Systematizing Knowledge about Customary Laws in Ethiopia

*Gebre Yntiso**

1. Introduction

Ethiopia has numerous customary laws developed and practiced since time immemorial. Since recent years, these customary institutions of dispute and conflict handling mechanisms received growing attention as evidenced by an increase in research activities, publications, and policy interest. In 2008, the French Center for Ethiopian Studies published an edited volume titled 'Grassroots Justice in Ethiopia'.[1] Two years later, the Ethiopian Arbitration and Conciliation Center published two edited volumes and one annotated bibliography on 'Customary Dispute Resolution Mechanisms in Ethiopia'.[2] In 2013, the Justice and Legal Systems Research Institute published an edited volume titled 'Law and Development, And Legal Pluralism'.[3] Of the many research projects of masters and doctoral programs at Addis Ababa University, some focused on customary laws in Ethiopia.[4] Why is there so much interest now on a theme that seems to have been overlooked for so long?

The rise of interest in customary laws may be explained in terms of several factors. First, there exists a growing realization that customary laws are deeply rooted and widely used in all corners of the country despite the introduction of the codified modern legal system (largely adopted from Europe) in the 1960s. Several studies point to the fact that rural communities (to a large extent) and

---

*Department of Social Anthropology, College of Social Sciences, Addis Ababa University. My deepest appreciation is due to those who contributed to this article directly or indirectly. The paper benefited from inputs by Dr. Susanne Epple (my wife), Dr. Yeraswork Admassie, Dr. Kassahun Berhanu, and the two anonymous reviewers, whose scholarly criticisms and constructive comments were invaluable.

[1] A. Pankhurst and Getachew Assefa (eds.), Grass-roots Justice in Ethiopia (2008), French Center for Ethiopian Studies.

[2] Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), Customary Dispute Resolution Mechanisms in Ethiopia (2011; 2012, vol. 2), Ethiopian Arbitration and Conciliation Center.

[3] Elias Stebek and Muradu Abdo (eds.), Law and Development, And Legal Pluralism in Ethiopia (2013), The Justice and Legal Systems Research Institute.

[4] Fekade Azeze, Assefa Fiseha, and Gebre Yntiso (eds.), Annotated Bibliography of Studies on Customary Dispute Resolution Mechanisms in Ethiopia (2011), The Ethiopian Arbitration and Conciliation Center.

urban residents (to some extent) prefer the customary laws to the formal counterpart.[5]

Second, the global tendency to promote indigenous knowledge since the 1970s led to the recognition of the customary laws as part of the indigenous knowledge repertoire along with others, such as traditional medicine and folk environmental knowledge.[6] In short, the global trend of promoting indigenous knowledge and the rights of local communities contributed to the rise in research interest in customary laws as well.

Third, the Ethiopian Government's official determination since the early 1990s to respect cultural diversity and the constitutional recognition of customary laws (Art. 34:5 and 78:5)[7] also created a favorable environment for research undertaking. Article 34:5 reads, "This Constitution shall not preclude 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." There exists also a growing interest on the part of some Ethiopian researchers to unveil the customary laws of their own groups.

Fourth, research interest in customary laws has increased due to the inter-ethnic, inter-religious, and political conflicts that Ethiopia has been experiencing in last two decades. The difficulty of resolving such conflicts through the state law warrants the need to use customary mechanisms by government authorities. Tirsit Girshaw wrote, "Most wars today are fought within rather than between countries. Hence, it is not only important but also compulsory for governments ... to think about indigenous conflict resolution mechanisms, since they are very powerful tools for solving such conflicts."[8]

Finally, before the enactment of the 2009 Charities and Societies Proclamation that limits the involvement of certain civil society organizations in advocacy

---

[5] Pankhurst and Getachew (eds.), cited above at note 2, p. v; Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), cited above at note 4, (2011), p.xii.

[6] A. Pankhurst and Gebre Yntiso, "Local Knowledge and Relevant Technology in Ethiopia", in Shiferaw Bekele (ed.), Culture and Development in Ethiopia, (2012), p.81-82 (in Amharic).

[7] Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art. 34:5 and 78:5, Proc. No. 1, Neg. Gaz. Year 1, No. 1.

[8] Tirsit Girshaw, "Indigenous Conflict Resolution Mechanisms in Ethiopia", in Ministry of Federal Affairs (ed.), First National Conference on Federalism, Conflict and Peace Building , (2004), p.50.

and rights issues, many non-governmental organizations used to work on peace initiatives and sponsor projects and studies on dispute and conflict handling issues.[9] In short, availability of funds created a favorable environment for research engagement in this field.

It can be argued that these golden opportunities for research and publication on customary laws apparently lacked conceptual clarity; common understanding of the core values and issues worth exploring; common recognition of the challenges and limitations of using customary laws; and clear picture of their potentials and prospects. The failure to differentiate such key concepts as dispute vs. conflict and dispute settlement vs. conflict resolution has been hampering communication and common understanding. Most of the studies undertaken to date are largely isolated ethnographies. There is deficiency of a comprehensive perspective to formulate social theories and/or social policies. Gabriele Hoehl wrote, "lacking systematic knowledge and proper concepts of how to handle conflicts…entities [in Ethiopia] are mostly unable to coordinate their activities even towards crisis management."[10] Given the growing interest to understand customary laws by scholars and government sectors, more studies and publications are expected in the future. Thus, it is high time to rectify the existing deficiencies and develop systematic research strategies.

This paper is written with firm conviction that research on customary laws in Ethiopia and beyond could be systematized to produce results that are amenable to comparative analysis, scientific generalization, and practical application. The idea of knowledge systematization (with latitude for deviation and adaptation) can be accomplished though clarity of concepts that have been used interchangeably and confusingly; identification of the values and virtues that enhance the legitimacy and enduring popularity of customary laws; and promotion of comparative research to pave the way for comprehensive understanding of customary laws.

This paper is primarily based on literature review. Limited ethnographic accounts based on the writer's own research have also been used to provide

---

[9]Gebre Yntiso, Understanding the Dynamics of Pastoral Conflict in Lower Omo Valley, (2011), p.82.

[10] G. Hoehl, "Exploring and Understanding Conflicts", in Ministry of Federal Affairs (ed.), First National Conference on Federalism, Conflict and Peace Building, (2004), p.114.

illustration. Apart from the general literature review, the author significantly benefited from three volumes on customary laws in Ethiopia that he co-edited. Between September 1988 and December 1998, he undertook doctoral dissertation research in Metekel Zone (Benishangul-Gumz Region, Ethiopia), which enhanced his knowledge about the customary laws of the Gumz people. In 2010 and 2011, the writer had the opportunity to carryout research on intra- and inter-ethnic dispute/conflict handling mechanisms among the Dassanech and the Nyangatom people in South Omo Zone, Southern Nations, Nationalities, and Peoples Region (SNNPR), Ethiopia. Field data were collected through key informant interviews, focus group discussions, observations, and document reviews.

