals' (Lentz 2010:5).

6 Studies have shown, for example, that females prefer to turn to new forums, as state law and its 'non-traditional' values can be an important resources in the struggle for emancipation, while the local law is often the law of local elites and/or the senior male population (K. von Benda-Beckmann 2001:50). At the same time, gender can also limit access to legal forums (Griffith 1997, Hirsch 1998).

Demise or rise of customary law in Africa?

Customary law continues to play an important role in Africa, and is now officially recognized in many African constitutions, although – due to differing histories and colonial experience – the degree of recognition and the legal areas recognized vary greatly (Merry 1991:891). In a comparative analysis of 190 constitutions worldwide, Cuskelly (2011) found that African constitutions offer the highest level of recognition of customary law: of 52 African constitutions, 33 referred to customary law in some form, with good recognition of traditional and customary institutions and customary law in the courts and relating to land issues. An even larger number of African constitutions generally protect culture or tradition (Cuskelly 2011:6–11, see also Gebre, this volume).

What is customary law?

Although regularly used in the literature, the term 'customary law' has been criticized for being misleading. What is actually meant by the term depends on the contexts it refers to. In the literature, three types of customary law referred to by authors can be discerned.

First, there is the precolonial non-written law of the past: the 'customary law' described by many anthropologists in the first half of the twentieth century. It is seen as a continuation or remnant of precolonial cultures and traditions, and some authors perceived it to be 'timeless and static' (Zenker and Hoehne 2018:5). Since the 1970s and 1980s this view has been questioned. Researchers have emphasised that law (like culture in general) is dynamic, and that a second kind of customary law found in post-colonial Africa (and elsewhere) was actually created out of the struggles between and among colonizers and colonized during the colonial period.[7] Emerging African elites – mostly those who were educated, lived in towns

7 A dual legal system existed in most African colonies: one (imported European) law for the colonizers, and one (indigenous African) for the colonized (Merry 1991:890). Despite the room given to the local law to regulate the lives of the colonized, local law was nevertheless strongly influenced by the imported European legal system: indigenous structures and institutions were integrated into the colonial administration and regional authorities were identified and made responsible for regional administration (Kohlhagen 2008:79). European law was used to handle major criminal cases, control the local labour force, exploit local resources and establish an administrative structure that facilitated national and international trade. Local practices that contradicted key values of the colonizers were forbidden. In British colonies this was enforced through the repugnancy doctrine, which prohibited courts from enforcing any customary law considered 'uncivilized' or inhuman' by British standards and values or 'repugnant to natural justice, equity and good conscience' (Ibhawoh 2007:60–63). The central works highlighting the creation of 'customary law' are by Snyder (1981), Gordon and Meggitt (1985), Chanock (1985) and Moore (1986). Merry (1991) provides a detailed overview and re-

and tried to adapt to the lives and values of the colonizers – supported this process. The adaptation of the local law to imported law not only changed the local law's content, but also its general character, as the originally very flexible and adaptable local law was substantively transformed by codification (Merry 1991:891–893).[8] Thus, many authors consider the codified customary law used to handle the cases of the colonized in former colonies to be distinct from the pre-colonial law, and they speak of the 'creation of a customary law' (Zenker and Hoehne 2018:5–7) or 'invention of tradition' (F. von Benda-Beckmann 1989).[9]

A third version of the local law continued to exist next to the codified customary law (F. von Benda-Beckmann 1984). To distinguish between the second kind, e.g. the transformed versions of codified African law that developed under colonial rule and the third, that is the normative orders that actually guide daily lives in contemporary Africa, some scholars use the term 'customary law' or 'official customary law' (also 'lawyers' customary law' or 'judicial customary law') for the former, and 'living customary law' (also: 'sociologists' customary law', 'practiced customary law') for the latter (Woodman 2011:224–225). The 'living customary law', Himonga (2011:48) emphasizes, is also dynamic, though the changes it undergoes come from within the community instead of being enforced by any external authority.

Other terms used in the literature for unwritten or non-state legal systems include 'people's law', 'traditional law', 'folk law' and 'indigenous law'. All of these terms have been discussed and partly discarded for different reasons.[10] The expressions 'traditional law' and 'customary law' have been criticized for suggesting non-state law is unchanged and static, while law is – like other aspects of culture – dynamic and subject to continuous change (K. von Benda-Beckmann 2001). The terms 'people's law' and 'folk law' have been rejected for romanticizing and minimizing the forms of non-state law (Roberts 1986, in Merry 1988:877). The expression 'indigenous law' has been seen as giving the wrong impression, as indigenous societies

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view of important literature on the emergence of customary law under colonialism in Africa, pointing out that the indigenous law changed from a 'subtle and adaptable system often unwritten, to one of fixed, formal and written rules enforced by native courts' through adaption to the imported European law (Merry 1991:897).

8 This pattern of adaptation of the subordinate law to the dominant one, Merry (1991:893) argues, is also found in other contexts of domination, for example, when states incorporate ethnic minorities.

9 Franz von Benda-Beckmann (1989) describes how 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) were violating one of their customary laws they could defend their interests against the dominant state in a convincing way. If they simply claimed that land ownership did not exist or was disliked among them, they would appear as backward and uncivilized.

