12. Legal pluralism and emerging legal hybridity
Interactions between the customary, state and religious law among the Siltie of southern Ethiopia

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Introduction

Examining the versatile relationship between the customary, state and Sharia legal systems, and focusing on Siltie people in southern Ethiopia, this paper provides an anthropological understanding of the legal dynamics of state–society relations. Based on the experiences of dispute settlers and disputants, the paper investigates how the three legal systems interact in the area, and explores why and how disputants show a preference for one form of conflict resolution over another. It also looks into how dispute settlers use dispute settlement forums not only to end conflicts, but also to protect the custom and the language of the people and preserve and promote Siltie identity.[1]

The situation in Siltie is especially interesting because of the great complexity of legal institutions. The Siltie legal landscape consists of three normative systems: the state law, the customary law and the religious (Sharia) law. The complexity of the legal sphere is also observable in the intra-plural nature of these three legal systems. The religious legal system, for example, is comprised of Sharia courts, courts of local *mashayik* or *waliye*,[2] courts of local sheiks such as Abdul Qadir Jailani and Sheik Hussein of Bale, and the Salafi Social Committee, which was set up by Siltie-educated Muslim youth in the 1990s (Zerihun 2013:141).

1 This paper is the result of the research done for my PhD, which was conducted between August 2014 and March 2017. It was funded by the Bayreuth International Graduate School of African Study (BIGSAS) at Bayreuth University in Germany. I conducted several months of ethnographic fieldwork and mostly used qualitative methods, but also included some archival sources to substantiate the empirical data. Being from Siltie Zone myself, I was able to use my native language skills and prior knowledge of the local culture of Siltie to easily integrate with the local community.

2 A *waliye or* a *mashayik* is a human religious figure, dead or alive, popularly recognized as honourable Islamic symbols by the majority Muslims. It is usually represented by a tomb, and in some cases by a mosque, and is associated with a shrine.

While customary law has the longest history in the area, state law was introduced in the late-nineteenth century and Sharia law has been used since the 1950s. Since 1995, all three legal systems have been recognized and have a constitutional right to function and offer their services to the public, and parties in a conflict can choose which legal forum they want to hear their case. However, the customary and Sharia courts are constitutionally mandated to deliver legal services only in civil and family cases. Yet, the findings of this study show that customary courts deal with all forms of conflict – including those that are the preserve of state law – at the grassroots level in the study area. They also show that the relationship between the different institutions is both cooperative and competitive since the courts exchange some cases while contend also over the others when they handle some cases like murder cases. Additionally, not only do the clients to the courts choose the forum that seems to best represent their interests, but some of the legal practitioners from the various courts also pursue their personal interests when dealing with conflicting parties. While state legal actors, often rely on non-state actors in dispute cases that the state legal system cannot adjudicate. In addition, the interactions of the legal systems reveal contradictory perspectives and crossings into territories claimed by the other. Religious dispute settlers, for instance, borrow ideas and legal norms from the state and customary legal systems whenever they handle dispute cases. In turn, customary legal actors use Islamic legal precepts and at times state legal norms to settle disputes. This hints at the porousness of the boundaries between the various legal systems.

The empirical data presented here further indicates that some dispute cases do not remain in one court, as disputants often take their cases from one legal system to another. Marital disputes in particular are often moved between state and customary courts, and some disputes are moved from one customary court to another, all of which indicates that 'forum shopping' exists not only between the various legal systems but also within the same legal system. This is partly because many state and Sharia court judges favour the customary courts for their efficiency in handling legal cases, and this has greatly increased their legitimacy in the area and has affected disputants' choice of forum.

Islam plays a key role in Siltie and has been important in the construction of the Siltie people's identity (Markakis 1998:130–33). Islam also plays an important role in the area of dispute settlement and as a control mechanism that regulates social and moral aberrations among the Siltie and their neighbours. The Sharia courts, which have been in place since the1950s, thus play a paramount role as faith-based dispute settlement institutions, though nowadays some of the younger Muslims accuse the *qadis* (Sharia court judges) of being acquiescent to the state agenda.

My findings indicate that, despite the fact that the constitution of the Federal Democratic Republic of Ethiopia (henceforth FDRE) recognizes both customary and religious institutions of dispute settlement (FDRE 1995 Articles 34(5) and 78(5)),

the customary legal system delivers justice to the grassroots level more frequently than other tribunals, and that Sharia courts cannot do so to the same extent due to a number of internal and external factors. These factors include not only competition with the other legal systems, but also the plurality within the Islamic legal system itself, as represented by the Salafi Social Committees that have developed since the 1990s and the local Sufi shrines.

