The Interaction of State and Traditional Justice Institutions in Ethiopia: The Case of Gereb Institutions in North-East Ethiopia

Awet Halefom Kahsay ♣

Abstract

The existing literature on the relationship between state and traditional justice institutions presents a range of analytical perspectives but faces several limitations. First, much of the legal pluralism literature, focusing on customary laws and formal (state) laws, narrowly associates traditional institutions with the state justice sector, neglecting broader institutional interactions. Second, it often provides models of relationships without adequately considering the diverse regional contexts and traditional institutions found in federal systems like Ethiopia. Third, the existing case studies frequently fail to compare or establish connections between and among similar cases. This article, using the Gereb traditional institutions as the primary case study alongside comparable research conducted in Ethiopia, examines the relationship between the state institutions and the Gereb traditional institutions from legal and institutional perspectives. The findings reveal that formal legal and policy frameworks governing the Gereb institutions are absent. However, the regional states adopt a dual approach toward the Gerebs. In inter-communal conflicts, the Gerebs have de facto legal recognition; whereas, in intra-communal conflicts, the Gerebs lack such recognition but are allowed to settle conflicts through irq or 'reconciliation'. Based on findings from the Gereb case study and other relevant studies, the article suggests that instead of imposing a uniform national framework or typologies, in this regard, such legal and policy frameworks should be left to the regional states.

Keywords: *Gerebs*, Interaction, Traditional Institutions, State institutions, Legitimacy, Cooperation

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♣ LLB, LL.M, PhD Student, IPSS, Addis Ababa University, Addis Ababa, Ethiopia, Email: awet.halefom@aau.edu.et
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1. Introduction

Legal pluralism refers to the coexistence of multiple legal systems within a given society or state. Although the literature on legal pluralism acknowledges this coexistence, it often neglects the roles of the institutions themselves and remains focused primarily on legal jurisprudence.[1] According to Berman, 'legal pluralism applied to the insights of sociolegal scholarship' needs to 'turn its gaze away from abstract questions of legitimacy and toward empirical questions of efficacy and more complex accounts of institutionalised collective action.'[2] Thus, a comprehensive analysis of the relationship between traditional institutions and state institutions requires national and local level analysis. These analytical lenses are essential for examining the extent to which legal, policy, and institutional frameworks adequately address the dynamics of this relationship. Existing literature in Ethiopia highlights an unclear and inconsistent relationship between state and traditional institutions, with notable variation across regions[3]. First, a complex and often contentious relationship between the state and traditional institutions necessitates a thorough examination to understand the dynamics at play. Second, traditional institutions, which are deeply embedded in the broader socio-legal landscape, interact with state institutions in various ways, either in cooperation or competition, requiring careful consideration of which path should be pursued. Third, traditional institutions do not exist in isolation but are part of a broader societal framework that includes state institutions and state laws, making it necessary to analyse their interactions with these entities. Lastly, examining the relationship between state and traditional institutions can offer valuable insights into how these systems can complement each other and identify areas of synergy, enabling policymakers and practitioners to develop strategies that enhance cooperation and improve the overall effectiveness of conflict resolution mechanisms and beyond.

This article critically examines the current relationship between *Gereb* traditional institutions in north-east Ethiopia and various state entities, focusing on both intra-communal and inter-communal conflicts at the local level. While existing literature has primarily focused on the

[1]See for instance Susanne Epple and Getachew Assefa (eds.) *Legal Pluralism in Ethiopia: Actors, Challenges and Solutions* (Transcript, 2020). See also Alula Pankhurst and Getachew Assefa (Eds), *Grass-Root Justice in Ethiopia: The Contribution of Customary Dispute Resolution* (Centre Francais d'etudes Ethiopianes. Addis Ababa,2008).
[2] Paul Berman, 'Understanding Global Legal Pluralism from Local to Global, from Descriptive to Normative' in Paul Berman (ed), *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press, New York, 2020), p.2.
[3] See, for example, Susanne and Getachew, *supra* note 1. This edited volume presents various cases from across Ethiopia's regional states, illustrating both cooperation and competition between state and traditional institutions.

relationship between the state and traditional institutions from the perspective of conflict resolution and justice sector institutions, highlighting only one role of these traditional institutions, this article broadens the scope to examine the full range of activities undertaken by traditional institutions and their interactions with state institutions. This analysis includes the legal frameworks that shape these interactions at the local, regional, and national levels. It is guided by the existing legal, institutional, and policy frameworks that define the interaction between these two institutions. By adopting this expansive approach, the article offers a more nuanced understanding of the relationship between *Gereb* institutions and state entities, surpassing earlier analyses that were typically confined to the justice sector. It not only examines specific case studies but also proposes solutions to regulate the relationship between the two, taking into account the current state structure.

The study adopts a socio-legal research methodology, combining empirical fieldwork with legal doctrinal analysis to examine the role of *Gereb* institutions within Ethiopia's legal pluralism framework. The *Gereb* institutions, whose name translates to streams, rivers, or forests, serve as traditional justice mechanisms along the Tigray-Afar boundary, stretching from southern to northern Tigray.[4] These institutions function as both judicial and non-judicial bodies, with *Abo-Gerebs* (*Gereb* representatives) overseeing conflict resolution. Their jurisdiction extends to both inter-communal conflicts (Enderta and Ab'ala districts) and intra-communal conflicts (Raya-Alamata district).[5]

For empirical data collection, fieldwork was conducted from January to April 2020, utilising semi-structured interviews with forty key informants, including community leaders, government officials, and Abo-*Gerebs*.[6] Additionally, six focus group discussions were held with

[4] Haregot Zeray, '*Women's Community Leadership at Grass Root Level: The Case of Gereb Customary Court in Raya Alamata District, Southern Zone of Tigray Region,* (MA thesis, Centre for Human Rights, AAU, 2018), p.56. Also interview with Ato Dereje, Chairman of the *Gereb* institutions, Mekelle, on 12 March 2020.

[5] In this research intra-communal conflicts refers to conflicts that occurred within an ethnic group whereas inter-ethnic conflicts refer to conflict of occurred between two ethnic groups (Afar and Tigray in this case). Enderta *Wereda* is found in Southeast zone of Tigray whereas Ab'ala *Wereda* is found in Afar region zone 2. Both *Weredas*' share the same boundary. Raya Alamata *Wereda* was found under the Southern Tigray zone before the Tigray war.

[6] While the data was primary collected in before the eruption of the north Ethiopia war, it was updated in January in 2024 through participant follow-up interviews with original participants, supplemented by new data from relevant stakeholders. As the region was in war for two years, there is no substantial difference on institutional, legal as well as policy frameworks regarding *Gereb* traditional institutions. In fact, the researcher has contact after the war with the key informants so that they confirmed that the *Gereb*s are still actively functioning according to their tradition. Interviews with Afar regional state officials and experts was conducted in August 2023.

representatives from both communities to explore their perceptions of *Gereb's* jurisdiction, enforcement, and legitimacy. A fifteen-year compilation of the minutes of discussion (hereafter MoD) of the Abo-*Gerebs* was analysed to track patterns of conflict resolution, institutional changes, and interactions with the state legal system.[7] For the legal analysis, the study examines pertinent federal and regional laws, constitutional provisions, and policy frameworks governing customary justice institutions in Ethiopia. Particularly, it has considered the new transitional justice policy to position the *Gereb* system within Ethiopia's evolving transitional justice landscape.

This article begins by establishing the research context and outlining the methodological approach. It then explores the conceptual foundations, including key studies on legal pluralism. Subsequently, it examines the legal frameworks governing the *Gerebs*, highlighting associated legal and policy challenges, and addresses relevant policy frameworks. The analysis then investigates the institutional relationship between the *Gerebs* and state institutions. Finally, a model is presented to illustrate the interaction between state institutions and *Gereb* traditional institutions at both local and national levels.