10 See Merry (1988) for an overview of the discussion.

that seemed untouched by European influence at the time of early ethnographic research had, in fact, already been vulnerable to outside influences (Fitzpatrick 1985 in Merry 1988:876–877). The rather neutral term 'local law' has been suggested as 'a generic term for law that is being used and maintained at a local level, from whatever source it is derived' (K. von Benda-Beckmann 2001).

Alongside the diverse forms of customary law, the imported European law has also been reinterpreted and transformed into local versions (F. von Benda-Beckmann 1984) – a process that Merry and Levitt (2017) have called the 'vernacularization of law'. Thus, in reality, there exists a much greater variety of normative orders in Africa than just 'state law and 'customary law'.

Discussions on the correct terminology referring to the various forms of local and imported law channelled into the notion that the boundaries between different systems of ordering are fluid and that the systems are not separate but constitute a continuum (Galanter 1981 in Merry 1988:877). Moore's concept of the 'semi-autonomous social field' (1973), which can generate rules and norms internally but is also influenced by external forces, has been widely accepted and has endured.

Despite all the criticism, the term 'customary law' is still widely in use, not only in academia but also in national and international laws and policy documents. It is also commonly used in the Ethiopian context, both by scholars and legal practitioners and policy makers, though the context is slightly different to that of other African countries. Ethiopia was never colonized and there exist no codified versions of local normative orders (though some indigenous notions are reflected in areas of family law, successions and property law (Vanderlinden 1966/67:59 in Getachew, this volume). Most of Ethiopia's numerous non-state normative orders continue to be functional today, and run in parallel with the state system. When used in the Ethiopian context, the expression 'customary law' is therefore only used to refer to those local laws that are a dynamic continuation of past forms of legal ordering. While these local laws have certainly changed over time, in most cases, the extent to which a given customary legal system has been shaped or influenced by the law of previous and/or the current regimes remains to be explored. With all this in mind, the term 'customary law' is also used in this volume.

The presence and future of customary law in Africa

Many scholars acknowledge that customary justice systems, despite their oft-claimed fundamental differences and incompatibility with state law (Woodman 2011:20), are resilient and continue to be relevant in the lives of many people worldwide, especially among the poor (Ubink 2011a:7).

As Gebre (this volume) has pointed out for Ethiopia, customary laws are deeply rooted in cultural and religious values. Customary conflict resolution mechanisms have been praised not only by the local communities using them, but also by state

legal practitioners. The proximity of customary courts or elders' councils and their speedy handling of cases at low or no cost make customary conflict resolution attractive and easily acceptable to the public. Local legal practitioners are personally known and respected, and procedures are embedded and legitimated in local values and beliefs. Customary law is seen as highly credible and transparent because cases are usually handled in public and with the involvement of community members as observers, witnesses and commentators, and final decisions are usually publicly accepted and respected. This limits the chance for corruption and unfair judgment. In addition, individuals who do not conform to the verdicts of elders or customary courts risk being considered as rebellious against community values and interests. Customary institutions are also often more successful in finding out the truth in criminal cases than the formal justice system, as the social pressure to tell the truth within communities is very high. Besides, customary institutions can employ religious or spiritual pressure, for example, by asking a suspect to speak under oath. As lying under oath is believed to bring misfortune or disease, this tactic is usually succesful. Furthermore, while the state courts aim to punish wrongdoers, customary insitutions primarily intend to restore broken relationships. This again means that their decisions are usually well accepted and supported by the community, which hopes to avoid coercive measures and enhance social cohesion (Pankhurst and Getachew 2008a:260). As the restoration of social order often includes the relatives or clans and communities from both the perpetrator's and the victim's sides, possible relapses and spill over effects are avoided and community peace is ensured (Gebre, this volume). Alongside its role in dispute settlement and conflict resolution, Ubink (2011c) emphasizes that customary law has particular value in the way it regulates daily life, the management of and access to land and natural resources, as well as social life and family issues. As customary legal institutions reduce the workload of formal courts and are known for their effectiveness, they are often co-opted by government officials.

However, for all their positive attributes, customary laws and norms have also been criticized, especially for their frequent incompatibility with the modern state and international law. As mentioned earlier, some aspects of customary law do not comply with human rights standards because they contradict ideas of gender equality, the rights of women, children and minorities, and the rights of the individual. Yet, many voices claim that despite the shortcomings of customary laws, their strengths can be used to shape Africa's future (Mgbako and Baehr 2011) and contribute to its legal development in the twenty-first century. Himonga (2011) sees potential not in the 'official codified customary law', as used by magistrates and courts in postcolonial Africa, but rather in the 'living customary law', i.e. the non-encoded normative orders people live by. The ability of the 'living customary law' to adapt to changing circumstances, he argues, will enable it to live on despite the fact that it often contradicts national laws and international human rights standards

(Himonga 2011:34). While efforts should be made to reconcile 'living customary law' with human rights, its local values and fundamental features should be retained as much as possible (Himonga 2011:48).