There is also a kind of competition between individual actors within these systems. I found that elders and religious figures (sheiks and imams) use their mediation services not only to settle conflicts, but also to acquire and consolidate their power and influence in the area. The competition between legal actors is accelerated by a shortage of trained manpower in both the state and Sharia courts that negatively affects the courts' ability to deliver justice to the community. There are reportedly only thirty state judges and seven *qadis* serving about one million Siltie people. This has the effect of rendering these courts irrelevant in the eyes of many local people, who often question their legitimacy and jurisdiction. This is also evidenced by the high number of people who prefer to take their cases through the local religious and customary modes of dispute settlement rather than to the *Sharia* and state courts.

Yet, there exists also cooperation between the legal systems. For instance, the customary courts' handling of a large number of civil cases helps the state courts reduce their caseload. Elders likewise seek the assistance of state court judges in certain contexts, such as when they handle cases of domestic violence. Nevertheless, since the customary legal system has normative proximity to the community, it enjoys a wider legitimacy and hence resolves disputes in restorative ways.

Finally, the fact that dispute settlers from the three courts borrow norms and legal concepts from each other to handle dispute cases in their respective courts points to the emergence of hybridized legal practices in the area.

The Siltie Zone and people
Geo-political setting, social and political organization

Siltie Zone is located in the Southern Nations, Nationalities, and People's Regional State (SNNPRS) of Ethiopia. The Siltie people mainly live in the Siltie Zone,[3] although quite a large number of them are also found in various urban centres in the country. Although historical documents clearly indicate that the Siltie are a separate ethnic group (e.g. Markakis 1998, Braukämper 2002, Abdulfeta 2002, Kairedin 2012), the Siltie were incorporated into the administrative zones of

3 Zone is the second administrative division after Regional State in the contemporary federal structure of Ethiopia.

Hadiyya, Gurage, and the then Hallaba Kambata in the early 1990s. In the early days of the post-Mengistu regime, they felt neglected both economically and politically. The urban youth and entrepreneurs, as well as rural self-help organizations, initiated an ethnic identity movement called 'The Siltie Movement' that lasted for ten years (1991–2001). Its aim was to define Siltie ethnicity and to develop the socio-economic conditions of the society. According to Bustorf (2011:457), the Siltie activists' first important political goal was 'to assert their ethnic unity and to realize equality with neighbouring ethnic groups by acquiring their own administrative zone'.

Their political struggle resulted in a referendum on1 April 2001, when they regained the ethnic and administrative independence that they had lost following the incorporation of Siltie land by the forces of Emperor Menelik II in 1889 (Bustorf 2011:457–458). Based on the 2007 national population census, the total population of the Siltie was projected to be more than one million in 2017 (CSA 2008). Agriculture is the mainstay of the local economy. Muslims make up 97.6 per cent of the population, while 2.03 per cent belong to various Christian denominations (Siltie Zone Finance Abstract 2016). Some works (e.g. Abdulfeta 2002, Braukämper 2001, Kairedin 2013, 2017, 2018) indicate that the Siltie were one of the societies that came into contact with Islam very early, probably as early as the ninth century. There has been some erosion of cultural norms and practices due to the influence of reformist strains of Islam imported from the Gulf region over the last 25 years. However, the Siltie have maintained their customs, local beliefs and values, including the faith-based and customary modes of dispute settlement.

Siltie society is internally differentiated and consists of several stratified descent-based subgroups. These include the dominant majority of farmers and traders (*woleba*) and the marginalized craft workers (*awneya*), including blacksmiths, tanners and potters. People also differentiate between believers in Islam and non-believers. Believers are further differentiated into higher and lower classes. High-class individuals are called *sharafic* and belong to a group of people who trace their genealogy to the Hashemite and the Prophet Mohammed's family and who migrated to the Siltie area in three different exoduses after the ninth century. Low-class individuals are called *yeafer seb*, are of non-*sharafic* descent and are believed to be native to the area, having lived there long before the coming of the new settlers led by the legendary Siltie father Hajji Aliye from eastern Ethiopia during the sixteenth century. Finally, believers distinguish between Siltie highlanders (*ansewa*) and lowlanders (*qalla*).

Craft workers have no right to own land or local titles. They are socially marginalized, not allowed to intermarry with farmers and traders, and cannot be chosen to serve as dispute settlers. They are also treated differently in the elders' councils. For this reason, as my informants indicated, members of minority

groups prefer the state legal system over the customary courts, since the latter are said to favour members of the dominant majorities.[4]

Recently, another form of social stratification has emerged. Due to the expansion of development and education in the area, Siltie are now categorized as urban or rural, as well as elite or ordinary people. Resulting from the recent economic progress in the area, one can also see a middle class emerging in the space between lower and upper class Silties. Furthermore, there is gender segregation in the social life of the Siltie. Women are predominantly housewives who control their household's economy, while men work in the fields as farmers or as traders. However, in urban centres, Siltie women have begun to participate in new activities, including business. Rural women prefer customary courts for handling marital disputes than urban ones who mostly resort to State courts. But due to the patrilineal nature of the customary courts, rural women prefer property cases to be handled by the state courts. This is because the state courts take cases involving women seriously as part of the government's commitment to redressing the general imbalances in society. In the urban areas, more-educated women prefer both the Sharia and state courts, rather than customary courts, to handle property disputes.