2. Conceptual Underpinning

2.1. Traditional Institutions, Conflict Resolution and Reconciliation (*irq*)

There is a terminological debate in this field. There have been numerous suggestions about what to call normative orders existing outside of the State, including 'popular dispute resolution mechanisms'[8]'traditional institution of conflict resolution'[9], 'traditional justice systems'[10], 'customary dispute resolution mechanisms'[11], 'restorative justice'[12], 'alternative dispute

[7] The minutes of discussion (here after MoD) is a compilation of the basic discussion by the *Abo Gerebs* since 2005-2020. The *Gereb*s compiled their discussion since 2005 because the *Gereb* has been reorganized themselves and got a *de facto* recognition from the two regional states. The original handwritten Minutes of Discussion (2008–2020) are stored at the Enderta *Wereda* Security and Administration Office, while a copy is held by the researcher.

[8] Gebreyesus Bahta, 'Popular dispute resolution mechanisms in Ethiopia: Trends, opportunities, challenges and prospects, African Journal on Conflict Resolution' Vol. 14, No. 1, 2014.

[9] Meron Zeleke, 'Ye Shakoch Chilot (the Court of the Sheikhs): A Traditional Institution of Conflict Resolution in Oromiya Zone of Amhara Regional State, Ethiopia, African Journal on Conflict Resolution', Vol. 10, No. 1, 2010, pp. 63–82.

[10] Emmanuel Olawale, Ying Hooi & Balakrishnan, K., 'The Dynamics of African Traditional Justice Systems: Perspectives and Prospective, African Security Review' Vol.33, Issue 3, 2024.

[11] Alula and Getachew, *supra note* 1. See also Gebrie Yntiso, Assefa Fiseha and Fekade Azeze, *Customary Dispute Resolution Mechanisms,* (The Ethiopian Arbitration and Conciliation Center, Addis Ababa, 2011).

[12] Julie Macfarlane, 'Working Towards Restorative Justice in Ethiopia: Integrating Traditional Conflict Resolution Systems with The Formal Legal System, Cardozo Journal of Conflict Resolution', Vol., 8, 2007.

resolution'[13], and 'traditional methods of conflict resolution.'[14]. The term 'traditional' is employed in this research for two primary reasons. First, while "customary" refers to norms and practices rooted in custom, often tied to conflict resolution,[15] it implies that these institutions are strictly grounded in customary rules. By contrast, "traditional" underscores the enduring nature or 'traditionality' of these institutions, without delving into the origins of their authority or decision-making processes. This mirrors the usage of terms like 'common law tradition' or 'civil law tradition, which point to well-established legal systems that have stood the test of time, as recognised in legal jurisprudence.[16] Second, this research seeks to take a broader view of these institutions, factoring in not only conflict resolution but also conflict prevention, where their underlying principles may not always hinge on custom alone. As a result, for the scope of this study, "traditional institution" is the term of choice.

Since 2011, the Ethiopian Arbitration and Reconciliation Centre has sponsored three book series on traditional institutions. In the whole series, these books are titled 'Customary Conflict Resolution Mechanisms in Ethiopia' and translated as *ባህላዊ የግጭት መፍቻ ስርዓት በኢትዮጵያ*. As the contributors have tried to reflect and translate what the traditional leaders have said or ritually performed, in nowhere the book has described that the traditional leaders/elders used the word resolution in the process. Besides, dominant number of Amharic or Tigrinya literatures on conflict resolutions use the term *'ጎንፂ ምእላይ'* (*gonts'i mɨlay*) and *'ግጭት መፍታት'* *(gɨc'it məftat)* respectively.[17] However, interviews and subsequent discussions with *Abo Gerebs* and community members revealed a notable absence of these terms. Instead, the *Abo Gerebs* frequently employed

[13] Shipi Gowok, 'Alternative Dispute Resolution in Ethiopia- A Legal Framework, African Research Review', Vol.2, No.2, April 2008.

[14] Mutisi, Martha and Greenidge, Kwesi (ed), *Integrating Traditional and Modern Conflict Resolution: Experiences from selected cases in Eastern and the Horn of Africa*, Africa Dialogue Monograph Series No. 2/2012, (African Centre for the Constructive Resolution of Disputes (ACCORD), South Africa, Durban, 2012).

[15] Alula and Getachew, supra note 9, p, viii. They stated that "One of the clearest distinctions of the institutions under consideration [customary dispute resolution institutions] is that they operate on the basis of local customary or cultural norms and rules, as opposed to those set out from above from the state or internationally." Sussan Epple also discussed the difference between different terminologies in the literature including 'people's law', 'traditional law', 'folk law' and 'indigenous law'. See Sussan Epple, 'Introduction' in in Susanne Epple and Getachew Assefa (eds.), *Legal Pluralism in Ethiopia Actors, Challenges and Solutions*, (Transcript, 2020), p.18.

[16] Glenn provides a foundational framework for understanding the concept of "tradition" within the context of legal traditions. His book emphasizes the importance of legal traditions as dynamic, evolving systems of thought and practice that are deeply rooted in cultural, historical, and societal contexts. See Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (Oxford University Press,2004).

[17] Fekade Azeze, Assefa Fiseha, & Gebrie Yinteso (Eds.) *Annotated bibliography of studies on customary dispute resolution mechanisms in Ethiopia* (The Ethiopian Arbitration and Conciliation Center, 2011).

the term ዕርቂ (*ɨrqi*), which is commonly translated as 'reconciliation' in Amharic and Tigrinya literature.[18] The etymology of *ɨrqi* as described by the *Abo Gerebs* involves a process where the perpetrator is made naked (metaphorically exposed) before the community, prompting the wrong doer to disclose the action fully and expressing remorse for the wrong deed.[19] This concept of reconciliation through disclosure differs significantly from the notions of *gonts'i mɨlay* and *gɨc'ɨt məftat* which were not observed in the entire process.

2.2. The Relationship Between Traditional and State Institutions: Critique of the Existing Legal Pluralism Literature

The coexistence and the potential tension between state institutions and customary conflict resolution mechanisms are an ancient phenomenon. Some studies held that in some circumstances they can effectively complement, while others claim that there is an inherent contradiction that can't be resolved.[20] At the continental level, the African Centre for the Constructive Resolution of Disputes (ACCORD) monograph demonstrated that the relationship between traditional institutions and the state is a delicate one, and in some cases, politicised. This collation of case studies thus opens debate on the possibility of integrating both traditional and modern approaches to conflict resolution. However, the monograph ended by proposing the need for a clear-cut formula regarding the interactions between the state and traditional institutions.[21] With the same trend, specific case studies have been conducted in Rwanda[22], Ghana,[23] and South Africa[24] to explore the experiences and to forward possible solutions to specific countries.

The literature in Ethiopia provides different case studies with variant relationships between the State and Traditional institutions. Such studies consistently narrate the cooperation and competition between them, focusing predominantly on the justice aspect of traditional institutions.

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[18] FGD with Abo *Gereb*s, on 10 April 2020, Quiha, Mekelle.
[19] Ibid.
[20] Luc Huyse and Mark Salter (eds), *Traditional Justice and Reconciliation after Violent Conflict Learning from African Experience,* (International Institute for Democracy and Electoral Assistance, 2008).
[21] Mutisi and Greenidge, *supra note 14,* p.149.
[22] Sullo Pietro, *Beyond Genocide: Transitional Justice and Gacaca Courts in Rwanda the Search for Truth, Justice and Reconciliation* (Asser Press, The Hague, 2018).
[23]William Myers, Kevin Fridy, 'Formal Versus Traditional Institutions: Evidence from Ghana, *Democratization'*, Vol.*24, issue* 2, 2016, pp 367–382.
[24] Richard Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State* (Cambridge University Press, New York, 2001).

While legislative confusion looms, the day-to-day activities of traditional institutions reveal varied approaches among and within regions.