Adding to the voices in support of customary systems, Ubink and van Rooij (2011:8) have pointed to the contribution made by customary laws and administration, natural resource management and local knowledge on food security to the enhancement of sustainable development in Africa. The authors' hope is that the involvement of local people and their normative systems should not be seen as a hindrance, but as assets in the creation of a fruitful link between state and customary law and institutions.

The potential of legal hybridity

Legal hybridity is not a new phenomenon. Indeed, it is rather the norm, as legal institutions – whether state or customary – have always been dynamic and borrowed from and been influenced by other legal institutions. However, the focus in academia on legal hybridity is somewhat recent, probably because the number of legal forums coming into contact with each other has been increasing with globalization.

Santos (2006:46) uses the words 'porosity and interpenetration' to describe 'legal hybridity', and sees it as the result of the bringing together of distinctive and often contradictory legal orders or cultures that leads to the emergence of 'new forms of legal meaning and action'. In a wide sense, 'hybridity of law' refers to a legally plural situation, in which 'two or more legal systems coexist in the same social field'. More specifically, it means that 'two legal traditions blend in the same social field' – something sometimes referred to as 'mixed jurisdictions' or 'hybrid systems of law'. This is the case, for example, in countries or jurisdictions where both civil law and common law traditions coexist (De Cruz 1999:202). 'Legal hybridity' can refer to the whole justice sector, but also to individual (state or customary) legal institutions. When they borrow from each other or function in a hybrid manner, this is often referred to as 'internal hybridity' (Clark and Stephens 2011).

In contemporary Africa, the complexity of legal forums is greater than in the past (Santos 2006). Due to the transformative processes at play in Africa's states in the context of globalization, the focus of research has shifted from the intra-state legal orders that coexist with official, national law, to the influence of the emerging supranational legal orders. Today, we find today subnational legal plurality in combination with supranational legal plurality in many African countries (Santos 2006:7). While the interaction between the local, national and global (each of which has its own rationale and norms) often creates tensions, it always also leads to mu-

tual influence. Thus, each legal order can only be defined in relation to the legal constellation of which it is part (Santos 2006:45–46).

As Clark and Stephens (2011:70) have shown for Indonesia and the South Pacific, this borrowing of elements occurs in both directions. Their work elaborates how on one hand customary authorities tend to codify their rules and structures in order to 'be seen like the state' and thus to be respected and not regarded as 'backward'. On the other hand, the state also borrows from non-state normative traditions to apply state law more effectively. The creation of hybrid institutions, the authors argue, can be a chance to blend the strengths and mitigate the weaknesses of formal and customary systems. Also, in contexts where neither state nor non-state justice system can fully deliver justice, hybrid institutions can help overcome the weaknesses and injustices of both systems (Clark and Stephens 2011:68). Berman (2007) also sees the normative conflicts among multiple, overlapping legal systems as a potential source of new ideas that can lead to the creation of a wide variety of procedural mechanisms and institutions. The *gacaca* courts in Rwanda, for example, are an oft-mentioned recent example of a creative and resourceful hybrid of 'retributive, deterrent and restorative justice with the ultimate aim of being restorative and reconciliatory' (Clark 2007:61–62). This hybrid form of court was launched to handle the less serious cases related to the 1994 genocide, and combined 'prosecution with national unity and reconciliation' (Hermann 2012:90). Mgbako and Baehr (2011) mention the constructive role played by paralegal organizations, which are usually comprised of non-lawyers – for example, paralegal experts who receive some training in formal law and at the same time have intimate knowledge of customary law – who assist communities and individuals in the resolution of justice disputes. These non-lawyers' knowledge of both areas of law enables them to assist communities in navigating between the formal and customary systems. Harper (2011) has highlighted some examples of productive engagement with customary law in Africa, and has shown that impediments to accessing equitable justice through customary forums can be addressed by the creation of alternative institutions. These include i) NGO-created forums for dispute resolution based on customary values and procedures that can be expanded and built on; ii) paralegals (laypersons with some legal knowledge and skills to negotiate with court system) who can provide a bridge between the formal legal system and society; and iii) legal aid services and mobile courts designed to extend the reach of the state's justice services to remote communities (Harper 2011:35–38). Ubink (2011b) has explored the positive effects of participatory codification of customary law in Namibia, and uncovered a successful attempt to bring customary and state law together. In the 1990s, traditional Ovambo authorities of northern Namibia selected a number of the most essential and procedural customary norms for codification. Even though some of these codified norms (for example, on the status of widows) were adapted to conform to the constitution, local acceptance of their legitimacy

still seems to have been rather high. The fact that the norms chosen for codification were selected by local elders and not enforced by the government had an overall strengthening effect on the Uukwambi (traditional kingdom of Ovambo) customary justice system (Ubink 2011b:145–147). The formalization of customary law has not, however, contributed to the legal empowerment of women in either customary or state court contexts (Peters and Ubink 2015). In South Africa, the philosophical and legal concept of *ubuntu*, 'the right to be treated with respect and dignity',[11] is frequently used in state court cases (Himonga 2011:45–46).