Legal pluralism and hybridity

Some conceptual notes

Conflict transformation, conflict management, and conflict resolution have been distinguished in the existing literature. Appleby (2012:212) defines conflict transformation as the transformation from violent to non-violent means of dispute settlement, while conflict management entails the prevention of conflict from becoming violent or expanding to other areas. Conflict resolution refers to the removal, as far as is possible, of the inequalities between disputants through the use of mediation, negotiation, advocacy and testimony.

In complex industrial societies, the formal law is usually retributive and consistently employed, indicating the social distance between members of the societies (Lewellen 2003). In 'traditional' societies, restorative justice – that is, the conciliation between conflicting parties – is the main purpose. For this, techniques that involve mediation, conciliation or even forgiveness are commonly used to handle

4 The reason behind this is that the craft workers are said to have 'impure blood' (*deme keleb*). If a craftworker kills a farmer, the victim's family will not prosecute him/her in the customary court, because at the end of the dispute settlement the families of the perpetrator and the victim have to forge a new form of kinship. To avoid this social tie, the families of such victims usually deliberately drop the case.

disputes. The modalities by which disputes can be settled are divided into violent and peaceful. Violent modes include duel or combat, self-help and warfare, while peaceful modes include avoidance, negotiation, mediation and adjudication (Gulliver 1979:11).

With the growing interconnectivity of the world, contemporary conflict resolution entails the involvement of different legal systems even in remote areas. This challenges the hitherto alleged monopoly of the state legal system as a dominant dispute resolution mechanism (F. von Benda-Beckmann and K. von Benda-Beckmann 2006:9) and leads us to definitions of legal pluralism. Authors have attempted to define pluralistic socio-legal structures at least since the 1930s. However, due to its cross-disciplinary nature, scholars have struggled to come up with a universally agreed definition of legal pluralism (Griffiths 1986:9, Tamanaha 2008:376, Twinning 2010:11). In an attempt to resolve the intellectual battle over the concept of legal pluralism, Tamanaha (2008:396) introduced what he calls a 'simple approach', stating that, 'legal pluralism exists whenever social actors identify more than one source of "law" within a social arena'. He further defines legal pluralism as multiple uncoordinated, coexisting or overlapping bodies of law that may make competing claims to authority (Tamanaha 2008:375). Taking ideas from Moore's 'semi-autonomous social field', Griffiths (1986:38) asserts that, since 'law is present in every semi-autonomous social field, and since every society contains many such fields, legal pluralism is a universal feature of the social organization'. In this way, legal pluralism challenges the assumed state monopoly of making, administering, imposing and sanctioning the law. If one closely inspects the various definitions of legal pluralism, one notes that they imply that law covers a continuum from the state law to the informal social controls mechanisms of the customary legal spheres (Moore 1978, Woodman 1998, F. von Benda-Beckmann and K. von Benda-Beckmann 2006, Twinning 2010).

A number of authors (for example, Santos de Sousa 2006, F. von Benda-Beckmann and K. von Benda-Beckmann 2006) point to the fact that law is increasingly becoming hybridized. This hybridization, or mutual influencing among coexisting legal systems, is not a recent phenomenon. It could be observed during the colonization period (Tamanaha 2008:384), where the customary law and the colonizers' law influenced each other in various ways, with each exchanging or recognizing the other's norms. Nevertheless, the increasing economic and social pressures that have accompanied globalization and that surpass national boundaries (Santos de Sousa 2006, Tamanaha 2008:386) have further accelerated the porosity of legal systems' boundaries. This has led to the coming of what Griffiths (1998:134) calls 'cross-fertilization', a process whereby rules in one system are shaped by those of another, and are also shaping those of the other. Legal hybridism underpins the existence of multidirectional interactions rather than hierarchical relationships among legal systems, whereby an actor from the state

legal system, for instance, borrows legal ideas from religious or customary legal systems and vice versa, as is witnessed among the Siltie people. The form of legal hybridism that is currently emerging indicates that each legal system influences the practices of the others whenever legal practitioners handle dispute cases. In this regard, we can see the birth of a 'hybrid legal system' among the Siltie in which each legal system incorporates elements of the other two, yet still stands by itself.