Turning to specific regional examples, among the Gamo, Temechegn highlighted that cooperation exists between state and traditional institutions in the handover of the slayer, identification of the criminal, and prevention of revenge and further escalation of conflict. This cooperation underscores the necessity for peace, which, according to Temesgen, can only be achieved through traditional institutions. He stated, "state agents have duly recognised the local preference for customary law and have also noted that it is difficult to restore peace and ensure stability in the area if customary institutions are excluded. …the state institutions collaborate with customary institutions in the resolution of conflict in general and homicide in particular."[25]

Furthermore, the tension between the two is more pronounced in areas where local elders have more influence than the state. Epple reported that among the Beshada and Hamer, "anyone who addresses the police or court directly risks being locally sanctioned and fined by the elders."[26] The police cannot easily apprehend a criminal if the local community does not cooperate. Therefore, the police usually choose to follow up on a case only occasionally. Preference is given to the local leaders, and there "seems to be a kind of silent agreement between the government and the locals" as it is impossible to apprehend and prosecute anyone in the bush against the will of the community. In the worst scenarios, this escalates to "verbal threats and intimidations" against state officials.[27]

Among the Borona Oromo, while both state law and customary law coexist, "disagreement arises when the victim, the offender, and the concerned community want their dispute to be settled through customary law, but the police insist that it be resolved in the regular courts."[28] Similarly, among the Tulama Oromo, Melaku noted that "there is informal cooperation between the two, extending to the transfer of cases to the traditional *Jaarsumma*." [29] In terms of competition, the

[25] Temechegn Gutu, 'The handling of homicide in the context of legal pluralism Cooperation between government and customary institutions in the Gamo highlands', in Susanne Epple and Getachew Assefa (eds.), *Legal Pluralism in Ethiopia Actors, Challenges and Solutions* (Transcript, 2020), P.106.
[26] Susanne Epple, 'Local Strategies to Maintain Cultural Integrity: The Vernacularisation of State Law among the Bashada and Hamar of Southern Ethiopia' in Susanne and Getachew, *supra note 13,* p.200.
[27] Ibid.
[28] Aberra Degefa, 'When Parallel Justice Systems Lack Mutual Recognition Negative Impacts on The Resolution of Criminal Cases among the Borana Oromo', in Susanne and Getachew, *supra note* 1, p.323.
[29] Melaku Abera, 'The Interplay of Customary and Formal Legal Systems Among the Tulama Oromo Cooperation and Competition' in Susanne and Getachew, *supra note 13,* P.106

author mentioned issues such as mutual undermining, confusion, disputes over jurisdiction, double jeopardy, and a lack of mutual trust. To be more specific, "the decision of the elders had little or no value in the court's decision," whereas conversely, "elders use different techniques to intimidate disputants into withdrawing their complaints before or even after investigations or prosecutions have started."[30] The mistrust between the state and traditional institutions is expressed in various ways. "Actors in the formal legal system do not trust local elders due to the latter's involvement in disputes that fall outside their jurisdiction. Similarly, the elders expressed disappointment that actors in the formal legal system violated the promises they made regarding disputes that had already been settled customarily."[31]

What makes the Oromia region different in this regard is that the regional state introduced a breakthrough proclamation empowering traditional institutions (customary courts) to have jurisdiction over civil, family, and criminal matters.[32] While no limitations are provided on civil and family matters, the jurisdiction of customary courts is restricted to petty offences and crimes punishable upon complaint.[33] However, the proclamation empowers these courts to reconcile and determine '*Gumaa*' regarding criminal matters instituted by the public prosecutor.[34] Despite such restrictions, research indicates that traditional institutions handle cases without differentiating between civil and criminal issues.[35]

In addition to these examples, there are situations where state institutions may assist in enforcing decisions made by traditional institutions. For instance, in the Somali context, it is noted that the '*odayaal'* [the elders] may fail to enforce the decision it has reached. In such a case, they ask the police and other executive officials to lend a hand in enforcing the decision, claiming that peace and security might be out of control unless the decision is enforced."[36] Such requests are typically met with positive responses, and executive officials assist in enforcing the *odayaal's* decisions. Although not formalised, the regional state acknowledges this practice and has permitted some

[30] Id, p.136
[31] Ibid.
[32] Oromia Region Customary Courts Proclamation No. 240/2021, *Magalata Oromiyaa*, No1/2021.
[33] Id, Art.8 (1)(b).
[34] Id. Art 8(4)(b).
[35] Teferi Bekele Ayana, 'Administration of Justice in Customary Courts in Oromia, Haramaya Law Review', Vol. 12, 2023, p.15.
[36] Mohammed Mealin Seid and Zewdie Jotte**, '**Customary Dispute Resolution in the Somali State of Ethiopia: An Overview' in Alula and Getachew, *supra note 1*, p.193.

criminal cases to be resolved by the *odayaal*, particularly in instances of inter-clan conflict, citing peace and security as reasons for cooperation.[37]

Contrastingly, the situation in Afar is somewhat different. In Afar, "the Regional Government allocates budgets to facilitate the work of the elders."[38] Notably, there are instances where elders have written to the state council requesting the withdrawal of ongoing cases for peace purposes. Getachew and Shimelis documented a case where, after the police transferred a case to the public prosecutor's office, elders resolved this case amicably by using customary institutions and wrote a letter to the State Council.

> *In the letter, the elders requested the release of the suspect. The State's Council accepted the peaceful resolution of the case by elders and wrote a letter to the State's Justice Bureau not to institute the charge against the suspect. The Justice Bureau of the State decided not to institute a charge on the suspect, accepting the request of the State's Council. The Justice Bureau cited Article 42 (1) of the Criminal Procedure Code as the basis of its decision. The Justice Bureau justified its action by stating that the amicable resolution of such a case by the elders was preferable to avoid conflict between the clans of the deceased and the clans of the suspect.*[39]

Furthermore, the state not only withdraws from ongoing cases or at the initial stage of criminal proceedings, but also releases perpetrators after criminal adjudication. Kebede mentioned a case where the Afar Supreme Court ordered the release of an offender upon the request of the elders from the region, "by citing the letter written to the court that indicated the disposition of the case by reconciliation made by elders in accordance with the tradition of the Afar people."[40]

In the Bashada and Hamar people, Southern Ethiopia, it is reported that there is a conflict, not cooperation, between these institutions expressed in terms of hiding crimes, pretending cooperation, trying to influence court decisions and to the extent openly resisting the state

[37] This is informal and political decisions as there is no legislation authorized such exceptions. Interview with Afar Regional State Supreme Court Judge, on 24 August 2023.
[38] Alula Pankhurst and Getachew Assefa 'Understanding Customary Dispute Settlement in Ethiopia' in Alula and Getachew, *supra note 1*, p.75.
[39] Getachew Talachew and Shimelis Habtewold, 'Customary Dispute Resolution in Afar Society' in in Alula and Getachew, *supra note 1*, p.104
[40] ibid.

institutions.[41] In the Borana, Oromia regional state, it was reported that there are inclinations to be given some degree of formal recognition to traditional institutions and be supported by the Oromia National Regional State structure. Regarding this, Aberra states:

> *the leadership of both systems could specify how cases can be referred from one system to the other and determine the nature of the relationship with the police and courts. They could also determine and agree upon the circumstances under which cases in the courts of law might be diverted to the customary justice system.*[42]

In the northern part of the country, it is revealed that there is complementarity: the police support for the appearance of the Arrestee before the elders, the final reconciliation agreements will be considered as a mitigating circumstance in the final Judgment of the court. On the border between Afar and Tigray[43] the then Ministry of Justice had terminated a criminal case constructed against the suspects for the sake of the community's peaceful co-existence. The facts of the case were that considerable numbers of cattle were taken by each side during the fight because the cattle were found grazing on the land over which the communities used to dispute. Several individuals died on each side, and the regional police caught ten individuals accordingly. Upon the initiation of the elders of the area, it was recommended that the *Abo-Gerebs* of both communities should handle the conflict. Upon the request of the *Abo Gerebs*, the police released the suspects, and the process of resolution had ended up per the procedures of the traditional institution with the document of the reconciliation written and signed in the presence of representatives of the administration of the regions (Tigray and Afar), the police representatives of the two regions and the elders of the communities.[44]

The worst type of relationship is reported in Burji.[45] Accordingly, in the locality, the formal judicial system is considered as "*yetelat bet*" or an alien institution, which shows the trust and level of acceptance that these traditional institutions have in the locality. The same is true in the Borona

[41] Susanne Epple, supra *note 1*, p.31.
[42] Abera Degefa, 'When Parallel Justice Systems Lack Mutual Recognition Negative Impacts on the Resolution of Criminal Cases Among the Borana Oromo' in Susanne and Getachew, *supra note 13*, p.*333.*
[43] Shimelis Gizaw and Taddese Gessese, 'Customary Dispute Resolution in Tigray Region: Case Studies from Three Districts' in Alula and Getachew, supra *note 1*, p.193.
[44] Ibid
[45] Girma and Fekade, 'Chemuma: Conflict Resolution System in Burji' in Gebrie et al, *supra note 11*.