2. Towards Conceptual Clarity

The Concept of Alternative Dispute Resolution (ADR) was conceived in the United States by legal practitioners and law professors with the intention to reform the justice system through the introduction of non-litigant methods.[11] In England, the history of voluntary conciliation and arbitration goes back to 1850 where these methods were used to address industrial disputes.[12] The early advocates of ADR with the reformist agenda in the US sought the non-litigant model from customary laws, which were viewed as more humane, therapeutic, and non-adversarial.[13] Ugo Mattei and Laura Nader [14] argued that ADR was used as a disempowering tool "to suppress people's resistance, by socializing them toward conformity by means of consensus-building mechanisms, by valorizing consensus, cooperation, passivity, and docility, and by silencing people who speak out angrily." Historical parallel and resemblance to this argument comes from the 1850s England that witnessed "the highest hopes of abolishing strikes completely by the most ruthless application of arbitration".[15]

---

[11] L. Nader, "Controlling Process in the Practice of Law: Hierarchy and pacification in the movement to reform dispute ideology", Ohio State Journal on Dispute Resolution, vol. 9, (1993), p.1.

[12] J. Hicks, "The Early History of Industrial Conciliation in England", Economica, No. 28, (1930), p.26.

[13]K. Avruch, "Type I and Type II Errors in Culturally Sensitive Conflict Resolution Practice", Conflict Resolution Quarterly, Vol. 20, No. 3, (2003), p.352. Also read: K. Avruch, A Historical Overview of Anthropology and Conflict Resolution, (http://www.aaanet.org/press/an/0907/avruch.html) last visited on 20 March 2014.

[14]U. Mattei and Laura Nader, Plunder: When the rule of law is illegal, (2008), p.77.

[15] Hicks, cited above at note 12, p.26.

The new profession of ADR in the US and the historical application of some of the methods in England are different from the customary laws practiced in Ethiopia and perhaps in other non-western countries. While the western ADRs were instituted later in time to address disputes and conflicts outside of the formal courts, the customary laws in Ethiopia existed long before the introduction of the formal law. Therefore, the common ADR terminologies such as dispute, conflict, negotiation, mediation, arbitration, conciliation, dispute settlement, conflict resolution, conflict management, and conflict transformation (all western concepts) should be used in customary law studies after scrutinizing and redefining their meanings, approaches, and purpose.

It is to be recalled that, half a Century ago, two prominent anthropologists (Paul Bohannan and Max Gluckman) espoused a debate on whether universal categories and terminologies should be used to depict the legal systems of different societies. Bohannan advocated for the use of native terms to be accompanied by ethnographic meaning, arguing that using universal categories act as a barrier to understanding and representing the legal systems in different cultures.[16] Gluckman, on the other hand, argued in favor of translating native concepts into English, stating that excessive use of local terms serve as a barrier to cross-cultural comparison of legal practices.[17] As Kevin Avruch[18] rightly stated, the etic approaches that allow comparative analysis and the emic approaches that provide much deeper and contextualized insights are equally important in dealing with dispute/conflict.

It is the conviction of the author of this paper, that the translation of local terminologies into Anglo-American equivalents makes sense only when the English meanings are in good order. However, the vast literature on customary laws in Ethiopia includes ADR terms that have been used interchangeably and confusingly. Since the terminological usages would have discrete implications for the outcome of a dispute/conflict situation, ensuring conceptual clarity becomes indispensable. For analytical purpose, the terms that require differentiation are categorized into three: types of incompatibility (dispute and

---

[16]P. Bohannan, "Ethnography and Comparison in Legal Anthropology", in Laura Nader (ed.), Law in Culture and Society, (1969), p. 403.

[17] M. Gluckman, "Concepts in the Comparative Study of Tribal Law", in Laura Nader (ed.), Law in Culture and Society (1969), p. 353.

[18] K. Avruch, Culture and Conflict Resolution, (1998), p.60.

conflict), methods of handling incompatibility (negotiation, mediation, arbitration, and conciliation), and approaches to ending incompatibility (dispute settlement, conflict management, conflict resolution, and conflict transformation). This section attempts to clarify the meanings of these concepts; find out whether they have equivalent practices in Ethiopia; and reflect on the aptness of their usage in the Ethiopian literature. In this paper, as part of the knowledge systematization effort, the concept of 'customary laws' has been used intentionally avoiding the interchangeable use of such terminologies as 'indigenous laws', 'traditional laws', 'informal laws', and 'customary dispute/conflict resolution mechanisms.'

2.1 Types of Incompatibility

In the literature, there exists lack of uniformity in the use of the terms dispute and conflict. While some writers stress differences between the two, others use them interchangeably.[19] In the Ethiopian literature on customary laws, the terms dispute and conflict have not been adequately differentiated. In the book 'Grassroots Justice in Ethiopia', the titles of 10 out of 11 chapters carry the term dispute,[20] but nowhere in the volume it is made clear whether the choice was meant to convey the message that the issues discussed in the book are about disputes, not conflicts. Likewise, the two volumes on 'Customary Dispute Resolution Mechanisms in Ethiopia'[21] failed to differentiate the usage of the two concepts. Many chapter contributors to these two books and others published in Ethiopia used dispute and conflict without providing operational definitions and at times interchangeably.

In order to ensure conceptual clarity in the field of dispute/conflict handling research, this paper adopted John Burton's[22] approach that describes dispute as a short-term disagreement between two persons or groups over a specific set of facts and/or issues that are negotiable in nature, and conflict as a long-term and deeply rooted incompatibility associated with seemingly "non-negotiable" issues between opposing groups or individuals. Non-negotiable issues include, among others, denial of basic human rights and deprivation of essential

---

[19] B. Spangler and Heidi Burgess. Conflicts and Disputes, (http://www.beyondintractability.org/essay/conflicts-disputes) last visited on 12 May 2014.
[20] Pankhurst and Getachew (eds.), cited above at note 1, p. i-ii.
[21] Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), cited above at note 2.
[22] J. Burton, Conflict: Resolution and Prevention, (1990), p.2

economic resources such as land and water.[23] A specific dispute, if not settled, could turn into conflict, not the other way round. It is beyond the scope of this paper to delve into the argument that conflict is inevitable and useful for change.