Ethiopias experiences of legal pluralism

Ethiopia's historical and political milieu is particularly rich, for the country is one of the oldest independent political entities in the world, having existed as such for more than two thousand years (Bahru 2000, Pankhurst and Getachew 2008:2). It is a legally plural state not only because it hosts different ethnic groups that have various coexisting normative orders, but also because the country has embraced constitutionally sanctioned federal and state laws that co-exist with other normative orders – including customary and religious ones – that have been formally recognized since 1995.

The current legal system reflects Ethiopia's history and politics, including the various doctrines – be they religious or ideological institutions the country has passed through since at least the nineteenth century. Many studies indicate that the customary legal systems serve as alternative institutions of dispute resolution in Ethiopia, where the state legal system is failing to fully provide the judiciary needs of the nation (see for example Meron 2010). Pankhurst and Getachew (2008:2) go further, saying that the various customary systems are the dominant legal systems delivering justice at the grassroots level in the country. Even though the religious and customary legal systems have long existed in Ethiopia, it was only in 1995 that the country officially embraced legal pluralism, in its Constitution. In the Constitution, Article 34 – entitled 'legal pluralism' – and Article 78(5) specifically contemplate the linkages between statutory courts, religious courts, and non-state dispute resolution forums. Article 34(5), for example, stipulates that the Constitution 'shall not preclude adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the disputes.' Article 78(5) underlines that 'pursuant to sub-article 5 of Article 34, the House of People's Representatives and state councils can set or give official recognition to religious and customary courts.' Article 78(5) goes on to say that 'religious and customary courts that had state recognition and functioned before the adoption of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.' Following the national constitution, regional constitutions have also provided room for religious and customary laws to operate in their communities.

Following the arguments of Griffith (1986), Ethiopia could be understood as having 'weak legal pluralism' (Griffith 1986:6), since the state legal system accords supreme status to the Constitution, as seen in Article 9(1) of the 1995 Constitution: 'The Constitution is a supreme law of the land. Any law, customary practice or decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.' Indirectly, however, it empowers the state law to validate the activities of other laws and legal forums. In this regard, although the government recognizes the customary and the Sharia courts, they are given a limited mandate (e.g. to handle family and civil matters) so long as both parties give their consents. Yet, the courts do not have a means by which to enforce their decisions. However, as will be shown in this chapter, even though the greatest power lies with the state law, when it comes to daily practices, the different legal systems have been influencing each other.

The Siltie legal world
A descriptive analysis of three legal systems

The state legal system

The late-nineteenth century marked a turning point in the modern history of Ethiopia as much of today's South was then incorporated into the Ethiopian empire under Emperor Menelik II, ushering in the beginnings of the modern Ethiopian state. At the same time, the foundations for legal pluralism in the country were laid. It was then that the state introduced its legal system in Siltie and many other places as a way of strengthening its grip on power and building state processes (Bustorf 2011:468). Since then, new forms of land tenure, the modern centralized state bureaucracy, a new judiciary system and economic order have grown up.

Most of my respondents indicated that, during both the Imperial (1931–1974) and the Derg regimes (1974–1991), the capacity of the state judiciary systems to deliver justice to the Siltie community was limited to the urban areas of neighbouring ethnic groups. This was because the Siltie area was broken up into adjacent areas following its fierce resistance to Menelik's expansion that led the area not to have an administrative centre of its own. This situation continued during the early days of the EPRDF regime: between 1991–2001 there were, for instance, only three state courts of first instance with a small number of trained judges in Silti, Dalocha and Lanfuro Woredas. This forced many people to travel long distances to get justice since there were not state justice offices in Siltie-settled areas.

After the establishment of Siltie Zone in 2001, the Siltie people set up nine first instance courts plus a High Court in Worabe town. There are now also more than

Figure 1: Meeting of clan courts in Lanfuro Woreda, Edeneba Kebele to handle both murder and civil cases (Kairedin 2015)

150 social courts in 181 *kebeles*. Most of the social courts were established by the state after 2001, with the intention that they would handle minor cases, for example, civil cases up to 500 ETB. However, their roles and functions have declined because of various legal reforms made in response to competition from customary courts in the country. The state system also exhibits some intra-plurality, as customs and revenue sections and the Good Governance and Appeal Office are also involved in dispute resolution processes.

According to the president[5] of Siltie Zone High Court, there are only thirty judges working in ten courts, including the High Court, in the whole zone. This clearly shows that the state court still cannot effectively serve the more than one million Siltie people. Appointment to the position of president in the state courts' is a political decision since it is the zone officials who propose candidates and the Regional Council that approves them. State court judges are trained lawyers. The

5 Interview with Akmel Ahmedin, Siltie Zone High Court President on 7 April 2015 in Worabe town.

dearth of qualified judges in the study area seems to be one of the factors contributing to the decline in demand for the state courts in the area,[6] alongside the problem of accessibility, the normative distance and the perception of state judges as more corrupt than those of customary and Sharia courts.

