Book Review

Alula Pankhrust and Getachew Assefa (eds), *Grass-Roots Justice in Ethiopia, The Contribution of Customary Dispute Resolution,* (French Center of Ethiopian Studies, Addis Ababa, United Printers PLC., 2008) p. xi and 301, price not indicated.

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The book documents some customary dispute resolution mechanisms extant in the nine national regional states which constitute the Ethiopian federal state, on top of its inclusion of traditional dispute settlements methods in two localities in Addis Ababa. The book is a survey of the diverse traditional dispute settlement institutions of Ethiopia. In the Preface, the Editors have succinctly stated the objective of the survey as aiming at the possibility of and the methods of integrating the longstanding customary dispute resolution institutions with the state legal system.(p.vi) Also made patent is the nexus the subject matter of the book has with the ongoing justice reform program of the country. (id.) The Preface, in addition, describes the various stakeholders which took part in the project which has led to this book, indicates their involvement in the project, research methods and working procedures as well as the justification for the adoption of and the appropriateness of the term customary dispute resolution as the central unifying concept of the book.(p.vi-ix)

The book consists of fourteen chapters. The first chapter is a joint contribution of the Editors. In this review, the opening chapter warrants greater coverage owing to its size, scope and depth. This chapter goes by far beyond a mere introduction. In the first section, it maps out the historical development of the interface between modernity and traditions in the context of law and legal institutions in Ethiopia. The historical narrative demonstrates that the state has shown a constant and visible orientation towards giving a limited formal place for traditional legal institutions. Put it differently, the Ethiopian state has preferred to predominately look outward for inspiration and raw materials in crafting its laws and legal institutions and little to inward sources.(p.8) Even the limited domain left by the state legal system to legal diversity, to the Editors, *has not been followed through with practical provisions and the creation of an enabling environment for a fruitful cooperation, alliance and partnership in the legal sphere* between the two.(p.8) This same first chapter, in the next section, provides the reader with the profile, in terms mainly of geography, population and economic base, of several ethnic groups/regions in the country followed by a short but informative description of the traditional legal institution of each of these communities.(p.18-50)

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More importantly, this second segment of chapter one, accomplishes an extremely useful task by bringing to our attention the various researches conducted so far on the customary law system of each of these ethnic groups. This section is not a mere enumeration of the pertinent bibliography. It characterizes them. It shows their gaps, too. Moreover, this same section complements the other contributions by describing certain traditional legal institutions such as the customary dispute settlement institutions of Kambata, of Gurage and of Wolayta, which are not at all covered by the other contributors in the book. This introduction to or indication of the available literature in the area seen together with the more than 270 bibliography supplied at the end of the book makes the book a good bridge to these readings. This considerably lessens the burden of those who want to venture into this seemingly well trodden path, but in actuality an interdisciplinary virgin territory. In the third portion of the first chapter, the reader is elevated to the domain of abstraction for she is offered the opportunity to identify and expound the major common pillars of the multiplicity of traditional legal institutions. At root, the Editors have demonstrated that territory, kinship, spiritual authority, and a combination thereof are common principles of social organization that tie together the diverse traditional legal institutions of the country. (p.51) Examination of these principles is followed, in the same winding up part of the first chapter, analyses of concepts such as *sirat*, *sera, aadaa* and *gome*. (p.58-60) This chapter shows the fact that customary dispute resolution mechanisms are amenable to change. The Editors make mention of extraneous factors such as writing, money, religion and the stretch of the tentacle of the state legal system to the geographic peripheries as accounting for some signs of dynamism in the existing customary law systems in Ethiopia.(p.73-76) The chapter closes with a sensible proposal, which is re-raised in the last chapter, for greater accommodation by the state of Ethiopia of the grass-roots justice systems by eliminating their de-meritorious faces (e.g., age and gender orientations) and formally embracing their meritorious aspects (e.g., malleability and reconciliation).(p.76)

The chapter by Kohlhagen presents a survey of the most significant experiences of the *de jure* and *de facto* dialogue between what he calls living laws (which are rooted in traditions) and state laws (which are either received or grafted) in Africa. In the sense that this contribution injects outside experiences sets it apart from all the other contributions included in the book. This second chapter asserts that there is a significant discord between customary laws and state law on the continent of Africa. The former are used to adjudicate the overwhelming majority of disputes in rural Africa while the latter deals with *only an infinitely small number of disputes*. (p. 77) After explaining the reasons for this huge discrepancy (e.g. language, infrastructure, value disjunctions) and outlining the interrelationship between the two systems based on the lived experiences of fifteen African nations having common law, civil law and *lusophone* heritages, Kohlhagen forwards the various avenues through which traditional justice systems could be accommodated (i.e., codification, integration, incorporation, tolerated self-regulation, cooperation and innovation).(p. 90-1) This

second chapter calls for an in-depth study of customary laws of Africa, which is a call for knowledge about customary laws before one decides either to condemn or maintain them. Kohlhagen does not suggest as to what African countries should do in the event of a significant value divergence between the received or imposed western legal traditions and the homegrown legal traditions.