2.2 Methods of Handling Incompatibility

The common methods employed to address individual or group disputes/conflicts outside of the formal court include negotiation, mediation, conciliation, and arbitration.[24] The four methods of alternative dispute resolution, as practiced in western societies, vary in their respective meanings and approaches. In the Ethiopian literature on customary laws, these terms are not sufficiently differentiated from each other and from their usage in ADR literature. Tirsit stated, "Mechanisms like reconciliation and arbitration are common features of indigenous conflict resolution mechanisms"[25] Wodisha Habtie noted that negotiation, mediation, and arbitration exist as distinct methods among the Boro-Shinasha.[26] Jetu Edossa wrote, "In Ethiopia, the use of mediation process as a customary method of dispute resolution has been practiced for centuries."[27] It is not clear whether these three authors used those terms after confirming their exact matches with ADR usage.

In some studies, conciliation and mediation are used interchangeably as if they are the same.[28] There are works that show the existence of a connection between mediation and arbitration. For example, Dejene Gemechu wrote, "[T]he *qaalluu* court mediates and assists the disputants to negotiate, but whenever its efforts fail, it evolves into arbitration. Taking into consideration

---

[23] B. Spangler, Settlement, Resolution, Management, and Transformation: An Explanation of Terms,(http://www.beyondintractability.org/essay/meaning-resolution) last visited on 12 May 2014.

[24] A. Sgubini, Mara Prieditis and Andrea Marighetto, Arbitration, Mediation and Conciliation: Differences and similarities from an International and Italian business perspective, (http://www.mediate.com/articles/sgubinia2.cfm) last visited on 13 January 2014.

[25]Tirsit Girshaw, cited above at note 8, p.49.

[26]Wodisha Habitie, "The Nèèmá - Conflict Resolution Institution of the Boro-Šinaša", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), Customary Dispute Resolution Mechanisms in Ethiopia (2011), p.438-440.

[27]Jetu Edossa. "Mediating Criminal Matters in Ethiopian Criminal Justice System: The prospects of restorative justice, Oromia Law Journal, vol. 1, No. 1, (2012), p.100.

[28]Dejene Gemechu, "The Customary Courts of the Waliso Oromo", in Gebre Yntiso, Fekade Azeze and Assefa Fiseha (eds.), cited above at note 26, p. 256-257.

the interests of both parties, the final decision is pronounced by the judges."[29] Among the Nuer, according to Koang Tutlam, kinsmen and elders arrange mediation to determine the fine and ask the culprit to pay compensation to the victim.[30] In the western ADR context, as discussed later, mediators do not suggest a solution (conciliators do suggest non-binding agreement ideas), and arbitration results are final and legally binding.

The interchangeable and differential usage of these concepts clearly suggests the existence of a challenge associated with borrowing foreign terms to represent local practices in different contexts without establishing comparability. This section attempts to discuss the meanings of the four concepts and the actual ADR proceedings (private in nature) so that researchers could establish the presence or absence of resemblance with the proceedings of customary laws (public in nature) before using them.

Negotiation is a mechanism where the parties that are directly involved meet to resolve their differences and reach an agreement on their own without the involvement of a third party.[31] If conducted without influence and intimidation, negotiation is known to be the most efficient and costless approach to handle a dispute/conflict. Since it is conducted based on the principle of give-and-take and willingness to ease tension, private negotiators are expected to opt for compromise. Apart from this specific and narrow usage, the term negotiation is flexibly and broadly employed to refer to any discussion aimed at finding a middle ground, be it in the context of mediation, conciliation, or early phase of arbitration.

Mediation as dispute/conflict handling method involves an appointment of a neutral and impartial third party (a mediator, often a trained person or a legal expert) to facilitate dialogue between conflict parties and help them reach at a mutually acceptable agreement without imposing a biding solution.[32]

---

[29]Id., p.263.
[30]Koang Tutlam, "Dispute Resolution Mechanisms of the Nuer", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), id., p. 412.
[31]Assefa Fiseha, "Business-related Alternative Dispute Resolution Mechanisms in Addis Ababa", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), Customary Dispute Resolution Mechanisms in Ethiopia, (2012), vol. 2, p.245.
[32] M. LeBaron-Duryea, Conflict and Culture: A Literature Review and Bibliography, (2001), p. 121.

Mediation is often preferred over litigation because the former is faster, fair, efficient, cheaper, confidential, and addresses the unique needs of parties. The main principles of mediation are voluntarism, being non-binding, confidentiality, and being interest-based. The parties are free to reach at or withdraw from negotiated agreements. In order to facilitate the resolution of a conflict, a mediator performs a series of activities. The mediator is expected to understand the perspectives of the parties, set ground rules for improved communication, encourage them to discuss in good faith and articulate their interests or concerns, remind them to make decisions on their own, and convince them to remain committed to peaceful result. In meditation parties may be represented by lawyers who argue their case, advocate for their clients, and negotiate on their behalf.

The 1960 Civil Code of Ethiopia does not clearly recognize mediation procedure. According to Assefa Fiseha, it appears that the Ethiopian Civil Code combines mediation and conciliation.[33] The Ethiopian Arbitration and Conciliation Center is reported to have prepared and submitted a draft mediation law, which is under consideration by committees in the House of Peoples' Representatives.[34] One might wonder whether mediation as practiced in the west is consistent with the customary laws where non-professionals handle disputes/conflicts in public. Researchers of customary laws should also bear in mind the fact that a mediator in the ADR context would not dictate the process, make a judgment, or suggest any solution.

Conciliation (or reconciliation) is another dispute/conflict handling method that involves an appointment of a neutral and impartial third party (a conciliator) to assist parties to reach a satisfactory agreement. Conciliators are appointed based on their experiences, expertise, availability, language, and cultural knowledge. Louis Kriesberg and Bruce Dayton stated that there are four important dimensions of reconciliation that parties expect for the process to succeed: truth, justice, regard and security.[35] Conciliation and mediation have a lot in common, and sometimes the two terms are used

---

[33]Assefa Fiseha, cited above at note 31, p. 247.
[34]Girmachew Alemu, Introduction to the Ethiopian Legal System and Legal Research, (http://www.nyulawglobal.org/globalex/ethiopia.htm) last visited on 15 April 2014.
[35] L. Kriesberg and Bruce Dayton, Constructive Conflicts: From Escalation to Resolution, (2012), p.305.

interchangeably.[36] In both methods, the parties retain the power to select their conciliators, the venue, the language, the structure, the content, and the timing of the proceedings. Both techniques are flexible, time and cost-efficient, confidential, and interest-based. The parties also retain autonomy to make the final decision without imposition by a third party. The difference between conciliation and mediation is that a conciliator could play direct/active roles in providing non-binding settlement proposal. The Ethiopian Civil Code (Articles 3318-3324)[37] duly recognizes the conciliation procedure and provides details about, among others, the role of conciliators and the conciliation proceedings.