Preconditions for productive cooperation

Transferring laws from one cultural context to another often means interfering with communities' key values, and carries the risk of knowingly or unknowingly creating disturbance and irritation. Such transfers mostly also occur in unequal relationships: they are usually initiated by a dominant state imposing new laws on local communities, even if both sides influence each other in the long run. However, even though the state seems to be in the more powerful position, if the targeted recipients cannot be convinced that the legal innovations are to their benefit, the imposition of new laws can lead to disappointment, withdrawal, resistance and conflict. Mutual recognition is one of the bases for peaceful relations and trust (Taylor 1997).[12] Thus, respectful and polite forms of interaction must be found in order to avoid distrust, disrespect and perceived insult. As trust, respect and deference are rather complex social and culture-specific phenomena (Broch-Due and Ystanes 2016, Finkelstein 2008), mutual knowledge about cultural values and practices are important for success. In addition, the character of social relationships, whether interpersonal or between groups, radiates from the past as much as the present, so successful intercultural encounters need careful and open-minded approaches, especially when negative experiences have shaped perceptions and stereotypes.

11 *Ubuntu* has been translated as 'humaneness', 'human dignity'. Being a traditional concept, it has to some extent influenced the way people are treated in the state legal system.

12 In his discussion on the contemporary politics of 'multiculturalism', Charles Taylor (1997:99) acknowledged the importance of 'recognition' as a 'vital human need' and not just a 'courtesy we owe people'. The absence of recognition (i.e. misrecognition) can actually be considered as a form of oppression, and can inflict harm (*ibid*.:98–99). In the politics of equal recognition, this has led to two forms of conceptions. The first, based on the perception that all humans are the same, equal recognition is commonly understood as an offering of equal rights for all. The second acknowledges the need to recognize difference and the need for special rights and entitlements for groups who have been disadvantaged or whose culture is at stake if they are to preserve their personal and cultural integrity (*ibid*.:105–107).

Customary law and legal pluralism in Ethiopia

The normative systems in Ethiopia are highly diverse. They include the formal state system, the customary normative orders of more than eighty ethnic groups, the *Sharia* courts, the certified commercial arbitration forums, and spirit mediums operating as mediators between humans and supernatural forces (Gebre 2014). International law now also has a place in Ehtiopia's legal landscape, as Ethiopia has adopted the Universal Declaration of Human Rights (UDHR) and related conventions and treaties, and has included laws protecting human rights of the individual in its 1995 Constitution and in numerous government and NGO programmes. Concepts

As mentioned earlier, customary laws and conflict resolution mechanisms continue to be applied both in the absence and presence of state institutions in both rural and urban contexts. Efforts by earlier regimes to ignore or forbid local normative orders, institutions and authorities have been rather unsuccessful in Ethiopia (Pankhurst and Getachew 2008, Getachew, this volume). Unlike in former colonies, Ethiopia's customary legal systems have continued to function unimpeded by outside influence in many places (especially in the peripheries). However, as elsewhere, changing conditions and external influences have led to changes in customary conflict resolution that have, especially in the twentieth century, led to new forms, hybrid institutions and some cooperative interaction between state and customary institutions (Pankhurst and Getachew 2008:73).[13]

The first Ethiopian Constitution was enacted in 1931 and revised in 1955 (Aberra 2012:166, 170). The country's first modern codified law was developed in the late 1950s and early 1960s. It was inspired mainly by various European civil law models, with efforts made to blend Ethiopian concepts of justice into the civic law (Aberra 2012:183ff). However, despite these efforts, it is clear that the incorporated elements were very limited and did not represent the diversity of customary laws in the country; customary legal institutions were also not given any recognition (Pankhurst and Getachew 2008:5). Similarly, the socialist Derg regime's (1987–1991) consitution emphasized the formation of a unitary state under one national law (*ibid*.:5–6).

The current Ethiopian Constitution, created in 1995, emphasizes cultural and ethnic diversity in a federal state. Article 34(5) makes direct reference to settlement

13 In some areas state law was extended, especially in areas of serious crime (such as homicide, breaches of law and order, and after 1975 in relation to land issues). The introduction of the *balabat* institution (local leaders selected for local administration) constituted a form of indirect rule. The formalization and monetization of economy led to changes in compensation payments –no longer given in kind but in cash – and the influence of writing led to the codification of law. Besides, the monotheistic religions (Islam and Orthodox and Protestant Christianity) replaced customary law in some places or removed some of its key elements (Pankhurst and Getachew 2008:73ff).