The religious legal system: Plurality of intra-faith institutions and modes of dispute settlement

Local religious institutions also have a bearing on dispute settlement processes. In the following section, I will look into the plurality of intra-faith-based institutions of dispute settlement and how they interact and compete with each other over dispute cases.

According to my key informants,[7] the first Sharia court was set up in the 1950s. During the Imperial period, the Siltie people were categorized under Haikochina Butajira, Chebona Gurage and Kembata and Hadiyya *Awrajas*.[8] With no *woreda*-level administration, the *awraja* (Provincial) *qadi*s appointed one or two *qadi*s within a given area of a *balabat* (landlord). Informants mentioned that the *qadi*s were very respected by the society, as they were considered to be fair and committed to serving the community. During the Derg regime, the Siltie were categorized under the southern Shoa administrative structure and had access to the Dalocha-Lanfuro Awraja Sharia Court, which persisted until the demise of the Derg in 1991. The Islamic Affairs Council and the Sharia courts had been set up in Dalocha and Lanfuro areas, while the majority of the Siltie were living in Gurage Zone from 1991 to 2001. It was after the establishment of Siltie Zone in 2001, that the Siltie established an independent Islamic Council and their own Sharia courts. The Siltie High Sharia Court handles cases not only from the six first instance Sharia courts in the zone, but also from those in the neighbouring Hadiyya and Gurage zones. The proximity of the areas as well as the cost-effectiveness of servicing several zones are the main factors behind this development.

6 Baker (2013:202) indicates that political interference in the judiciary system in Ethiopia is meant to bring local development. The lack of enough qualified human resources in the state legal system and a low retention rate is a result of low salaries in the state system driving many judges leaving to join the private sector as legal representatives. This is less observable at lower administrative tiers, e.g. regional and zonal levels.

7 These were Kaire Sule, an important informant who has a deep knowledge about Siltie culture and history, and Shifa Seid, who worked in the Islamic Affairs offices including as Secretary of Siltie's Islamic Affairs and Sharia courts at different levels between 1970s to early 1990s in Lanfuro and Dalocha Woredas.

8 *Awraja* was the third administrative tier below the province/region during the Imperial (1931–1974) and the Socialist Derg (1974–1991) regimes.

The Sharia Courts handle issues such as marriage contracts (*nikah*), inheritance and divorce cases. They also examine civil cases up to 5000 ETB (approximately 350 USD in 2018), wills (*wesiya)*, gifts (*hadiya*), endowments (*waqf*) and family Maintenance cases. My research has shown that the Siltie Sharia courts are very much occupied with marriage contracts as well as divorce and inheritance cases. According to several interviewed *qadis*,[9] the number of cases referred to Sharia courts has decreased since the introduction of the Revised Southern Family Law in 2008, which prohibits courts from handling inheritance cases

According to my informants, the Sharia courts have rather little legitimacy in the community, as their establishment is attributed to the political agenda of the state rather than to a true commitment to Sharia law. Besides, like customary courts, Sharia courts do not have the power to enforce their decisions, but depend on the agreement of the involved parties to any proposed resolution to their cases. The local community also mentioned the fact that young Salafis consider the *qadi*s as ignorant of Islamic knowledge (*jahil*) and as more loyal to the political interests of the state than to Islamic values.

Some of the *qadis* I talked to during my research also expressed frustration that they were not practising the Sharia in its true spirit. Besides which, even the limited rights granted to the Sharia court could not be fully implemented due to a meagre budget, which is not even enough to cover purchases of basic office equipment, such as computers or copy machines. The *qadis* interpreted the small budget allocation as a manifestation of the government's lack of regard for Sharia law.

The president of the Siltie Sharia High Court[10], on the other hand, argued that many Muslims lacked of awareness about the Sharia courts for dispute settlement. As one *qadi* confirmed, many do not know the extent to which the Hanafi School of teaching gives an equal share of property to husband and wife upon divorce. He argued that if Muslims better understood the Hanafi School's teaching on gender equality, more Muslims would go to the Sharia court. This provides an indication of intra-faith competition among Muslims, since the *qadi* in this case was a follower of the Hanafi School, which is less dominant among the Siltie, who mainly follow Shafie teachings.

While most of the *qadis* I interviewed complained about the lack of state support – both financial and constitutional – for Sharia law, some appreciated the financial support of the government that allowed them to hire *qadis* in different Siltie *woredas* and provide training for them.