Arbitration is the fourth major dispute/conflict handling method where parties voluntarily present their disagreement to an unbiased third party arbitrators or arbitral tribunals. Arbitrators are expected to apply the law and start the proceedings after receiving a written consensus (arbitration agreement) from the parties on the content of their disagreement and their willingness to accept in advance the 'arbitral award' - the verdict issued after hearing. Arbitral proceedings are conducted under strict rules of confidentiality (not open to the public). Like mediation and conciliation, arbitration is supposed to be efficient, easier, faster, cheaper, and relatively flexible. Parties are free to choose their arbitrators, the venue, the language, and the timing of the arbitral proceedings. Arbitration is different from mediation and conciliation in that (1) arbitrators have the power to administer a legally enforceable award and (2) parties lose control over their ability to make a decision on their own. Arbitral awards are enforced even internationally because of the 1958 New York Convention on the Recognition of and Enforcement of Foreign Arbitral Awards. As practiced in the West, the decisions of arbitrators are final and binding and cannot be reversed even by the formal courts unless the arbitration agreements were invalid.

---

[36] C. Morris, Definitions in the Field of Conflict Transformation, (http://www.peacemakers.ca/publications/ADRdefinitions.html#reconciliation) last visited on 13 January 2014.

[37] Civil Code of the Empire of Ethiopia, 1960, Art.3318-3321, Proc. No. 165, Neg. Gaz. Year 19, no. 2.

Arbitration as an ADR method is legally recognized in Ethiopia and has been used to handle different disputes/conflicts.[38] Although the procedure seems to be similar to western practices, Assefa noted that arbitration in the Ethiopian context is becoming more expensive and that arbitral awards are not necessarily final and binding as courts tend to accept appeals from parties dissatisfied with the decisions of arbitrators.[39]Such court interference is inconsistent with the principles of arbitration and unfairly diminishes the relevance and credibility of the method. It would be interesting to know whether there exist customary courts in Ethiopia that apply the formal law, require the submission of written arbitration agreements, and conduct hearings protected from the public.

2.3 Approaches to Ending Incompatibility

The ending of a conflict takes four major forms: dispute settlement, conflict management, conflict resolution, and conflict transformation. In the Ethiopian literature, the terms dispute settlement, conflict resolution, and conflict management are not sufficiently differentiated (sometimes used interchangeably), while conflict transformation is a new concept the local equivalent of which is yet to be found. The following discussions are expected to clarify the common usage of the four approaches thereby avoiding confusion and interchangeable use.

Dispute Settlement is an approach that removes dispute through negotiation, mediation, conciliation, and arbitration. A dispute is settled (rather than resolved, managed or transformed) because it represents an easily addressable short-term problem that emanates from negotiable interests. Establishing the facts of the dispute and satisfying the interests of disputants are among the basic conditions to be met for successful dispute settlement. Depending on the methods employed, a third party may use persuasion, inducement, pressure, or threats to ensure that the disputants arrived at satisfactory settlement. A dispute settlement strategy aims at ending the dispute through compromises and concessions without addressing the fundamental causes or satisfying the basic

[38]Tilahun Teshome, "The Legal Regime Government Arbitration in Ethiopia: A synopsis", Ethiopian Bar Review, vol. 1, No. 2, (2007), p. 128-30; Civil Code of the Empire of Ethiopia, cited above at note 37, Articles 3325-3345.
[39]Assefa Fiseha, cited above at note 31, p. 253 & 255.

demands of the disputants.[40] Since it does not change the existing structures and relationships that caused disputes, the efficacy and durability of the settlement approach (compared to the resolution and transformation approaches) are considered to be limited.

Conflict Management refers to the process of mitigating, containing, limiting or controlling conflict temporarily through third party intervention. Conflict management steps are taken with the recognition that conflicts cannot be quickly resolved, and with the conviction that the continuation or escalation of conflicts can be somehow controlled as an interim measure. The conflict management process would succeed only when the conflicting parties have respect for the integrity, impartiality, and ability of the third party. However, the strategy neither removes conflict nor addresses the underlying causes.[41] As Merton Deutsch noted, the main intention is to make the situation more constructive and less destructive to the conflicting parties through lose-lose, win-lose, or win-win results.[42] Conflict management must soon be followed by other strategies to resolve the problem permanently.

Conflict management as defined in ADR has equivalent cultural and religious practices in Ethiopia. For example, among the Orthodox Christians, a priest would hold the holy cross and pronounce religious injunction on adversaries to temporarily halt offensive actions. In some cultures, offenders take refuge with individuals and institutions believed to have cultural and religious sanctity to protect them against revenge.[43]

Conflict Resolution is an approach that removes the underlying causes of conflict decisively. Peter Wallensteen defines conflict resolution as "a situation where conflicting parties enter into an agreement that solves their central incompatibilities, accept each other's continued existence as parties and ease all violent action against each other."[44] From this definition it is apparent that

---

[40] J. Burton and Frank Dukes, Conflict: Practices in Management, Settlement and Resolution, (1990), p.83-87.
[41] J. Lederach, Preparing for Peace: Conflict Transformation Across Cultures, (1995), p. 16-17.
[42] M. Deutsch, The Resolution of Conflict: Constrictive and Destructive Processes, (1973), p. 8 & 17.
[43] Alemu Kassaye, "Blood Feud Reconciliation in Lalomama Midir District, North Shoa", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.),cited above at note 26, p.166; also see Gebre Yntiso, cited above at note 9, p.41.
[44] P. Wallensteen, Understanding Conflict Resolution (3rd ed., 2012), p.8.

conflict resolution follows a mutual understanding about a problem to be solved and a firm commitment to address the root causes of conflict. This can be accomplished through changes in behaviors, attitudes, structures, and relationships that incite or perpetuate conflict. The resolution approach leads to a long-term solution. The role of a third party is to facilitate communication and enable conflict parties make a comprehensive agreement. Resolving conflicts, as opposed to settling disputes, demands more than establishing the facts or satisfying the interests of the parties. It is equally important to note that conflict resolution may not remove all differences or may not lead to major structural changes to avoid future relapse of conflict.