of disputes relating to personal and family laws in accordance with customary laws, and Article 78(5) states that the House of People's Representatives and State Councils can give official recognition to customary courts.[14] Local institutions and courts are thus officially recognized and, in some contexts, even considered as more cost and time effective than the state system (Gebre *et al.* 2012a). While there exist many studies on customary conflict resolution in Ethiopia (see the collected essays in Fekade *et al.* 2011, Pankhurst and Getachew 2008, Gebre *et al.* 2011, 2012b, Tarekegn and Hanna 2001, and the monograph by Nicolas 2011) – both appreciative and critical – there are very few on legal pluralism. Most of the case studies on customary dispute resolution in Pankhurst and Getachew (2008) have a short section on the interaction between state and customary legal institutions of half a page or so. Only Dereje (2008, in the same volume) gives a more detailed example, in his discussion of the *sefer shum*, a kind of hybrid legal institution (court) among the Nuer. Some very recent publications look specifically at the cooperative coexistance of state and customary laws and the emergence of hybrid institutions and procedures. Among the very few offerings from anthropology are the works of three authors: Seidel (2013), who examines the coexistence of Sharia law and state law; Kairedin (2018), who looks at the very complex situation in Siltie, where Sharia, state and customary legal institutions function and interact; and Prigge (2012), who describes the realities of legal pluralism among the Amhara. Legal experts, meanwhile, have made efforts to develop models of how the various legal systems could cooperate productively and contradictions be eliminated. Among them are Donovan and Getachew (2003), who discuss the handling of homicide in the context of legal pluralism in Ethiopia from a legal perspective, Mohammed (2011), who discusses the position of Sharia courts in the constitutional framework of Ethiopia, and several authors in the volume edited by Stebek and Muradu (2013), who examine the role of legal pluralism in the process of development and modernization of the Ethiopian state.

Somewhat paradoxically, it was with the introduction of ethnic federalism in 1995, and the official recognition of cultural diversity and customary laws in the constitution, that major changes in local normative orders began to occur. Since 1991, the current government has been putting increased effort into integrating all areas and people into the state apparatus. The penetration of the state into the local communities has taken different forms. First, the decentralization process has empowered local people to administer their own affairs using the national and subnational law. Second, the government has practically come to the 'doorsteps' of many rather isolated communities through major development and investment projects, the improvement of local infrastructure (construction of roads, establishment of telecommunication networks), and the expansion of social services (educa-

14 Constitution of the Federal Democratic Republic of Ethiopia (accessible online at http://www.ethiopia.gov.et/constitution, last accessed 22 October 2018).

tional and healthcare institutions, awareness-raising programmes). This has been accompanied by government efforts to increase enforcement of the state law, which meant that state law has come to be seen as offering a viable alternative legal forum for local communities.

Given that the federal decentralization of power was inspired by the right to self-determination of the ethno-cultural communities, one might expect that customary justice systems would have been given robust recognition. However, the formal state's approach to customary justice systems has not in fact shown much change from the pre-1995 scenario. While the state seems to be continuing with its policy of creating a pervasively applicable formal legal system (to the exclusion of customary institutions), many researchers have the impression that customary institutions not only continue to exist but are, in fact, flourishing. Although their position has been altered, customary leaders continue to play important roles in managing community affairs in many parts of the country, especially in the Southern Nations Nationalities and Peoples Region (SNNPR), parts of Oromia region and the border regions of Afar, Somali, Gambella and Benishangul-Gumuz, where most pastoral groups live (Tronvoll and Hagmann 2012a:7–8). Local legal institutions and courts are appreciated by both, the communities and state officials, who value them for their cost and time effectiveness and their sustainable resolution of conflicts (Gebre *et al.* 2012).[15]

The co-existence of different legal systems has led to constant negotiations across normative divides between state, religious and customary legal practitioners, government officials, justice-seeking members of local communities, local leaders and political functionaries. The provision that parties to a dispute have to agree to have their case handled in a particular legal forum makes communication between justice seekers and government officials necessary. The fact that a growing number of government officials are native to the area in which they work has led to a merging of knowledge about different value and legal systems; although, the normative dilemma for native government officials of having to serve different sides necessitates great sensitivity, flexibility and tolerance. The high caseload in state courts and an awareness of the effectiveness of customary conflict-resolution mechanisms motivates many legal practitioners to send cases back to the customary or religious legal forums for resolution, and this demands at least a certain degree of knowledge of, and respect for, customary laws. As the case studies in this volume will show, the better the communication, mutual respect and knowledge about the differences between the values and laws of the existing legal systems, the more sustainable and satisfying the outcome of

15 There are many appreciative and also critical studies on customary conflict resolution in Ethiopia (see the collected essays in Fekade *et al.* 2011, Pankhurst and Getachew 2008, Gebre *et al.* 2011, 2012, Tarekegn and Hanna 2001, and the monograph by Nicolas 2011).

resolved conflicts. Misunderstandings, resistance and conflict are common – and previously abandoned harmful traditional practices might even be taken up again (see Epple, this volume, on infanticide in Bashada and Gabbert 2014, on female genital cutting in Arbore) – where distrust continues to prevail, cultural differences are great, and the flexibility of legal practitioners is low (see for example Aberra, Yohannes, this volume).

Finally, the study of legal pluralism in contemporary Ethiopia needs to be understood in the context of its history, which has long been marked by the domination of the centralist state over the country's diverse cultural groups. Some studies looking at the continuities and changes of the mutual perceptions of local populations and the government under subsequent regimes have shown that past experiences still influence the way present day Ethiopian citizens relate to their government.[16] As Strecker and Lydall (2006a:1) put it, in situations of cultural contact, 'notions of pride, honour, name and self-esteem come into play, which – once people are hurt – have great explosive power leading to destruction and self destruction'. However, people have the chance to 'act imaginatively and creatively' if given enough space and time to understand and adapt, even if the changes they experience are unwanted and painful (Strecker and Lydall 2006a:3).