Oromo and the Mehan Somali conflict resolution, which goes up to "accusing [the accused] his ethnic member for taking him to *gaddisa nyaapha* (alien court) instead of *gaddisaa gossa* (ethnic/clan court), which simply suggests the formal court is less preferable to the customary court" from the Borona case. While these studies highlight variations across the country and the cooperative, competitive, and occasionally conflicting nature of these relationships, they predominantly frame the interaction through the lens of conflict resolution and justice. This narrow focus overlooks the broader societal roles and institutional frameworks that underpin these traditional institutions.

With all these variations, the literature on traditional institutions is also replete with various typologies and models aimed at solving the delicate relationship between state and traditional institutions. Connolly, in her 2005 research, examines many cases from various countries, focusing on the state regulation of non-state systems.[46] Connolly distinguishes and evaluates four different types of recognition regimes that incorporate the non-state justice institutions into the state legal system in different ways. These are abolitionist approach, complete incorporation, limited incorporation, and no incorporation models.

Instead of distinguishing fixed types of incorporation, other writers opted to examine ways of incorporation through the 'flexibility' criterion. Kotter *et al* identified a three-step scale that resides between Connolly's hypothetical borderline cases of complete autonomy and complete integration, with criteria of increasing or decreasing autonomy of the non-state justice system in its relation to the state legal system and the state judiciary.[47] The foremost and most renowned typology is Miranda Forsyth's seven models of the relationship between state institutions and traditional institutions.[48] The problem with these typologies is that they define the complex relationship of the state and traditional institutions into listed categories. If we take the Ethiopian

[46] Connolly Brynna, 'Non-State Justice Systems and the State: Proposals for a Recognition Typology, Connecticut Law Review' Vol.38, 2005, p. 239.

[47] Matthias Kötter, Tilmann Röder, Gunnar Schuppert and Rüdiger Wolfrum (eds), *Non-State Justice Institutions and the Law: Decision-Making at the Interface of Tradition, Religion and the State* (Palgrave Macmillan, 2015). Accordingly, *high autonomy* refers to where "the non-state institution has exclusive jurisdiction of certain subject matters and its decisions cannot be overruled by a state court of last resort", *medium autonomy* where "the final revision of certain subject matters is exercised by a superior state court" and Low *autonomy* where the non-state institution is granted jurisdiction on certain subject matters, but the final revision is exercised by a superior state court law(p.174).

[48] Miranda Forsyth, *A Bird that Flies with Two Wings Kastom and State Justice Systems in Vanuatu* (ANU Press, 2009).

reality, case studies reported show that in some localities these institutions are granted *de facto* exclusive jurisdiction, while in other case studies it is reported that there is no exclusive jurisdiction, but the person will be subjected to the state as well as the non-justice systems. This model doesn't consider the diversities within a federal structure of countries as it assumes a uniform application of these models within a single nation, overlooking the complexities inherent in federal states.

In such contexts, diverse ethnic groups may operate under vastly different local realities shaped by their distinct customary institutions. Put differently, the framework fails to consider the nuances of a multi-ethnic federal system, where a one-size-fits-all approach cannot capture the varying dynamics of local traditions and legal structures. As it is indicated above, the Ethiopian literature on traditional institutions offers a wealth of specific examples across various ethnic groups, highlighting the limitations of a model that attaches a single framework to a single state. These models, therefore, neglect the coexistence of multiple legal and customary structures that may be present within a country. Additionally, it focuses on a nation's legal framework at a macro level, often ignoring the intricate details of institutional and policy arrangements. For instance, in Ethiopia, the civil code pursues an abolitionist approach by disregarding customary rules and institutions unless they are incorporated into the code. In contrast, the criminal justice policy acknowledges and recognises the role of traditional justice systems. The draft criminal procedure code even grants exclusive jurisdiction to customary institutions on certain issues, making their decisions final and unappealable. The Ethiopian Constitution allows for the establishment of courts on personal and family matters. All these issues call for a broader analysis of the relationship between the state and traditional institutions.

In general, these studies suffer from five major limitations. First, by focusing exclusively on the justice sector, these studies presume that traditional institutions are primarily connected to the state's justice system, a presumption that arises from the dominant narrative of their conflict resolution role. Second, these analyses often rely solely on normative approaches, without employing a more holistic framework that considers legal, institutional, and policy dimensions at both the national and local levels. Third, the models and typologies offered thus far focus on national-level solutions, overlooking the nuanced dynamics of cooperation and competition that

occur at the local (sub-national) level. Moreover, these approaches have not adequately accounted for the complexities introduced by federal systems, where regional states possess distinct legislative, executive, and judicial structures. Fourth, as will be argued below, this issue originates from a misinterpretation of the FDRE Constitution's legal recognition provisions, which have been understood to grant recognition to cultural (traditional) systems solely on family and personal matters, while excluding criminal matters. Fifth, the literature appears to overlook that, while legal frameworks enforcing the decisions of traditional institutions may be absent, institutional recognition and integration of state and traditional institutions can occur without formal legal provisions.

3. Legal Frameworks and Contestations for the *Gerebs*

3.1. Legitimacy of Traditional Institutions

Contrary to the widespread misconceptions,[49] the law does not outright bar the resolution of criminal cases or civil cases through customary institutions. The involvement of traditional mechanisms in settling disputes is not inherently problematic. The core legal principle here is that while traditional institutions may adjudicate cases, their rulings do not carry binding legal authority within the state system. In other words, state institutions are not obligated to enforce decisions rendered by these traditional bodies, and the police are not mandated to execute their outcomes. This is simply about the legal legitimacy of traditional institutions. This distinction is significant, as it shifts the focus from jurisdictional exclusion to an issue of state enforcement mechanisms. In practice, most traditional institutions operate independently of state enforcement, relying on customary enforcement mechanisms that do not require state intervention.[50]

However, the practice as well as the evidence from the case study of this research shows that the *Gereb* traditional institutions have more popular legitimacy than the state institutions. As evidenced in the *Ab'ala* and *Enderta* case, courts have no role in adjudicating criminal cases, but traditional institutions do. To the question why the community chose *Gerebs* over the state institutions, a respondent mentioned that:

[49] Alula and Getachew, supra *note 1*, p.8. 'CDR systems are not allowed any formal space of operation in the criminal law areas in spite of the fact that they are heavily involved in criminal matters'; See also Susanne Epple, *supra note 13,* p.11.

[50] Case studies mentioned in Alula and Getachew, *supra* note 1, and Susanne and Getachew, *supra* note 1, reveal that traditional institutions enforce their decisions through their own mechanisms. State involvement in enforcing these decisions occurs only in rare cases, due to the absence of legal provisions supporting such cooperation.

> *The community has inherited it from its parents since ancient times, Abo Gerebs are not paid for their work, Abo Gerebs treat both communities equally, Abo Gerebs are not like a court that needs plenty of time to solve a problem. The conflict between two regions is judged by the federal government but Abo Gerebs are solving the problems swiftly without further appointment, without any obstacles and for free. Abo Gerebs helps the peoples to reconcile their conflict; Tigray, Afar, Ab'ala and Enderta believe in Abo Gerebs above all and above all, if anything happens, it comes directly to the Abo Gerebs.*[51]

Despite the formal judicial structures in place, traditional institutions continue to play a significant role in addressing intra-communal and inter-communal conflicts. This suggests a complex interplay between state and traditional systems, where the latter continues to thrive due to its resonance with local customs, norms, and practices. The persistence of traditional institutions like the *Gerebs* highlights the limitations and challenges faced by state institutions in fully integrating and serving diverse communities across the regions. The question is, then, what is the source of legitimacy of the *Gerebs* or other similar institutions in Africa? One of the arguments cited for supporting the legitimacy of traditional institutions is the one mentioned by Goran Hyden, which is associated with the problem of the post-colonial state:

> *the African continent since colonial days is a shift from one crisis of legitimacy to another. During colonialism, the crisis that eventually emerged in these societies was the discrepancy between the values underlying the operations of the state and the norms guiding African communities. The success of nationalism brought about a change so that after independence the crisis that has come to dominate the political scene on the continent is the inability of the state to operate as a distinct institution free from the constraints of communitarian and religious ties.*[52]

However, the limitation of this argument lies in its inapplicability to Ethiopia, 'unlike in former colonies, Ethiopia's customary legal systems have continued to function unimpeded by outside influence in many places'.[53] In fact, Goran's arguments work for the African states, as these states

[51] Interview with Ato Atsbha Hailu, a disputant who submitted his case to the *Abo Gerebs*, Quiha, Mekelle, on 29 March 2020.
[52]Goran Hyden, *African Politics in Comparative Perspective* (Cambridge University Press, September 2012), p.64
[53] Epple, supra *note 26*, p.24.

lacked legitimacy among nationalist politicians for whom control of people was more important than control of territory. To most Africans, local community institutions carried much greater legitimacy than the civic institutions established by the colonial powers, and 'once the colonial powers left Africa some fifty years ago, Africans – leaders and followers alike – preferred a return to what they were most familiar with from home.'