This reviewer lumps the remaining chapters (chapters 3-13) together for the unifying first chapter captures and distills their essential attributes as shown above. These eleven contributions have unearthed a number of dimensions of the customary laws of Ethiopia. On the downside of traditional legal institutions, in many instances, women are not permitted to present their case before traditional elders (e.g. Afar, p.98; Amhara, p.108; Oromo, p.182; Somali, p. 187 and Tigray, p. 221); in the event of compensation for homicide, the value attached to the life of a woman is less than the life of a man (Oromo, p.176 and Somali, p. 195); the existence of cooperation between customary law systems and state legal institutions or delegation of matters to traditional legal institutions (e.g. Amhara, p.108-109; Nuer, p. 148 and Somali, p.193) and marriage between tradition and religion (Berta, p. 124 and Somali, p. 191). On the positive notes, among others, traditional legal institutions uphold the principle of public hearing (e.g. Afar, p.99) and are more often than not reachable for the majority of the populace.

Chapter twelve and chapter thirteen demonstrate amply that customary dispute settlement institutions are not mere rural phenomena. They are also urban occurrences, too. The occurrences of homegrown legal institutions at the citadel of the modern legal system of the country are not limited to commercial disputes. Cases considered in the localities of *Yeka* and *Mercato* prove that wide arrays of disputes including criminal and civil disputes are handled through traditional means of adjudication even in major cities. (p. 238-239 and p. 251-252)

When one goes through the book, one can vividly see that the pervasiveness of traditional dispute settlement methods radiate from the capital of the state legal system to all directions, north, south, east and west. They are in the four corners of the country embedded in the fabric of the peoples, though their degree of entrenchment might vary from time to time, place to place and from area of law to area of law.

In the final chapter, the reader finds the editors again, this time with conclusions and recommendations. This chapter garners evidence from the preceding thirteen chapters to single out and explain ten common major attributes of customary laws of the country. The ten attributes confirm the truthfulness of the message of the preamble of the FDRE Constitution, which to this reviewer, means that nations, nationalities and peoples of Ethiopia have common bondages in some respects and they do exhibit some differences. Then, the Editors consider ten merits of customary dispute resolution methods followed by discussions about five limitations of the same. A well targeted and structured set of recommendations brings the body of the book to an end.

This reviewer hopes that the first chapter of the book, in its second edition, if that is intended, will treat the writings, published in late 1960 and early 1970, which assess the success and failure of the massive codification project of Ethiopia. These writings examined the divergence between the imported laws and the practices in the areas of commercial law, labor law, adoption, marriage and juvenile justice ten years after the wholesale adoption of foreign laws by our country.[2] Besides, it is hoped that the second edition of the book will treat the space given by different legal theories (such as legal positivism and legal pluralism) for customary laws. This element, missing from any of the contributions in the book, will inject greater depth and perspective into the future edition. Further, it looks that the book seeks to defend meritorious customary dispute resolution methods (those which go with current expectations) on utilitarian grounds as opposed to principle based defense in their favor. That is, the book latently argues that the good faces of customary laws systems should be maintained provided they give advantages to the respective communities, for example, accessibility of the forums to the people in terms of distance, cost, opportunity for participation, etc. The right based (principled) defense for customary law systems would, on the other hand, argue that the positive dimensions of customary law systems should be maintained not just because they offer a particular advantage but because as a matter of collective entitlement of the owners of such customary laws. This latter type of collective entitlement based argument in defense of the accommodation of customary law systems located in our country is missing from the book. What is more even if the Editors have taken good care in the choice of expressions which capture the subject matter of the book, the term *customary dispute resolution* employed tends to send the message that customary law systems come into the picture when a dispute arises. The use of this expression hides the preventive role (which is latent throughout the book) of customary law systems.

On the whole, the book is a good read. The overwhelming majority of contributions in the book are joint products of a pair of researchers drawn from the discipline of law and of anthropology. This attempt made in the book to forge a union between the two disciplines is sound and should be encouraged. Bringing actively on board two of the key actors in the justice system (the Ministry of Justice and the Federal Supreme Court) of Ethiopia makes one to hope that the findings and recommendations of the book would not be taken lightly. Furthermore, the book has enabled us to understand the indigenous legal institutions better. A distinguished Malariologist made a striking remark to capitalize upon the utility of mastery of the conditions of things and

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[2]Some of these contributions are: Aklilu Wolde Amanuel, The Fallacies of Family Arbitration Under the 1960 Ethiopian Civil Code, 9JEL1 (1973); John H. Beckstrom, Divorce in Urban Ethiopia Ten Years After the Civil Code, 6JEL2 (1969); _____., Transplantation of Legal Systems: An Early Report on the Reception of Western Laws in Ethiopia 21Am. J. Comp. L, 3. (1973); Daniel Haile, Law and Social Change in Africa: Preliminary Look at the Ethiopian Experience, 9JEL2 (1973); Thomas Gerathy, People`s Practice, Attitudes and Problems in the Lower Courts of Ethiopia, 6JEL2 (1969).

communities. He said: *if you wish to control mosquitoes, you will learn to think like mosquitoes.*[3] Following him but with a little tinkering with his memorable remark, one should say that if you wish to accommodate or banish customary laws, you should learn to think like customary law systems. The full understanding of the reasons behind the diverse communities for creating and maintaining their grass-roots legal institutions should precede any form of dealing with them by the state. This book is a stride towards this direction.

[3]Dr. Samuel Darling as quoted in Benjamin D. Paul, Health, Culture and Community: Case Studies of Public Reactions to Health Programs (New York: Russell Sage Foundation, 1955) at 1.