Organization of the book

The contributions were made by lawyers and social anthropologists working on legal pluralism in Ethiopia. The book is divided into four thematic sections. Fol-

16 See the collection of articles in Strecker and Lydall (2006b), which examine how the different peoples in the Ethiopian south remember their past, especially their forced inclusion into the Ethiopian Empire at the end of the nineteenth century under Emperor Menelik II, and their lives under a dominant central state until the end of the socialist Derg regime in 1991. The one hundred years of unequal cultural contact between government and local populations led to various mutual conceptions and stereotypes, which still influence the way people think of each other, interact, communicate, adapt, avoid or reject each other. For example, Miyawaki (2006) has shown how the memories of the Ethiopian conquest still shape the way the Arbore people interpret present-day disturbances in their country. Taddesse (2006) recounts the Guji experience of past humiliation and strongly suggests that minority groups must be given opportunities for voluntary rather than enforced assimilation. Strecker (2013) published the memories of a Hamar elder about the Ethiopian conquest and the Italian occupation. Lydall (2010) depicted the relationship between the Hamar and the government and described it as paternalistic in that Hamar traditions are challenged by the dominant 'highlanders' with the assumption that they know better what is good for them than the Hamar themselves. Epple (2012) showed that, in the context of modern education, the Bashada cooperate with the government as long as the people feel they are being taken seriously and treated respectfully, and do not fear that the key values of their culture are under threat.

lowing the introduction, which constitutes chapter one, the first section gives an overview of the history and constitutional context of legal pluralism in Ethiopia, a critical view on the international status of indigenous rights, and a conceptual discussion of customary law in the context of legal pluralism. The second, third and fourth thematic section provide insights into the experiences and daily practice of justice-seeking individuals and legal practitioners. Based on original and recent fieldwork, they show that the relationships between the existing legal forums in Ethiopia are very dynamic and prone to constant negotiation by the actors concerned, who strive to achieve their rights, keep their personal and cultural integrity and defend their interests. Many of the authors have also made efforts to indicate the historical context for their case studies. Descriptions of customary legal systems and the normative differences and tensions with state and international law are provided as these create the framework in which actual interactions take place. However, the greatest emphasis has been given to the real-life experiences of justice seekers and legal practitioners.

The first section on *The interplay of international, national and local law* contains three contributions. First, Getachew Assefa discusses the past and continuing relationship between the formal and customary justice systems in his chapter entitled 'Towards widening the constitutional space for customary justice systems in Ethiopia'. He begins by providing an historical overview of the relationship between the two justice systems up until the early 1990s, and explains the formal linkages created among them by the 1995 Ethiopian Constitution. He argues that the constitutional position, which requires that only customary (and religious) family and personal laws are recognized and only customary and religious courts only have power to preside over such matters, and not – for example – criminal matters does not reflect the reality in the country. He suggests that the vibrancy of customary justice systems in all areas of dispute settlement in all corners of the country must be reflected in the formal legal institutions. The author cautions, however, that the de jure recognition of customary justice systems must be done in a way that ensures customary justice is not subordinated to the formal system, and that only mechanisms – such as a constitutional review system – be put in place to ensure that customary justice systems function consistently with constitutional and international human rights standards.

The next chapter, written by Gebre Yntiso, aims at 'Understanding customary laws in the context of legal pluralism'. While the plural legal orders in Africa are the object of growing attention from researchers, the author argues that better and more comprehensive knowledge is needed for comparative analysis, scientific generalization and policy application. The deficiency lies mainly in the inconsistent use of terminology, especially around conceptual issues in the study of customary law. In his contribution, the author clarifies the meaning of concepts borrowed from the literature on alternative dispute resolution (ADR), and examines the extent to

which these concepts could be used to refer to customary legal practices. Next, he identifies and organizes the core values, structures and procedures of customary laws, and examines their relevance in the analysis of legally plural situations.

Karl-Heinz Kohl looks at the UN 'Declaration on the Rights of Indigenous Peoples', and examines why many African governments remain reluctant to accept it as a basis of policy. Unlike in many former colonial settings around the world, where 'indigenous' peoples usually form a minority, the vast majority of people in Africa are indigenous to the continent: they were born there and regained freedom to live according to pre-colonial tradition after independence. Consequently, labelling all African peoples as indigenous would mean that there is no need to protect and privilege some of them. However, Kohl argues, the situation of smaller groups in Africa is comparable to, if not worse than, that of indigenous groups on other continents, as they are often considered as an obstacle to development and modernization, their cultures discriminated against and their access to natural resources and traditional lands threatened.

In the first of three thematic sections, the case studies explore *Cooperation and competition between legal forums,* and look at the productive aspects of the interplay between various legal forums in urban and rural contexts, which have led to the sustainable resolution of conflicts to the satisfaction of all parties involved, though not without elements of competition and abuse of gaps in the law. More specifically, the case studies presented look at i) the continued strength and widespread popularity of customary law; ii) the efforts made by legal practitioners and the justice-seeking clientele of parallel legal systems to communicate and cooperate, learn and be inspired from each other; iii) the daily handling of legal plurality, the negotiations between the actors, and the strategic application and manipulation of law.