The other historical reason mentioned in the literature for the legitimacy for traditional institutions in Africa is the argument forwarded by Peter Ekeh[54] who argued that 'in the absence of a nation-state, where the boundaries between community and state would tend to coincide, African countries were characterised by much more tension between community and state' and as result 'Africans have no loyalty to the civil institutions of the state – what he calls the "civic" public realm – but instead nurture their membership in a local community based social organisation.'[55] However, this reasoning seems not to apply to this case study and Ethiopia in general. Traditional institutions were there before the era of colonisation; these institutions continued after the colonisation, and for that matter, Ethiopia has never been colonised.

If the prevailing arguments in the literature do not adequately explain the legitimacy of *Gereb* institutions, particularly due to the unique context of Ethiopia and the *Gerebs* in the northern part of the country, alternative justifications must be considered. The researcher aligns with Goran's perspective that the source of legitimacy of these institutions emanates from 'the abstract nature of the system[state] underlying the ideal of a rational-legal type of bureaucracy is ignored in favour of the locale-specific pressures and interests associated with individual communities'[56] which suggests that the legitimacy of these institutions arises from the locale-specific pressures and interests of individual communities, rather than the abstract nature of a rational-legal type of bureaucracy.

The discourse on justice, legal systems, laws, and the institutions that the modern state depends on often fails to align with the needs and local demands of these communities. In contrast, the rules, systems of operation, procedures, and decision-making processes of traditional institutions like the *Gerebs* are closely aligned with the practical needs of the community. This practical alignment

[54]Peter Ekeh 'Colonialism and the Two Publics in Africa: A Theoretical Statement, Comparative Studies in Society and History', Vol. 17, No. 1, 1975, p.6.
[55] Ibid.
[56] Goran, *supra note 51*, p.58.

provides a strong basis for their legitimacy. Accordingly, legally speaking, the *Gerebs* lack legal legitimacy as their operations are not backed by formal legal frameworks. Additionally, they do not possess popular legitimacy in the conventional sense of state elections. However, they hold significant local legitimacy because they effectively address the community's needs for peace and justice, needs that are often unmet by state institutions.

The legitimacy of the *Gerebs* and other traditional institutions, therefore, can be understood through their ability to provide tangible and culturally resonant solutions to conflicts and other community issues. While they may not conform to the formal legal standards or democratic processes, their effectiveness and acceptance within the community provide a robust form of legitimacy. This local-level legitimacy is crucial in a context where state institutions may be seen as disconnected or ineffective. By delivering justice and maintaining peace in a manner that resonates with local customs and expectations, the *Gerebs* sustain their relevance and authority within their communities.

3.2. Legal Frameworks and the *Gerebs*

There is a conspicuous gap in the legal, institutional, and policy frameworks concerning the formal recognition of traditional institutions, particularly with regard to the lack of state enforcement in decisions of criminal matters.[57] The FDRE Constitution, as well as its subsequent legislative enactments, reflects a similar pattern as they provide no substantive provisions for the formal acknowledgement of state-backed enforcement for traditional institutions' decisions in the area of criminal matters. While certain policy frameworks have tentatively addressed this lacuna,[58] they fall short of offering a comprehensive resolution. This oversight is further replicated in the regional constitutions of Tigray and Afar, which largely echo the federal constitutional arrangements on the status and authority of traditional institutions.[59] Interviews with key officials, including the heads of both Tigray and Afar security and administration bureaus,[60] representatives from the Tigray

[57] Awet Halefom, 'Integrating Traditional and State Institutions for Conflict Prevention: Institutional, Legal and Policy Frameworks in Ethiopia, Mizan Law Review', Vol. 16, No. 2, 2022.
[58] Criminal Justice Policy of the Federal Democratic Republic of Ethiopia (Ministry of Justice, Addis Ababa, 2011).
[59] Afar Regional State Revised Constitution, 2002, Art.65 and Tigray Regional State Constitution, 1994, Art.60 which both articles a direct replica of Article 78(5) of the Federal Constitution.
[60] Interview with Tigray Security and Administration head, on 19 April 2020.

Justice Office,[61] and the president of the Tigray Supreme Court,[62] confirm that no existing laws authorise the *Gerebs* to handle cases along the Tigray-Afar boundary.

From the legal point of view, two distinct systems of relationship are evident in the case studies examined. In inter-communal issues of the Afar and Tigray communities, the *de facto* recognition of the *Gerebs* grants them the authority to resolve inter-ethnic conflicts. They have *de facto* exclusive power over inter-ethnic conflicts. Conversely, in the case of intra-communal conflicts within Raya *Alamata Wereda*, the rules of the *Gerebs* indicate a parallel operation with state institutions. No reconciliation will proceed unless the perpetrator surrenders himself to the state institutions or is in custody. The *Gerebs*' final decision is then submitted to the court to be considered as 'mitigating circumstances' in the criminal proceedings, usually in cases of homicide. While the Federal and regional constitutions do not prohibit traditional institutions from functioning in non-criminal matters, such as environmental issues or the elimination of harmful traditional practices, they do not explicitly authorise the *Gerebs* to handle these issues either. Officials at the bordering *Weredas* provided similar responses, recognising the peacekeeping role of the *Gereb* traditional institutions despite the lack of formal legal backing.

On the need for the state's legal recognition of *Gerebs* and their rules, the researcher encountered diverse opinions. While most of the research participants support legal arrangements either for exclusive jurisdiction or limited jurisdiction, at least the relationship between the state and traditional institutions should be clarified. However, there remains considerable uncertainty regarding how this can be effectively achieved. Within the state system, there is clear hesitancy towards the notion of enacting legislation specifically for the *Gerebs*. For instance, the head of the Tigray Security and Administration office questions the necessity of special recognition and highlights potential drawbacks.[63] He argues that formalising the role of the *Gerebs* could inadvertently restrict their authority, confining them to a narrow framework and rendering them overly reliant on legal powers. Instead of advocating for legislative measures, proponents suggest that the current *de facto* recognition suffices to mitigate potential controversies.

[61] Interview with Tigray Justice office head, on April 27, 2020.
[62] Interview with Tigray supreme court president, on 17 April 2020.
[63] Interview with Ato Tekie Mitiku, head of Tigray Security and Administration office, Mekelle, on 19April, 2022

A judge from the Tigray Supreme Court argued that leaving jurisdiction to be determined by the parties will put a great deal of pressure on victims and cultural pressure to favour the traditional institution; the judge also asked why individual victims prefer the state institutions.[64] A judge in Raya Alamata *Wereda* highlighted the absence of specific laws delineating the authority of *Gereb* institutions.[65] Consequently, he explained that the *Gereb* institutions are utilised as mitigating factors in criminal cases. Individuals involved in *Gereb's* proceedings are subsequently required to undergo court proceedings. This underscores the necessity for greater recognition of the *Gereb* system by the state, as it currently operates within a legal grey area. The judge claims that the justice structure should consider the *Gereb* institutions not because they have to, but because it allows the community to have access to justice and ensure that peace and harmony prevail.

State officials at the bordering *Weredas* or higher acknowledged the practical necessity of the *Gerebs*, particularly in their role as peacemakers. Both regions, however, provide *de facto* institutional recognition to the *Gerebs* based on practical necessity and a desire for peace. This informal recognition is rooted in the state's failure to bring peace before 2005.[66] The *Gerebs* were there, but not as formal as the years after 2005 in terms of their relationship with the state. The approach after 2005 has undergone a pragmatic approach to governance, where traditional mechanisms are utilised to fill gaps left by formal institutions.