Conflict Transformation may be described as the deepest level of change that results from improved and accurate understanding of the conflict. Conflict transformation underlines the need for major structural and relational changes to avoid relapse of conflicts due to similar causes. Apart from the structures and relations, those issues and interests that led to conflicts are expected to change to allow the establishment of a new system and a new environment. In this regard, the transformational approach seems to have an interest in conflict aftermath or post-conflict peace building processes. John Paul Lederach, the leading advocate and proponent of conflict transformation, wrote:[45]

> Transformation provides a more holistic understanding, which can be fleshed out at several levels. Unlike resolution and management, the idea of transformation does not suggest we simply eliminate or control conflict, but rather points descriptively toward its inherent dialectic nature. Social conflict is a phenomenon of human creation, lodged naturally in relationships. It is a phenomenon that transforms events, the relationships in which conflict occurs, and indeed its very creators. It is a necessary element in transformative human construction and reconstruction of social organization and realities.

The gist of Lederach's argument is that conflict (created by people in some kind of relationships) transforms the creators and the relationships. If unchecked or left alone, it could have destructive consequences for the conflicting people. However, such adverse effects (hostile relations and negative perceptions) can be modified through long-term and sustained processes that involve education, advocacy, and reconciliation to improve

[45]J. Lederach, cited above at note 41, p.17.

mutual understanding and transform the people, relationships, and structures for better. Hence, conflict transformation is explained more in terms of healing and major structural change with positive implications for social transformation and nation building.

3. Values and Virtues of Customary Laws

The studies undertaken thus far in Ethiopia indisputably reveal that customary laws are deeply rooted in cultural and religious values and widely practiced throughout the country. Especially in the countryside, it seems that comparatively fewer cases are taken to the state court[46] and that most plaintiffs (more than 76% according to Dejene) withdraw cases filed with formal institutions before proper investigation.[47]It is equally important to acknowledge the fact that the degree of resistance to the formal law depends on the level of state penetration or the intensity of state influence, which gets weaker from the center to the periphery. For example, the researcher's own observations in Metekel Zone (Benishangul-Gumz Region) and parts of South Omo Zone (SNNPR) point to the popularity and intensive use of customary laws. Although the activities of customary courts are not legally sanctioned, many professionals and practitioners in the justice sector sincerely admit today that these courts have been helpful in terms of reducing the workload of the formal courts. In their efforts to address inter-ethnic conflicts, government officials have been openly co-opting influential customary authorities and judges of customary laws. This section focuses on the core values, perspectives, and functions that contribute to the perpetuation, resilience, and in some cases dominance of customary laws. Some five key variables have been identified to show the merits of customary laws in Ethiopia. It is hoped that future researchers in the field would find these variables to be useful entry points to build on.

3.1 Restoration of Social Order

In places where people live in settings of strong networks of kinship, clanship, ethnicity, and other social groupings, disputes/conflicts between individuals are

[46]Woubishet Shiferaw, "Spirit Medium as an Institution for Dispute Resolution in North Shoa: The Case of Wofa Legesse", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.),cited above at note 26, p.194-195.
[47]Dejene Gemechu, cited above at note 28, p.271.

likely to engulf much larger groups. Unlike the formal courts that define justice in terms of penalizing perpetrators, customary courts focus on larger groups (e.g., families, communities, clans, etc.) that may have been drawn into the trouble from both the perpetrator's and the victim's sides. This is because discords are viewed not only as isolated individual differences to be addressed but also as disconcerting social disorder to be restored. The restoration of social order is ensured only when the larger groups, far beyond the actual perpetrators and victims, drawn into the dispute/conflict come to grips with it and move forward, leaving the trouble behind them. Hence, the deliberations of customary courts often end with repentance of the perpetrator's group and the forgiveness of the victim's group thereby bridging the social divide and healing the social scar.

In 1999, the author witnessed reconciliation processes between two Gumz families in the presence of their respective relatives and neighbors to resolve an adultery case. When a young married woman admitted to have been impregnated by a young man in the same village, the case was brought to the attention of elders and clan leaders, who immediately summoned the family and relatives of the impregnator and those of the young woman's husband (who was away from the village for education). The problem between the two families was resolved through repentance and forgiveness in the absence of the husband expected to agree to the deal upon his return to the village. From the books on customary laws that the author edited, it is apparent that families and large groups, in many parts of Ethiopia, are involved during the handling of disputes and conflicts initiated by individuals or small groups.[48]

The staging of a forum for group involvement in a customary peacemaking process is meant not only to resolve disputes/conflicts but also to avoid possible relapses and spillover effects, and ensure social order and community peace. Hence, justice and peace are served at the same time. It can be argued that in communities with a strong sense of social bonding and group loyalty, customary laws are better suited for transformation of hostility to solidarity at both individual and group levels without creating a winner-loser situation. In view of this fact, the customary laws exhibit irrefutable superiority over the

[48]Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), cited above at note 2.

formal law, which focuses only on the prosecution of the perpetrator, a measure that does not lead to community peace.

3.2 Quest for Truth

The second important quality of customary laws is their unique and unparalleled strength in discovering the truth that would otherwise pose challenges for the formal justice system. The police would find offences committed under secrecy and in the absence of any evidence to be difficult or impossible to investigate. In the context of customary laws, the victim's side is not expected to open up for discussion and forgiveness before the disclosure of truth. Hence, the primary role of customary judges is to discover the facts through confession or investigation. In closely organized communities, people do not hesitate to expose culprits, and it is not uncommon for family members to testify against their loved ones involved in unlawful acts. Customary courts rarely convict alleged perpetrators based on circumstantial evidence, and offenders rarely get away with wrongdoing for lack of witness/evidence.

Telling the truth is given high value for practical and religious reasons. On the practical side, the social life of people in communities is built around mutual trust. People make agreements and entrust things to each other without any third party in witness or any record in evidence. If the social contract of trust was allowed to crumble, the consequence for individuals and society at large would be grave. For example, untrustworthy individuals risk being dishonored and disgraced in their own families and communities. A society would become dysfunctional without its basic principles that govern the behaviors and actions of its members. Hence, there exists a great deal of social pressure to tell the truth.

Regarding the religious aspect, telling lies while under oath is associated with a betrayal of faith that might have supernatural consequences. The following quotes reveal the value attached to truth and the association with belief systems. Among the Nuer, "The disputants swear an oath of innocence and the person who doesn't tell the truth is bound to suffer misfortune."[49] Among the Waliso Oromo, "Customary courts attempt to prove the truthfulness of cases through the flow of information, directly from the disputants. Both parties are

[49]Koang Tutlam, cited above at note 30, p. 425.

expected to be honest in providing information....It is believed that the *waaqa* easily identifies the truthfulness and falsity."[50] In short, customary laws employ divine weight as well to extract the truth.