The first case study in this section looks at 'The handling of homicide cases in the context of legal pluralism: Cooperation between government and customary institutions in the Gamo highlands'. The author, Temechegn Gutu, looks at how state and customary institutions cooperate in the area of criminal law. Although officially the exclusive domain of the government, in practice, homicide cases are also handled locally. This is not only because the Gamo people believe that rituals of purification are needed to restore social order and prevent misfortune, disease and natural calamities caused by the offender's pollution, but also because state institutions need the local population to cooperate in the collection of evidence and to help identify and detain suspects. As he shows in several case studies, the police and courts not only give local communities room to restore and maintain peace through their own conflict resolution mechanisms, but also make creative use of customary mechanisms to get hold of perpetrators and thus to serve the state's interests in prosecuting criminals.

The next contribution, by Melaku Abera, is on 'The interplay of customary and formal legal systems among the Tulama Oromo: Cooperation and competition'. Using several cases as examples, he highlights cooperative as well as problematic aspects of the relationship between the two legal systems. The author shows how the transfer of cases and notification of decisions made between jurisdictions contribute to mutual recognition and respect between state and local courts. Their activities even overlap at times: disputes may be settled jointly, or legal practitioners may be part of both systems, as elders in the local elders' court and judges in state courts, for example. At the same time, he points out, this emerging cooperation is vulnerable, especially when customary and state courts fail to respect each other's decisions, which leads to a lack of mutual trust and, in some cases, to wrongdoers being punished by both legal forums. The absence of clear regulations over the responsibilities of state and customary courts in some areas of law has led to the rejection of both systems in the handling of certain disputes.

In his chapter on 'Sharia Courts in Addis Ababa', Mohammed Abdo looks at the nature of the cases, the kinds of litigants and the procedures used in Sharia courts in Ethiopia's capital. After giving a detailed account of the history of Islamic courts in Ethiopia, he examines their current condition and how well accepted they are in light of recent developments, such as the growing consciousness of human rights and women's rights and the increasing Muslim demand for self-autonomy over religious matters. His findings show that most cases submitted to the Federal Sharia Courts – whose jurisdiction is confined to personal and family matters – concern divorce, with the great majority being submitted by well-educated Muslim women. Despite their modern outlook and economic independence, many Muslim women prefer to have their marriages dissolved in Sharia courts out of religious conviction. Mohammed also shows that Sharia courts have developed ways to interpret and employ the state procedural rules, by which they are bound, so that they appear to be in line with Sharia procedures.

Desalegn Amsalu has done research on the 'Use and abuse of "the right to consent": Forum shopping between *shimgilinna* and state courts among the Amhara of Ankober, north-central Ethiopia'. The transfer of a case from state court to customary legal forum demands the consent of all parties in dispute, and cases can be transferred back to the formal court if one of the parties withdraws consent. However, the author demonstrates, the lack of further elaboration of this rule in law has left room for manipulation and abuse. Plaintiffs or defendants may give and rescind their consent several times during the course of litigation, switching between courts in the hunt for a favourable decision. In Ankober, where many cases have been moved back and forth several times between the state court and the elders' council, this abuse of the right to shop between different legal forums has led to a general weakening of both the customary dispute resolution culture and the formal justice system.

The third thematic section looks more specifically at the *Emerging hybridity of legal institutions and practices*, examining how the boundaries between legal forums can become less rigid, and how new forms of legal concepts, values and practices can emerge through the effects of close cooperation, mutual understanding and influence. Case studies focus on i) the creativity of legal actors and recipients/users in making national and international law applicable to the local context; ii) the emergence of hybrid forms of law and legal procedures in some places, and iii) cross-cutting legal procedures.

Susanne Epple looks at 'Local strategies to maintain cultural integrity: The vernacularization of state law among the Bashada and Hamar of southern Ethiopia'. She argues that local communities have developed different kinds of mechanisms to handle unavoidable change brought from outside with the aim to protect their key values and cultural practises. As could be demonstrated, these strategies of avoidance range for very soft ones, such as hiding crimes or criminals and pretending cooperation to open confrontation when the pressure gets very high. Wherever possible, people try to avoid government interference in areas where they feel their cultural integrity is threatened. Innovations that cannot be turned away are adapted to, reinterpreted or customized in ways that allow the people to be, or at least to feel in control of their own affairs.

Julian Sommerschuh writes about the role of religion. In his chapter on 'Legal pluralism and Protestant Christianity: From fine to forgiveness in an Aari community', he demonstrates that, alongside customary conflict resolution mechanisms and state courts, Protestant churches offer an additional forum for dispute resolution. In an area where about 60 per cent of the population has converted, Protestantism has become an important player in the legal arena. By privileging forgiveness over retribution, prohibiting litigants from going to court without asking permission, and introducing Protestant logic into the formal courts through the judges' personal religious convictions, the author argues, the Church is gaining influence over the functioning of local formal institutions.