3.3. The Issue of Double Jeopardy and the *Gereb* Institutions

A common issue in the literature of legal pluralism relates to whether final punishment by state courts and punishment under traditional institutions' rules constitute double jeopardy.[67]According to Article 23 of the FDRE Constitution, "no person shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the criminal law and procedure." Similarly, the criminal code stipulates, with some procedural variations, that "nobody shall be tried or punished again for the same crime for which he has

[64] Interview with Assefa Woldu, Tigray supreme court Judge, Mekelle, on 20 March 2020.
[65] Interview with Ato Assefa Nigus, Judge at Raya Alamata *Wereda* court, Alamata, on 13 April 2020.
[66] The community between the two *Weredas'* had been experiencing killings, lootings and other criminal activities before 2005. However, following the *de facto* recognition of the *Gereb*s by the two states enables them address issues between the two. Accordingly, since 2005, no inter-ethnic death has been recorded. FGD conducted with community representatives on 22 April 2020, and interview with the two *Wereda* Justice, Administration and security offices confirms the same.
[67] Melaku, *supra note 30*, p.129. He contended that double jeopardy could arise in serious crimes like homicide, bodily injury, rape, and abduction, he does not clarify how double punishment fits within the existing legal framework.

already been convicted, punished, or subjected to other measures or acquitted by a final decision in accordance with the law." The same constitutional provisions provided in the revised constitutions of Tigray and Afar Regional States state that no one will be subjected to double jeopardy for the same offence if found guilty. [68]In the research area where the state courts have exclusive jurisdiction, the *Gerebs* also imposed punishment based on the customary laws.[69] This is not a simple legal controversy but has practical implications since an offender might be punished twice for the same conduct, first by traditional institutions and then by the courts.

For instance, the researcher contacted a former inmate from Maichew prison who shared his experience of undergoing the *irq* process but subsequently being incarcerated.[70] The individual contended that being compelled to pay compensation in addition to serving a prison sentence constituted an unjust double punishment. He further noted that, according to *Gereb's* customs, the perpetrator's relatives are expected to contribute financially toward the imposed penalty, which he perceived as a form of collective punishment affecting his family.[71]

Regarding double jeopardy, two perspectives emerged during discussions with government representatives.[72] The majority of the respondents viewed it as double jeopardy for the state to punish someone after they had undergone *irq* and fulfilled all the requirements under *Gereb sirit*. In contrast, prison officials argued that the *irq* process is part of a broader peace initiative aimed at fostering sustainable relationships between the parties involved. They maintained that this process operates independently and does not interfere with the state justice system.

Gereb institutions address cases through customary law, while state courts apply criminal law, potentially treating different aspects of the same case. Moreover, traditional institutions lack formal legal recognition, except in personal and family matters. As a result, state courts do not recognise their decisions, further complicating the issue of double jeopardy. Thus, categorising

[68] Tigray Regional State Constitutions, 1995, Article 24 and Afar Regional State Revised Constitution, 2003, Art.23

[69] The *Gereb*s customary rules have lists of rules with punishable and non-punishable acts. These acts are enumerated in the criminal code with corresponding punishments. The rules of the *Gereb* Raya Alamata *Wereda* list punishable acts, inter alia, rape, homicide, bodily injury, theft and other lists of harmful traditional practices. The punishments range from 1000-250,000 birr.

[70] Interview with Messay Alemu, former prisoner, on April 29, 2020.

[71] Under the *Gereb* rules in Raya Alamata, a perpetrator's kin must contribute financially. In intentional homicide cases, immediate family members pay 500 Birr, half-siblings pay 400 Birr, full siblings pay 600 Birr, and independent cousins pay 200 Birr.

[72] Interview with Tigra Regional State Supreme Court judges, April 2020 and Interview with Tigray Prison Administration leadership, April 2020.

Gereb traditional institutions' processes as double punishment is challenging in the strict sense of double jeopardy. The criteria for double jeopardy are not met, as the state neither mandates participation in traditional institutions nor enforces their decisions. However, while legal double jeopardy does not apply, a de facto form may still exist in practice.

4. Policy Frameworks and the *Gerebs*

In both regional states, Afar and Tigray, there is no specific policy that empowers the *Gerebs* to function in conflict prevention and conflict resolution. The new Transitional Justice Policy seems to open a new space for traditional institutions like the *Gerebs* by signifying a pivotal advancement by explicitly delineating the role of customary justice systems within its framework. By aiming "to clearly define the role of customary justice systems in and during the implementation of the transitional justice process," the policy sets a precedent for integrating indigenous mechanisms into national reconciliation and justice efforts.[73] This inclusion not only validates the importance of traditional institutions in conflict resolution but also empowers regional authorities to identify and recognise these systems, thereby enhancing their legitimacy and operational capacity. Moreover, the policy's emphasis on a victim-centred approach, which considers the role of traditional conflict resolution mechanisms in conditional amnesty processes, underscores a commitment to holistic healing. This strategy aims to prevent feelings of revenge and resentment as beneficiaries of amnesty reintegrate into society, facilitating sustainable peace and social cohesion.

However, while the policy's intentions are commendable, certain limitations warrant critical examination. Primarily, the policy appears to position traditional institutions as supplementary or gap-filling entities rather than recognising them as autonomous systems capable of independently administering justice. This is evident in the stipulation that "the customary justice systems shall have a supportive role in the transitional justice process," which may inadvertently undermine the authority and efficacy of customary justice mechanisms, relegating them to a secondary status within the broader justice framework.[74] Additionally, while decentralisation aligns with this article's argument, the delegation of responsibility to regional states for identifying and informing

[73] National Transitional Justice Policy of the Federal Democratic Republic of Ethiopia Adopted by the Council of Ministers, April 2024, p.5
[74] Id, p.16

customary justice systems introduces potential challenges. This top-down approach may overlook the intrinsic community-based nature of these institutions, where legitimacy and effectiveness are deeply rooted in local acceptance and participation. By not directly involving communities in the selection and empowerment of their traditional justice systems, there is a risk of misalignment between regional policies and local realities, which could impede the successful implementation of transitional justice initiatives.

Furthermore, the policy outlines that 'particulars regarding the participation of victims and customary conflict resolution institutions in the amnesty-granting process and the procedures for granting amnesty shall be specified by law.'[75] While this provision offers a structured pathway for integrating traditional mechanisms into formal legal processes, it also raises concerns about potential bureaucratic constraints that could limit the flexibility and responsiveness of customary systems. The imposition of legal specifications may not fully accommodate the diverse and dynamic nature of traditional practices, potentially stifling their adaptability and cultural relevance. Moreover, the policy mandates that "a system shall be put in place to ensure that the traditional justice systems work for truth and justice, free from politics and ethnic, religious, gender, and other biases;" while this aims to uphold impartiality, it may also impose state-driven checks and balances that could interfere with the organic functioning of these community-based institutions.

Moreover, the policy's approach to empowering regional authorities to identify and recognise traditional justice institutions may inadvertently overlook the existing capacities and structures of these entities. For instance, the *Gereb* inter-communal traditional institutions examined in this research have demonstrated a level of empowerment and functionality that surpasses the roles envisaged by the Transitional Justice Policy. By not fully acknowledging the established authority and practices of such institutions, the policy risks underutilising valuable indigenous resources that are already contributing to social cohesion and justice. Therefore, while the policy represents a progressive step towards inclusive transitional justice, careful consideration must be given to ensure that the formalisation of customary justice systems does not compromise their foundational principles and community trust.

[75] Id. p.13.

5. Mutual Institutional Recognition and Relationship Between the State and *Gereb* Institutions

5.1. Justice Institutions

In both intra- and inter-ethnic situations, the *Gerebs* maintain strong relationships with state institutions, demonstrating a collaborative approach to governance and conflict resolution. The relationship with the justice institutions consists of the courts, the justice office, the police, and the prison administration. The relationship of *Gerebs* with these institutions is presented below.