3.3 Public Participation

The notion of public participation in the context of customary laws is explained in terms of the involvement of community members in a dispute/conflict handling process. As opposed to the closed and confidential ADR proceedings of the west, customary laws allow people to attend the public deliberations and provide opinion about the validity or falsity of evidence provided and/or the fairness of verdict reached. This was the case, until the 1936 Italian occupation, with the customary justice system of the Government of Ethiopia, where the Imperial Courts invited bystanders and passerby to attend hearings and air their opinion.

According to Assefa Fiseha[51] and Abrham Tadesse[52], public participation in the administration of justice characterizes the customary laws of Tigray and Sidama respectively. Dejene wrote, "Apart from direct participation, [among the Oromo] the community provides information and suggests ideas on the issue under litigation. Such informal discussions and public views are important to arrive at consensus at the end of the day. The final decisions are the outcome of these various views and suggestions from the community."[53]Among the Nuer, the open procedures and participation of the community members in the administration of customary justice tend to limit the possibility for corruption and nepotism.[54]

Why is popular participation so important? First, the involvement of community members as observers, witnesses, and commentators increases the credibility and transparency of customary laws. Second, non-confidential proceedings help to put public pressure on parties to honor and respect

---

[50]Dejene Gemechu, cited above at note 28, p.261-262.
[51]Assefa Fiseha, "Customary Dispute Resolution Mechanisms in Tigray", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), cited above at note 26, p.366-367.
[52]Abrham Tadesse, "Customary Conflict Resolution among the Sidama", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), id, p.123.
[53]Dejene Gemechu, cited above at note 28, p.261-276.
[54]Koang Tutlam, cited above at note 30, p. 429.

agreements. Non-compliance to a customary court decision is rare mainly because nonconformity is likely to be interpreted as rebellion against community values and interests. Finally, since customary judges pass decisions in the presence of community observers, the possibility for corruption and prejudiced judgment is limited.

3.4 Collective Responsibility

Collective responsibility refers to a situation where social groups take the blame for offenses perpetrated by their members and the responsibility for the consequences. This principle is widely practiced in cultures where group identification and group control mechanisms are strong, and where the idea of individualization of crimes is not common. In such societies, to redress offenses, retaliatory acts are taken against unsuspecting members of a perpetrator, sometimes in the form of collective punishment. Hence, families and relatives of wrongdoers often take the initiative to make peace and avoid retribution. The customary judge(s) may require the perpetrator's family, lineage, or clan to take responsibility, express repentance as a group, and contribute towards compensation for the victim.[55]In Dassanech and Nyangatom, South Omo Zone, government authorities seem to employ the principle of collective responsibility to put pressure on communities to apprehend and bring criminals to justice.

One might challenge the appropriateness of holding communities/groups responsible for offenses committed by individuals. The rationale behind blame-sharing may better be understood in some contexts. First, it represents a tacit recognition that the family or the group to which the perpetrator belongs failed to detect, discourage, stop or report unjustified offenses, and therefore, they should take some responsibility. Second, when the verdict involves costly compensation to the victim's group, the principles of reciprocity, solidarity, and sharing are often evoked to help members in trouble. Third, in a situation where the group (rather than the individual offender) is the target of retribution, the cost of not taking collective responsibility could be much higher than sharing the blame and the fine.

---

[55]Assefa Fiseha, Gebre Yntiso, and Fekade Azeze, "The State of Knowledge on Customary Dispute Resolution in Ethiopia", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), cited above at note 26, p.30.

One might also wonder whether sharing of the consequences of wrongdoing would not encourage repeated perpetration. However, since it is an unpleasant experience for any group to go through such trials and tribulations that tarnish group reputation and image in society, repeated offenses may strain the relationship between the perpetrator and his group and lead to harsher measures such as humiliation, ostracism, expulsion from community, capital punishment, etc. In other words, there exist internal mechanisms to discourage and control offenders. On the whole, under ideal situation, collective responsibility for any wrongdoing is not a virtue worth pursuing. Under the contexts discussed above, however, it seems to serve important purpose worth appreciating.

3.5 Accessibility, Efficiency and Affordability

In Ethiopia, the formal law is inaccessible to a significant proportion of rural communities due to distance, efficiency, and affordability factors, not to mention the popularity deficiency. Most rural communities lack easy physical access to the formal courts because the District Courts are located in the Woreda (District) capitals, far away from most villages. Traveling to a Woreda capital to file a case would, undoubtedly, incur costs: money, time, and energy. Moreover, it creates inconveniences associated with the following: language barriers (where the local languages are not used in courts), facing unfamiliar and intimidating judges, repeated court appearances, and delays. Although quasi-formal social courts exist in villages, their mandates are limited to civil cases and petty crimes the punishments of which do not exceed one-month jail term and a 500 Birr fine.

On the other hand, the customary laws represent alternatives that fairly adequately address the gaps and challenges. The customary judges, who are sometimes appointed and entrusted by the parties and who speak the local languages, are readily available in every locality and provide speedy services free of charge (or for a nominal fee). Hence, the customary courts are more affordable and more accessible. Unlike the formal courts, which are complicated and known for rigidity, customary courts are characterized by flexibility and simplicity, which make the latter more efficient. Inconveniences and dissatisfactions associated with repeated court appearances, unbearable

delays, intimidating court procedures, and corruption are limited in customary courts.

4. Template for Comparative Research

Studies on customary laws may be undertaken in a variety of ways depending on their purpose and design. In this section, with the idea of knowledge systematization in mind, attempts are made to outline and explain salient variables useful for understanding the structures and procedures of customary courts and the state of legal pluralism in Ethiopia, which is unique in some ways. It is assumed that systematic study of customary laws requires a structured research approach that ensures the collection and analysis of comparable data.

4.1 The Structure of Customary Courts

This sub-section attempts to identify the judicial levels and frameworks, the identity and legitimacy of judges, and their terms of office. It needs to be noted that despite the constitutional provisions (i.e., Articles 34:5 and 78:5, discussed later), the customary courts lack space within the formal court. Hence, the structure discussed in this section relates to the customary courts.

Regarding court levels, some customary courts are hierarchically organized and have procedures for appeal, while others lack hierarchy and possibility for appeal. When it is deemed necessary to handle discords without delay and complication, cases may be transferred from a higher to a lower level court.[56] The absence of hierarchical structure does not deter complainants from taking their cases to other parallel levels for rehearing[57]. Some customary courts such as the Mad'a of the Afar people handle different types of cases[58], while others such as those among the Wolayita are specialized to handle only specific

[56] Gebre Yntiso, "Arra: Customary Dispute Resolution Mechanisms of the Dassanech", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), cited above at note 31, p.65.
[57]Debebe Zewde, "Conflict Resolution among the Issa Community", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), cited above at note 26, p.348; Mesfin Mesele, "Customary Dispute Resolution in Tach Armachiho Woreda, North Gondar", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), cited above at note 31, p.181.
[58]Kahsay Gebre, "Mad'a - The Justice System of the Afar People", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), cited above at note 26, p.326.

cases.[59] While the judicial levels and frameworks vary from society to society, flexibility seems to be one of the characterizing features of customary laws.