9 Interview with Hajji Siraj, Silti Wereda Qadi and Hajji Shemsu, Dalocha Wereda Qadi in April 2016.

10 Interview with Hajji Mifta Seid, President of Siltie Zone Sharia High Court on 18 July 2017.

Local religious dispute resolutions

Dispute settlement entails not only the material interests of disputants, but also reintegration and the restoration of relationships. Faiths play a pivotal role in achieving these goals by connecting disputants under one identity as well as promising them rewards such as eternal peace in the hereafter, in addition to the internal and external peace they can get in the social world. Moreover, religious actors can also admonish disputants if they reject a peace proposal, threatening them with not only divine punishment but also failure in the social world. In Siltie, local religious actors play an important role as dispute settlers, and religious centres like mosques are centres of dispute settlement. Zerihun (2013:139) notes that there are three forms of local holy man (*waliye*)-based institutions of dispute settlements among the Siltie: *mawlid, liqa*, and *warrie*.[11] *Mawlid* is categorized into two: the Prophet Mohammed's *mawlid* (*mawlid-un-nabi*) and *mashayik's mawlid* (*mawlid al-mashayik*). Veneration of *waliyes*[12] has a central place in the religious as well as communal lives of the Siltie (Kairedin 2012:180).

The Siltie revere the local religious leaders (*mashayik*) because of the role they played in bringing about the social order and in expanding Islam in the area. The religious leaders are called among the Siltie as sheiks. Those religious leaders who play an important role for expansion of Islam and are also involved in dispute settlement are known as *mashayik*. The most celebrated Sufi shrines are Alkeso, Dangeye, and Hajji Aliye mosques. The local community attend the sheiks' mosques daily for prayer, to strengthen social solidarity and to resolve disputes among themselves and the neighbouring ethnic groups. The mosques are used to resolving inter-faith, inter-ethnic and minor disputes, which do not involve blood cases. However, some informants[13] told me that said that these local religious forums do not handle dispute cases directly but instead indirectly play a role in peace-building as faith leaders advise their followers to give priority to forgiveness and peace rather than retaliation.[14]

Since the 1990s, there has been another religious institution for dispute settlement – the Salafi Social Committee. Some Siltie youth formed these forums to consider disputes within their own socio-religious groups. The formation of

11 *Warrie*, *liqa* and *mawlid* are local people's gatherings to revere the *waliyes* (religious figure) and handle dispute cases in the study area.

12 A *waliye or* a *mashayik* refers to a human religious figure, dead or alive, popularly recognized as honourable Islamic symbols by the majority Muslims. It is usually represented by a tomb, and in some cases by a mosque, and is associated with a shrine.

13 Interview with Sheik Mohammed, Ato Bahredin and Ato Usman on 23 February 2016 in Werabe.

14 The local community also resorts to the religious centres during natural calamities like drought and earthquakes, believing that these disasters can be averted by the intercession of the *waliyes*, whose prayers (*du'aa)* may be accepted by the Almighty.

the Committee seems to have emanated from a rejection of the customary courts and Sufi-oriented social gatherings on one hand, and the perceived failure of the Sharia courts to deliver justice according to Sharia law on the other. The Salafi Social Committee informally considers marriage contracts, disputes between husband and wife, and supports the needy. The group does not have a fixed structure, but gathers whenever the need arises. It is led by young university graduates and civil servants and is widely preferred by youths in the emerging Siltie elite. Siltie elders and old religious scholars, however, state that the youths' form of dispute settlement should be viewed in the context of the struggle between Sufi-oriented teaching and the more textual and puritanical Islamic teachings that have been introduced in the area since 1980s. The competition or clash between the young and old indicates the existence of a generation conflict between the classic Sheiks and the younger generation in the area.

The customary legal system

The Siltie customary legal system is rooted in Siltie *ada* or culture. It is influenced by some Islamic values. It employs local values and beliefs – namely, *berche*, *tur* and *fero* – as enforcing mechanisms. *Berche*, *tur*, and *fero* are local notions of the right to justice and, if one refuses to fairly treat others – including animals – it is believed that *berche*, *tur* and *fero* can bring bad repercussions in later life. It is believed that *berche* is inherited, so if someone cannot address a grievance or tries to hide a crime – even if it was committed by someone else – the repercussions will affect up to seven generations of that person's family. Being highly embedded in local values and norms, the customary legal system enjoys a wide legitimacy among the community.

Both, the political and social organization of the Siltie are characterized by plurality. The Siltie people are subdivided into several exogamous patrilineal clans, and the highly respected clan leaders have both social and political power at the local level. Despite the fact that the Siltie are a patriarchal society, they also value the female lineage: while the father's lineage (*abotgae*) is superior to the mother's lineage (*ummegae*) in various aspects, women's role and involvement can be observed in dispute settlement sessions, where people recognize female descent.