5.1.1. The Courts and the *Gerebs*

Based on the two regional States' constitutions, there are at least three levels of courts: Woreda, Zonal, and Supreme courts. In inter-ethnic issues, there is no direct relationship between the *Gerebs* and the Courts in both regions. Inter-ethnic conflicts are settled through the *Gereb* institutions, and local courts have no practical jurisdiction over these issues. Whereas in the case for Raya Alamata case, as it mentioned above, unless the issue are petty offences, the *Abo Gerebs* have no exclusive jurisdiction over criminal matters.

Responding to why they prefer *Gereb* institutions over State courts, the participants mentioned inclusivity, financial inaccessibility and accessibility.[76] However, the primary reason for the preference of *Gereb* institutions over state courts in the case of inter-ethnic conflict is the restoration of peace. The process enables the prevention of the escalation of conflicts as well as their re-emergence after their settlements. This multifaceted engagement sets the *Gerebs,* particularly their capacity to bridge community divides and promote sustainable peace, remain unparallel from the formal court system. Additionally, while state courts are vested with the authority to administer cases within the bounds of statutory law, the *Gerebs'* role extends far beyond judicial adjudication.

5.1.2. The Police and the *Gerebs*

A reciprocal relationship exists between the police force and the *Gerebs* at the local level. The police actively engage with the *Gerebs*, taking part in various pre-conflict processes. For instance, police representatives regularly attend the *Abo Gerebs*' monthly meetings, contributing to

[76] FGD with Aba'la and Enderta Representatives and interviews with Ato Dereje, on 12 March 12, 2020.

discussions and taking on assigned tasks.[77] This collaboration extends to enforcement actions, with the police assisting in apprehending individuals who violate *Gereb* rules.[78] Each month, the *Gerebs* assess the local situation, identifying any issues and individuals responsible for them. If these individuals fail to comply with *Gereb* directives, the *Gerebs* request police intervention to address the situation and initiate appropriate proceedings. This also works during the conflict stage. As customary practice, the police consistently provide support to the *Abo Gerebs* in maintaining security within the community.[79] This support extends to attending and safeguarding the *irq* process. The *Abo Gerebs* in return support the police sector in establishing peace among the communities.

In Raya Alamata *Wereda*, when a conflict arises, offenders are initially taken into police custody. This ensures the safety and security of the individuals involved and maintains order until traditional leaders can initiate *irq* process. Culturally, if someone commits a crime, typically homicide, they are usually required to take custody far from the locality. This is an honour and respect for the victim's family.[80] As state institutions are exclusively empowered to handle criminal matters, the irq process operates concurrently. The police cooperate with the *Gerebs* by taking the offender to the *Abo Gerebs*. Reciprocally, the *Gerebs* will not initiate the *irq* process until the suspect surrenders to the police. This is a precondition for any action by the *Abo Gerebs*. However, in inter-community situations, the community adheres to the *Gerebs*' rules, but reconciliation may proceed without the perpetrator being placed in custody, as communal peace takes precedence over individual peace in the two communities. Additionally, in the cases of Enderta and Ab'ala, the police may detain perpetrators before any reconciliation process begins. If a conflict escalates beyond the control of the *Gerebs*, the police typically intervene, performing their usual functions in maintaining peace and order

[77] The MoD recorded the name of police participants during a monthly meeting of the Abo *Gereb*s. MoD, *supra note* 7, p.40.
[78]Id, p. 15. The MoD mentioned a situation where the police apprehend a person to the Abo *Gereb*s monthly meeting.
[79] Interview with Ato Dereje, chairperson of the *Gereb*, on 12 March,2020. The researcher has also attended a reconciliation ceremony in January 2024 in Meseret Kebelle, Enderta observing the police provide securities to the participants.
[80] The Raya Alamata *Gereb* rules obliges the perpetrator to leave the district in case of black blood homicide (intentional homicide). See Traditional rules of *Gereb* of Raya Alamata, Raya Development Association, Meskerem 2005 EC, Art. 7.7

In the context of inter-ethnic conflict, Ato Kahsu, the secretary of the *Gereb* in Aba'la and Enderta, mentioned that, in the pre-conflict stage, the police rely heavily on traditional institutions to maintain law and order.[81] A senior police officer summarised the situation by stating that the police and traditional institutions work together.[82] The *Abo Gerebs* also engage with and lobby the police force to withdraw from initiating prosecutions and transfer cases to the *Gerebs*. Ato Kahsu provided the following insight:

> *There are situations where the police claim to proceed with formal state institutions. In such situation we speakout to the police using the proverb 'ካብ ብጣዕሚ ሮጉድ ብዳይነት ልተግነዮ ቀጣን ብሽምግልና ልተግንያ እያ ሰላም እተምፅእ' [comparing to sweepy winning from state instituions, tiney justice from shimgilina will bring peace] ዳኛ ልተሓደ የስሕቆ ልተሓደ የብኽዮ [A judge makes one person laugh while making another cry]. As a result, we didn't experience an objection from the two regional police in this regard. However, the police usually support us in the process.*

This underscores the inherent adversarial nature of formal legal proceedings, where judicial decisions often favour one party at the expense of the other, leading to satisfaction for some and disappointment or suffering for others.

5.1.3 Justice Bureau, Prison Administration, and the *Gerebs*

There is a limited situation where the prison administration, justice bureau/office and the *Gerebs* will work together. In inter-communal situations, the *Gerebs* are empowered to proceed with *irq* and settle conflicts based on the rules of the *Gerebs*. The state courts practically do not entertain such issues in the two *Weredas*. In intra-communal situations, the *Gerebs* decision and reconciliation are usually sent to the courts as a mitigating situation, as the criminal code provides so. There are two situations where the two institutions might converge and have a cooperative environment. One is the situation where the good behaviour of the offender and the reconciliation process is taken as a means of remand per the article of the criminal code. This could be done through referring back the issue of the offender to the *Gerebs* reconciliation thereby creating better linkages between them and bringing issues in their relationship to the fore.

[81] Interview with Ato Kahsu Secretary of the *Gerebs*, Meseret Kebele, Enderta, on 12 April, 2020
[82] Interview with Inspector Mamo, Enderta *Wereda* Police Quiha, Mekelle, on 12April, 2020.

According to the criminal code, 'imprisonment and death are enforced in respect of certain crimes and the main objective is temporarily or permanently to prevent wrongdoers from committing further crimes against society.'[83] Accordingly, the criminal code provides situations where criminals can be released on parole before serving the whole term or convicts can be released on probation without the pronouncement of sentence or without the enforcement of the sentence pronounced. According to the criminal code, probation as well as parole can be enforced if the criminal or convicts 'has repaired, as far as he could reasonably be expected to do, the damage found by the Court or agreed with the aggrieved party.''[84] The role of the *irq* extends beyond the court of law. In cases of pardon, the law regulating pardon procedures stipulates that any person seeking a pardon must fulfil certain mandatory criteria. Failure to meet these criteria renders the pardon null and void:

> *The Petitioner's confession and repentance, his effort to reconcile with the victim or his family and compensate them, or his ability and willingness to settle the compensation decide against him.*[85]

In such situations, the decision made by the *Gerebs* becomes relevant. This is particularly evident in Raya Alamata *Wereda*, where both the *Gerebs* and the courts have parallel functions in addressing conflict and crime. The decision made by the *Gereb* is required to be submitted to the courts for mitigation, as well as for pardon and probation procedures. Such practice is not applicable in Enderta and Ab'ala *Wereda*, where the *Gerebs* are authorised to manage conflicts, but the courts do not play a role in the process.

5.2. Non-justice Institutions

As mentioned above, the *Gerebs'* roles are not limited to justice issues. The minutes of discussion of the *Gerebs* mentioned that the *Gerebs* are engaged in a comprehensive list of the underlying causes of conflicts, meticulously categorising them based on factors such as water resources, land utilisation, reservoir management, and agricultural yields, among others. Accordingly, they provide a structured series of instructional interventions designed to address and mitigate these identified conflict triggers at various intervals. During these processes, the *Gerebs* engage with

[83] Criminal Code, 2004, Art. 8(1) & (2)., Proclamation No.414/2004,
[84] Id, Article 202(1)(b) Labour Proclamation, 2003, Art. 8(1) & (2), Proc. No.377/2003, Fed. Neg. Gaz., Year 10, No. 12.
[85] Procedure of Granting and Executing Pardon Proclamation, Art 20(5), Proc. No. 840/2014, Fed. Neg. Gaz., Year 2010, No. 68.

different state institutions which according to the *Abo Gerebs* and state institutions is cooperative. As part of this, the *Gerebs* cooperate with the Women's Affairs Office of Raya Alamata in combating harmful traditional institutions, including early marriage, revenge, FGM and similar traditional practices.