Customary court judges are known for their wisdom, impartiality, knowledge of their culture, rhetoric skills or convincing power, and rich experience in dispute/conflict handling. Apart from such well-versed individuals, influential clan leaders, ritual specialists, religious leaders, senior elders, village administrators, and lineage heads often participate in customary courts. The power of the customary judges emanate from at least four sources: consent of the parties, administrative position (e.g., clan chief), participation in rituals as in the case among the Sidama[60] and the Dassanech[61], and in some cases from leadership in religious institutions as in some parts of Amhara.[62] The identity of judges as prominent individuals and their power derived from secular and spiritual sources contribute to their legitimacy.

The terms of office of judges vary depending on the sources of their authority. The role of those judges appointed by parties in dispute/conflict end the moment the discords are handled. However, judges who acquired authority by virtue of their religious or administrative posts or by performing rituals may continue to serve until their formal replacement unless they are required to step down for legitimate reasons, such as inability to function, poor performance, and malpractice. While individuals with excellent record of service are invited to join the panel of judges repeatedly, those who failed to meet expectation are rarely given another chance. It can be noted that judges are under close public scrutiny and this helps to ensure their impartiality and competence for the task.

4.2 The Procedures of Customary Courts

This sub-section focuses on events/activities that span from the occurrence of an incident to its eventual closure. These include: reporting cases, evidence collection and verification, deliberation and verdict, closing rituals, and enforcement mechanisms. Reporting cases to customary courts is a collective

---

[59]Yilma Teferi, "Mediation and Reconciliation among the Wolayita Ethnic Group", In Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), id., p.106.
[60]Abrham Tadesse, cited above at note 52, p. 122-23.
[61] Gebre Yntiso, cited above at note 56, p.61.
[62]Birhan Assefa, "Yamare Fird: Customary law in Wogidi-BorenaWoreda, South Wollo", in Gebre Yntiso, Fekade Azeze, &Assefa Fiseha (eds.), cited above at note 26, p.139.

responsibility rather than a matter to be left to those directly involved. Family members, relatives, neighbors or anyone who has knowledge about the dispute/conflict is expected to report. In many cases, the culprit or his/her kin would admit guilt and report incidents to ensure quick conciliation. It is also a common practice for the party of the victim to file a case with the judicial body instead of resorting to vengeance.

The ultimate objective of customary courts is genuine conciliation after the disclosure of the truth. The truth is expected to surface through confession or public investigation that may involve review of evidence and witness testimony. Thanks to the high value accorded to truth, serious offenses committed under secrecy and in the absence of witness find solution through customary laws. The judges remind disputants to restrain themselves from doing things that can derail the process, hurt feelings, and exacerbate social disorder. Apart from those directly involved in disputes/conflicts and their witnesses, representatives of the parties (often family members) and ordinary spectators of the deliberation may be asked to air their views and comments in the interest of reconciliation and community peace.

When guilt is admitted or proven with evidence, a case comes to closure, and verdict will be passed often by consensus, although it does not preclude coercion (when persuasion fails). The offender's group may have to pay compensation to the victim's side, and express sincere repentance, which is often reciprocated with forgiveness from the victim's group. Regarding compensation, there exist significant variations across cultures. In some societies, fixed payment regimes exist, while in others fines are specified by judges or the parties based on the severity of the offence and sometimes the economic capacity of the offender to afford. Compensations may be paid immediately, in piecemeal over short period of time, or as a long-term debt to be inherited by generations as in the case among the Dassanech.[63]

Most customary court rulings end with closing ritual performances that involve sacrificial animals, expression of commitment to agreements, cursing wickedness and nonconformist behaviors, and blessing righteousness and conformity. Such rituals of partly divine content are believed to deter

[63] Gebre Yntiso, cited above at note 56, p.67.

rebellious tendencies and avoid possible relapse to discord. Besides the mystified harm that rituals are believed to inflict on the defiant, social pressure (e.g., defamation, ostracism, etc.) and physical measures (e.g., punishment, property confiscation, etc.) may be used to enforce customary court decisions. Handing an offender to the formal justice system is also viewed as dealing with the disobedient.

4.3 Legal Pluralism

Legal pluralism is explained in terms of the co-existence of more than one legal system in a given social field.[64] Sally Merry, who distinguished between 'classical legal pluralism' (that focused on the intersections of the colonial law and customary laws of the colonized) and the 'new legal pluralism', argued that the latter "places at the center of investigation the relationship between the official legal system and other forms of ordering that connect with but are in some ways separate from and depend on it."[65] Internal diversity within the state system, where various state sectors may be competing for authority also represents legal pluralism. Likewise, the non-state legal systems (of which customary laws represent one variant) are characterized by plurality of practices. The customary laws are also differentiated both within and across ethnic groups. In this paper, therefore, the concept of legal pluralism is employed to refer to:

a) the coexistence of and the relationships between the state law and the non-state laws, and

b) the coexistence of and relationships among various legal practices within customary laws.

Typology. For analytical purpose, five normative legal regimes (one state law and four non-state laws) have been identified in Ethiopia. These include: (1) the codified law introduced in the 1960s and the subsequent laws issued later in time; (2) the numerous customary laws characterized by both commonalities and differences between and within ethnic groups; (3) the *Sharia* Courts that have been in existence for long time, recognized by the three successive governments, and currently operating with jurisdiction over family and

[64] S. Merry, "Legal Pluralism", Law and Society Review, vol. 22, No. 5, (1988), p.870.
[65] S. Merry, cited above at note 65, p.873.

personal issues;[66] (4) the certified commercial arbitration forums that provide arbitration and mediation services in commercial, labor, construction, family and other disputes;[67] and (5) the spirit mediums, believed to operate as mediators between humans and God and accepted by followers as representing dispute/conflict handling institutions.[68] While Sharia Courts and the commercial arbitration forums have clear legal grounds to operate, the customary laws and spirit mediums largely function based on public acceptance and preference.

Relations. The relationship between the state law and the customary laws is an important area of study. The Ethiopian Constitution (Articles 39:2and 91:1) provides, in broad terms, for the promotion of the cultures of nations, nationalities and peoples of in the country. Article 34:5 makes more specific and direct reference to adjudication of disputes relating to personal and family laws in accordance with customary laws, with the consent of the parties to the dispute. Article 78:5 also states that the House of People's Representatives and State Councils can give official recognition to customary courts. Thus far, however, neither the particulars of Article 34.5 have been determined by law nor the official recognition stipulated in Article 78:5 has been given.