The Siltie call their local mode of governance *yesiltie serra*. *Yesiltie serra* has two forms of administrative structures: lineage and territorial based systems. Siltie elders work at various levels of the *yesiltie serra* as local leaders and mediators. *Gote*,[15] the smallest customary local administration level comparable to the state's administration level is known as *yeburda baliqe shengo* (hamlet elders assembly). At the next level, we find *yeazegag baliqe shengo* (village assembly), followed by *yemewta baliqe*

15 *Gote* is the smallest state administrative level below *kebele*; it consists of less than 500 people.

(supra-village assembly). *Yebad baliqe shengo/chale* (local chiefs' assembly) functions at the apex of the Siltie territorial level.

The customary courts consist of the elders' court, the clan court and the *raga* (local legal expert) court. The elders' court mainly deals with marital cases and local boundary disputes, while the clan court handles inter-clan disputes and crime cases committed by members of the clans. The *raga* court resolves mainly homicide cases. Despite the allocation of responsibilities among the courts, actors in the customary courts converge to handle dispute cases and to avoid communal disputes. In addition, all homicide cases resort to the *raga* courts for final resolution since it is believed that the *ragas*' decisions are binding. But the customary courts may also contest the authority of another customary court to resolve some cases involving many actors, such as murder cases.

Local assemblies comprise the offices of the local leadership and the customary courts. According to key informants,[16] local actors such as the *mesaki* (family head), *murra* (representative of many interrelated households), *moro* (head of sub clan), and *gerad* (leader of a clan) exercise local political power, while the *maga*, *raga and ferezagegne* (local cassation court judges) are local legal actors working in the customary courts. As one clan leader[17] explained, the traditional elder assemblies oversee the cases in their respective localities. However, their organization is based on clan groups and not on territory.[18] These assemblies come together once or twice a year to discuss issues of common concern, such as how to keep the norms and values of *yesiltie serra* alive. They also hand over criminal suspects who have tried to avoid punishment by moving to another locality to their respective clan leaders. As I observed during my research, local dispute settlers handle all kinds of dispute cases including homicide.

Informants stated that one could become a *raga* (local legal expert) on the basis of one's maturity, marital status (married), knowledge of handling issues and social acceptability. The position is also often passed from father to son. The value and belief systems of the people serve as powerful enforcing modes for the decisions of elders. In addition to their role in ending disputes, such local dispute settlement sessions are stages for strengthening Siltie identity and channels for exchanging information about local developments.

16 This relies on FGD that was conducted with eight informants, namely Hajji Hussein Hassan, Hajji Hussein Bussera, Sheik Yusuf, Hajji Mifta, Gerad Kedir, Kaire Sule, and Hamid Azma Hassan in May 2016 at the annual Siltie History, Culture and Language Symposium in Werabe.

17 Interview with Girazmach Hussein Bussera on 3 April 2016 in Dalocha Woreda. He is the leader of the Chiro-Dilapa clan in Dalocha and Hulbareg Woredas, and is at the same time a customary dispute settler.

18 These are *Yechiro Dilapa Serra*, *Yemelga Serra*, *YeSumm Silti Serra* and *YeAlicho Serra*. These are the names of the clan councils, which are named after the communities they represent.

Although revived since 1990s, the customary justice system is currently in decline because of the competition it faces from the two other legal systems. First, the Islamic justice system promoted by the youth has labelled the customary justice system as an 'unwanted innovation' (*bida'a*) and an adulteration of the principles of Islamic justice. Second, it faces strong pressure from the state legal system and the government in general, which fears the creation of space for a 'state within a state' that might instigate a kind of power struggle between traditional authorities and local government officials. Due to the growing monetization of the customary courts in the area, some elders are also blamed for an increase in the prevalence of bribery.

Interactions of the various legal systems: Duality of cooperation and contestation

As has been indicated above, the interaction between the three legal systems is characterized by both cooperation and contestation. On the other hand, the fact that the three courts borrow local norms and legal concepts from each other indicates the emergence of a hybridized legal practice in the area, and possibly beyond. In this section, I discuss this issue in some detail. The judges of the customary justice system, for instance, operate pragmatically, borrowing from or referring to legal norms from other legal systems, in particular from the Islamic justice system.