Muradu Abdo's chapter on '*Kontract*: A hybrid form of law among the Sidama' discusses three legal forums that are used to govern land transfer among the Sidama: Sidama customary norms and institutions (*utuwa*), state land laws, and a hybrid form of land rental agreement (*kontract*). Examining the genesis and nature of *kontract*, he shows that it holds elements of both customary practice and legal contracts used for land transfer. He then elaborates on the related processes employed during land transference, and on their implications for the livelihoods of smallholder farmers who are suffering from agricultural land alienation and loss. He presents two contrasting theoretical perspectives to interpret the practice of *kontract:* i) efficiency-oriented thinking, which characterizes *kontract* as a practice that gives free juridical expression to a peasant's demand for the lifting of state-law-imposed restrictions on the transferability of farmland; and ii) the legal

positivist view that *kontract* emerged as an effective legal regime with detailed, clear and specific rules sanctioning those who enter into land sales is lacking. He then develops a third approach that sees *kontract* as constituting a third layer of the land tenure regime, lying between *utuwa* and state land law.

Kairedin Tezera looks at 'Legal pluralism and emerging legal hybridity: Interactions between the customary, state and religious law among the Siltie of southern Ethiopia'. He first provides a detailed description of the intra-plurality of the religious, state and customary legal forums among the Siltie and then explores how actors from the different courts communicate and complement, support and compete with each other for local power positions. His findings show that dispute settlers from the three courts borrow norms and legal concepts from each other in order to pass verdicts in their respective courts. This points to the porousness of the boundaries between the various legal systems, and to the emergence of a hybridized legal practice in the area.

Andrea Nicolas looks at how the normative and legal systems of Amhara and Oromo people influence each other. In chapter thirteen, 'A matter of perspective: Of transfer, switching and cross-cutting procedures. Legal processes among Oromo and Amhara of East Shewa Central Ethiopia', she introduces different forms of legal institutions co-existing in the study area. These include traditional Oromo law and legal forums, the Orthodox Church, the courts of spirit followers, the federal state law, courts and village tribunals, as well as some 'intermediate' forms, such as newly founded 'clan assemblies' and modern NGOs. By providing several case studies, she shows how justice seekers cross the institutional boundaries and consecutively appeal to different legal institutions – in her view possibly a legitimate choice for those involved. Alongside the option to forum shop, she suggests that a kind of 'meta-procedure' has emerged, such as when, for example, Amhara priests and Oromo legal experts jointly participate in common settlement procedures. Here, the cross-cutting of different legal institutions is no longer the exception but has become the standard, in that different legal institutions have become 'elements' of one and the same legal procedure.

Despite the many efforts to cooperate and develop mechanisms to cope with the diversity of legal forums in Ethiopia, disparities often end in miscommunication and mutual disappointment. The fourth thematic section therefore focuses on *Incompatibilities and conflict between legal forums in Ethiopia*, and shows that the way things are handled often depends on the goodwill and flexibility of individuals on the ground. Thus, the contributions in this part focus on areas where legal forums have been unable to come to satisfying solutions, either because the contradictions are too great, or because the parties involved are exploiting, denouncing or working against each other. More specifically, the authors explore i) the difficulties stakeholders face in attempting to harmonize international, national and local law; ii) the conflicts that arise when communication fails or the involved parties treat

each other with disrespect or ignore each others' needs and constraints; and iii) the negative effects on the local population when legal systems fail to cooperate.

Aberra Degefa's chapter titled 'When parallel justice systems lack mutual recognition: Negative impacts on the resolution of criminal cases among the Borana Oromo' looks at the competition between the two justice systems in the area of criminal law, and the negative effects this has on the community. The Borana have fully functional laws and procedures based on their Gada age-system, where clan elders make sure that all clan members respect the customary laws. Criminal cases, though handled by the state courts, continue to be treated locally as well. As is shown in several case studies, the denial of mutual recognition has meant that many offenders have been subjected to the jurisdictions of both systems and have, consequently, been sanctioned twice: through imprisonment by the state and through compensation payments in the community.

In 'Combatting infanticide in Bashada and Hamar: The complexities behind a "harmful traditional practice" in southern Ethiopia', Susanne Epple explores the problems that arise from contradictions between international law/human rights and customary laws and values in local contexts. Specifically, she examines the negotiation on harmful traditional practices (HTPs) in Hamar Woreda, looking at the perspectives and priorities of both local communities and external agents. After elaborating the cultural meaning and explanations of infanticide among the Bashada and Hamar people, she explores the views and priorities of state representatives: administrative personnel at the zonal and district level, and legal practitioners (prosecutors and judges). Examining the different strategies that have been employed to eliminate infanticide in South Omo, as well as the population's reactions and various local strategies, she shows that certain changes could be achieved through the creativity, flexibility and patience of actors on both sides, even though frequent set backs are part of daily reality.

Yohannes Yitbarek's research on 'Clashing values: The 2015 conflict in Hamar district of South Omo Zone, southern Ethiopia' constitutes chapter sixteen. The author explores the causes of certain major conflicts between the Hamar people and the local government, the reasons for their escalation in 2014/15, as well as the efforts made by both sides to resolve the crisis. As he demonstrates, differing perspectives on what it means to live a good life, how local resources should be used, and how conflicts should be resolved led to many deaths during violent encounters in 2015. Such deaths, he suggests, could be avoided in the future if differences in values are respected and solutions sought through equitable communication.

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