Therefore, the actual interactions between the state law and the customary laws are arbitrary, inconsistent, unregulated, and quite unpredictable, to say the least. One extreme situation is where the two legal systems unofficially recognize each other and cooperate to the extent of transferring cases and/or exchanging information.[69] There are instances where government authorities and customary judges work together in peace-making processes or addressing

---

[66] Mohammed Abdo, "Sharia Courts as an Alternative Mechanism of Dispute Resolution in Ethiopia", in Gebre Yntiso, Fekade Azeze, and Assefa Fiseha (eds.), cited above at note 31, p.261.

[67]Assefa Fiseha, cited above at note 31, p.241.

[68]Woubishet Shiferaw, cited above at note 46, p. 183-184.

[69]Mamo Hebo, Land, Local Custom and State Policies: Land Tenure, Land Disputes and Dispute Settlement among the Arsii Oromo of Southern Ethiopia, (2006), p.129-131; Gedewon Addisse and Fekade Azeze, "Customary Conflict Resolution Mechanisms among the Hadiya", in Gebre Yntiso, Fekade Azeze & Assefa Fiseha (eds.), cited above at note 26, p.100-101; Seyoum Yohannes, "Customary Dispute Resolution Mechanisms of the Irob Ethnic Group", in Gebre Yntiso, Fekade Azeze, & Assefa Fiseha (eds.), id., p.175.

inter-ethnic conflicts.[70] There are also situations where the formal and customary courts operate side-by-side exhibiting indifference and tolerance.[71] At another extreme, both get antagonistic, especially when one intervenes in the domains and activities of the other.[72]There is a need to regulate the relationship between the two legal systems and avoid anomalous practices.

Since little is known about the Ethiopian legal pluralism, the following questions await answers from researchers. What is the source of legitimacy of each legal practice? What are common features shared by all? What are their internal and external differences? What kinds of relationships exist among them? Are there categories of people who prefer certain laws over others? What are the criteria for choice of legal practices? What are the strengths and weaknesses of each practice? The answers to these questions and information on whether each institution is currently getting weaker or stronger and the reasons behind for such trend are expected to enhance knowledge about the state of legal pluralism in Ethiopia and its future.

Limitations of Customary Laws. The customary laws are criticized for the following limitations, among others: gender insensitivity, weak procedural fairness in adjudication and punishment, breach of human rights, lack of uniformity, and incompatibility with changing contexts. There are cases where customary courts overstretched their powers to handle homicide and pass death sentences. Sometimes convicted offenders are subjected to harsh physical punishment and torturous public humiliation. Hence, the application of some customary laws obviously violates the classic liberal rights (e.g., privacy, personal dignity, bodily integrity). Some of the injustices against women often overlooked by customary laws include: lack of women's participation in customary courts, denial of women's rights to property, marriage of rape

---

[70]Mesfin Mesele, cited above at note 57, p.197-201; Gebre Yntiso, cited above at note 56, p.73; Birhan Assefa, cited above at note 62, p.151; Israel Itansa, "The Quest for the Survival of the Gada System's Role in Conflict Resolution," in Gebre Yntiso, Fekade Azeze, & Assefa Fiseha (eds.), cited above at note 26, p.313.

[71]Wodisha Habitie, "Almaburi: Customary Conflict Resolution Mechanisms of the Berta", in Gebre Yntiso, Assefa Fiseha, and Fekade Azeze (eds.), cited above at note 31, p.125; Gebre Yntiso, cited above at note 56, p.73.

[72]Yewondwesen Awlachew, "Yejoka Qic'a: Conflict Resolution Mechanisms of the Seven House Gurage", in Gebre Yntiso, Fekade Azeze, & Assefa Fiseha (eds.), cited above at note 26, p.59; Alemu Kassaye, cited above at note 43, p.175-176.

victims to perpetrators, female genital cutting, denial of women's rights to divorce, arranged/forced early marriage, etc.

Since customary courts are localized, diverse, and unwritten, formulating a uniform law appears to be hardly attainable (if not totally impossible). In today's world where trans-nationalism, multiculturalism, and rapid social transformation are bridging the global and local divide, the compatibility of customary laws to the changing contexts and the new world order has become a crucial issue to be understood. Ethiopia has signed numerous international conventions and agreements, and the compatibility of the customary laws to such instruments and documents needs to be investigated. Therefore, research on customary laws should clearly spell out the broad spectrum of pros and cons to ensure comprehensive and balanced understanding.

5. Conclusion

In Ethiopia, customary laws have received growing attention by researchers due to multiple reasons discussed in the introduction. This unprecedented study of customary legal practices, however, did not lead to comprehensive knowledge amenable to comparative analysis, scientific generalization, or policy application such as legal system reform. This warrants the need to systematize knowledge about customary laws through a combination of measures.

First, the western concepts borrowed from the ADR literature must be clarified and their comparability to the customary practices should be established. Hence, the meanings and contexts of key terms (dispute, conflict, negotiation, mediation, arbitration, conciliation, dispute settlement, conflict resolution, conflict management, and conflict transformation) have been discussed with the hope to avoid confusing and inappropriate usage. Future researchers are expected to contribute to the conceptual clarity through careful choice and application of terms. Second, to explain the growing recognition of customary laws and their indispensability, efforts have been made to identify five variables (namely, restoration of order, quest for truth, public participation, collective responsibility, and accessibility) that represent the core values and virtues worth recognizing. Future studies are expected to add to these initial findings and broaden our perspectives. Third, in order to ensure comparative

study of customary laws, a prerequisite for advancing academic and policy interests, it is advisable to share common research approaches. With this in mind, a provisional template that captures the salient features of the customary court proceedings and other important variables has been proposed.

As long as scientific studies verify the relevance and popularity of customary laws, there is a need to establish coherent and harmonized legal systems where the jurisdictions of the various institutions and their relationships are identified and defined. Such a step should start with recognition as per the Constitution of Ethiopia. However, there are certain concerns that need to be addressed before taking any action aimed at reforming the legal systems. First, efforts to ensure cooperative relations between the formal and customary laws may lead to manipulative state intervention that would erode the legitimacy and integrity of the customary courts. Second, given the association of customary laws with violation of human rights and other limitations listed above, the state might find it rather difficult to embrace or accommodate the customary laws. Such concerns could be addressed through the systematic research approach proposed in this paper. On the whole, although the focus of this paper is on customary laws in Ethiopia, the ideas, approaches, and arguments raised here may apply to customary laws under similar situations elsewhere in the world.