While the local politico-legal system of the Siltie has continued to operate side by side with the new regimes, the state system has also brought changes in the application of the customary law. In the case of homicide, for example, previously, a person who committed homicide was thrown into a big gully by his relatives to end the feud and avert revenge. Since the late-nineteenth century, the customary practice of 'killing the murderer' – which is believed to have been taken from Sharia law – was replaced by the payment of blood money (*gumma*) to the victim's family.[19] Some informants said that the Siltie practised *gumma* even earlier, giving compensation in kind (such as cattle) rather than money to the victim's family. Hajji Kemal Barsebo, a 62-year-old elder and customary court dispute settler gave this account of his experiences in the area:

> We have asserted the right to self-administration, albeit late, in federalist Ethiopia. We paid every price to get recognized by the central government. As an independent ethnic group, we have our ways to settle disputes (e.g. *yesiltie serra*). We have employed the system for long to resolve disputes, including murder

19 Some informants stated that compensation payments were also common before Siltie was incorporated into Ethiopia, especially in cases of intentional murder. While such compensation was given in kind (e.g. in the form of cattle) before the late-nineteenth century, today is given in cash.

> cases. We also know that the government has set up its judiciary systems at the grassroots level. Alhamduli-Allah our Din (Islam) also acknowledges our role as elders to use our culture. It even recognizes *berche* (lit.: 'fairness').
>
> Ironically, the public prosecutors do not drop the dispute the cases we are handling and thereby affect our credibility as elders in the community. In fact, we do cooperate with the state legal system in those cases for which the police could not easily find evidence. The state has got prisons, yet we have got *berche*, which can keep inflicting harms on up to seven generations of the disputing parties as well as on the dispute settlers if not well addressed. Where is article 39 of the FDRE constitution? Why does the state not allow us to fully involve our elders in resolving disputes like our neighbouring ethnic groups? (Interview, 27 August 2014, Silti Woreda)

Barsebo recounts the cooperation he witnessed among different legal systems on the one hand, and the competition that characterized the interactions of legal actors on the other.

The various mechanisms that the state has developed since the 1990s indicate that the government has tried to expand the state judiciary system in the country. Yet the system seems to have remained ineffective. In this regard, the consolidation of state power and its legal system has two severe consequences for legal pluralism: it prevents religious and customary laws having an equal status as state laws; it changes the role of law from enforcing social norms, which is the typical characteristic of the religious and customary courts, to achieving the political and economic objectives of government (Tamanaha 2008). With the challenges the state legal system faces at the grassroots level, pluralism is at a crossroads in Siltie.

Summary and conclusion

The paper has shown that in Siltie today, the customary law and courts, the state (formal) legal system and Islamic institutions and courts operate side by side. While the customary and the religious legal systems have faced challenges from the state since the late-nineteenth century, they have survived because of the people's strong attachment to local values and norms on one hand and the agency of actors who have used their social legitimacy to deliver justice to the community on the other. Moreover, the state institutions' inability to provide sufficient and satisfactory services to all Siltie, as well as the community's lack of trust of the state, and partly of Sharia courts, have also contributed to the continued existence of the customary legal systems.

The study has also demonstrated that all three legal systems are marked by intra-plurality. The legal plurality of the customary justice system, for instance, is characterized by the various territorial or lineage-based institutions of dispute set-

tlement. The Islamic legal institutions in the community use not only the Sharia court but also other institutions of dispute settlement, such as the Social Committee created by members of the Islamic reform movement (the Salafis). Its plurality also emanates from the plurality of Islamic jurisprudence itself, which is based on four legal schools that differ on various issues, particularly on the gender dimension of property rights: while most of the Islamic legal schools have a male bias, the Hanafi School stipulates equal shares of property between husband and wife upon divorce. There is also plurality within the state legal system, manifested in the existence of various laws and institutions such as municipality laws, custom law, and the Good Governance and Appeal Office, which is in charge of hearing cases that are handled by the state courts.

The paper has also revealed that the formal legal system, the Islamic institutions and the customary institutions interact in such a way that they complement one another and cooperate with each other in many instances. In this regard, the state courts rely on customary courts to solve cases that the formal courts cannot adjudicate due to a lack of evidence, which the customary courts can more easily obtain. The customary courts employ local means of investigation involving ritual oaths to find evidence of crimes with no witnesses. Customary courts also promote restitutive approaches to disputes as opposed to the retributive approach of the state courts and formal law, which are culturally disconnected from the communities where the disputes are processed. While the legal systems cooperate in particular in handling marital cases, there is competition and conflict in other areas, notably over homicide cases.

The study has revealed that the different realms of state, customary and religious law not only interact but also adopt elements from each other, which points to the emergence of hybridized legal practices in the area and even possibly beyond. State court judges, for example, use local notions of justice, such as *berche*, when they handle marital disputes, while customary court judges refer to and promote gender equality when they handle family cases, which is contradictory to the dominant patriarchal relations prevailing in Siltie.

To conclude, one can state that the interactions between the various legal traditions in the area are characterized not only by cooperation but also by competition. And that we are seeing the emergence of the hybridization of legal practices in the contemporary world that is challenging the prevailing definitions of legal pluralism as the coexistence of more than one legal system in a given social setting.

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