Both the Security and Administration offices of Ab'ala and Enderta are organs that have a cooperative relationship with the *Gerebs.* These offices collaborate closely with the *Abo Gerebs*, compiling best practices and providing logistical support. They are responsible for covering accommodation expenses for the *Gerebs* during their monthly meetings and addressing the transportation needs of Enderta and Aba'la *Abo Gerebs*.[86] The MoD is archived in the *Wereda* Security and Administration Offices. This archival process is viewed as a success by both the *Abo Gerebs* and the two regional administrations.

The relationship is not limited to the executive branches of the regional governments; it also extends to the regional councils. The researcher has accessed two documents from the Tigray Regional State Council. One document is an assessment of the relationship between Afar and Tigray at the zonal, *Wereda*, and Kebele levels.[87] The second document pertains to the structural foundation of this relationship. It acknowledges that the two communities adhere to the traditional law, known as the *Gereb* rule, which, according to the document, has been in effect for 95 years.[88] Committees from both regions have been formed at multiple administrative levels. At the regional level, a grand committee consisting of top security, police, militia, and conflict prevention officials oversees early warning assessments, annual planning, and lower-level committees. At the Kebele level, these committees include local administrators, security officials, police, militia, and Abo *Gerebs*, ensuring a coordinated approach to conflict prevention and response. The document emphasises that the committee will implement decisions made based on the *Gereb* rules.[89] Accordingly, though the *Gereb* rules are not legally recognised, the two regional councils legitimised the settlement of their conflict through the *Gereb* rules. The relationship between the

[86] As it is discussed above, the Abo *Gereb*s of the two *Weredas* have fixed monthly meeting regardless of the status of conflict in the two *Weredas*. When the meetings are in Ab'ala, the Aba'la *Wereda* covers food and beverage expenses and vice versa.

[87] Tigray State Council, *የፌደራሊዝም ስርዓት እና የግጭት አሰተዳደር በኢትዮጵያ በአፋርና በትግራይ ብ/ክ/መንግስታት ምክር ቤቶች የጋራ መድረክ የቀረበ ፅሑፍ*, 2006.

[88] Tigray State Council, *በትግራይ እና አፈር ክልልና አጎራባች ወረዳዎች የተደረገ የዳሰሳ ጥናት*, 2011.

[89] Ibid

regional council and the *Gerebs* is significant and warrants consideration. However, it is important to note that the *Abo Gerebs* do not have representation in the regional or local council. Despite this, there are situations where *Abo Gerebs* submit reports to the *Wereda* council annually.[90]

The second document recognised that 'strong social relationships, such as those formed through funerals and associations, have been maintained. There has been no conflict in the past seven years, and previous disputes over the ownership of grazing land, whether for oxen or camels, have now been resolved."[91] All the cases signify that the *Abo Gerebs* has a cooperative relationship with the regional as well as *Wereda* councils of both regions.

6. The Dual Approach to the *Gerebs* and its Broader Implications

The multi-layered and context-specific interactions within Ethiopia's federal structure defy simple classification under any existing typology. As it is mentioned in the first topic of this article, Forsyth's seven models of state-traditional institutions relationship, while insightful, fail to capture the nuances of Ethiopia's muti-ethnic setups. Similarly, Connolly's frameworks, ranging from abolitionist to limited incorporation, overlook the variability and flexibility required in Ethiopia's diverse regions. Besides, the existing literature on state and traditional institutions tends to focus narrowly on the judicial dimensions of state-traditional institutions interactions, neglecting the broader governance roles and the horizontal and vertical interplay between these institutions and state branches. This judicial-centric view oversimplifies the complexities on the ground, where traditional institutions like *Gerebs* operate not only in the justice sector but also in governance, conflict prevention, and reconciliation. Furthermore, the reality in Ethiopia illustrates that the relationship between traditional and state institutions cannot be neatly measured or categorised through the lens of a country's legal or policy framework alone.

Accordingly, first, the relationship between state and traditional institutions, as exemplified by the *Gereb* system, is far from linear. Traditional institutions are often analysed narrowly within the context of the justice sector, focusing on their roles in resolving disputes or adjudicating cases. However, the *Gereb* institutions illustrate that this relationship transcends justice functions, extending into governance, conflict prevention, and community reconciliation. *Gerebs* not only provide culturally resonant mechanisms for dispute resolution but also contribute to broader

[90] Interview with Ato Dereje, Chairperson of the *Gereb*s, on 12 March 2020.
[91] Tigray State Council, *supra note* 78, p.15.

societal harmony by addressing underlying grievances and fostering community consensus. These roles challenge the simplistic view that traditional institutions merely supplement or compete with state justice systems. These multifaceted roles emphasise the need for more nuanced frameworks that capture the complexity of state-traditional interactions.

Second, in a federal structure like Ethiopia, assigning a specific typology to the relationship between state and traditional institutions is inherently challenging. The *Gereb* system exemplifies this complexity, operating without formal legal recognition yet wielding significant authority in specific contexts. In cases of inter-ethnic conflicts, *Gerebs* exercise exclusive power over criminal matters, often functioning independently of the state. By contrast, in intra-communal conflicts, *Gerebs* work in parallel with state institutions, with their decisions often complementing formal legal processes. This duality reflects the limitations of existing typologies, which often fail to account for the fluid and context-dependent nature of state-traditional relationships in federal systems. This variability underscores the inadequacy of rigid classifications, which do not capture the nuances of how traditional institutions operate within diverse federal frameworks like Ethiopia's. Instead, Ethiopia's experience with *Gerebs* suggests the need for more flexible and adaptive frameworks that accommodate the diversity and contextual specificity of federal systems.

Third, in a federal structure like Ethiopia, where ethnic diversity is accompanied by a variety of traditional institutions, it is imperative to leave the design of legal, policy, and institutional frameworks to regional states. The case of *Gereb* institutions demonstrates how de facto recognition by Tigray and Afar regional states has proven effective in preventing inter-ethnic conflicts. By allowing *Gerebs* to operate independently in specific contexts, these regional states have leveraged traditional mechanisms to fill gaps in state governance and maintain peace. However, similar arrangements might not work in regions with different cultural, social, or political dynamics. The examples mentioned above clearly prove the diverse contexts that shape the relationship between traditional and state institutions. Given the realities on the ground, along with the different dynamics of cooperation and competition, the optimal solution is not to impose a uniform legal and policy framework across all regions. Rather, the authority to address these local practicalities should be left to the regional states themselves. The *de facto* recognition of the *Gerebs* can be traced to the Federal Constitution's lack of provision for enforcement authority in

criminal matters, even as regional states find a pressing need for such recognition. For instance, within the current legal framework, the Oromia Regional State has introduced its own customary courts proclamation, still adhering to the constitutional parameters that limit the enforcement of traditional institutions' decisions over criminal matters. Granting regional states to craft legal frameworks allows them to address specific circumstances in their respective regions. For example, in this research, the *de facto* recognition of the *Gerebs* in inter-ethnic conflicts has proven effective in preventing and resolving disputes, even though the *Gerebs* in Alamata district lack exclusive jurisdiction. While this model has shown efficacy in this particular context, it may not necessarily apply to other regional states, underscoring the importance of localised approaches.

7. Conclusion

This article demonstrates that traditional institutions, such as the *Gerebs*, persist not simply because they are ingrained in societal norms, predate the modern state, or serve as alternatives in areas where state institutions are inaccessible. Rather, their enduring presence is a necessity for the peaceful coexistence and governance of communities. *Gerebs* play indispensable roles in contexts where state institutions are functional and effective, complementing and extending the reach of formal systems. Moreover, these institutions are not confined to addressing justice matters; they contribute significantly to the everyday governance and social cohesion of their communities. This calls for a comprehensive examination of the interplay between state and traditional institutions and their respective rules. Existing legal pluralism literature largely focuses on the customary laws of traditional institutions and their state counterparts, often limiting its scope to justice-related issues and assuming that traditional institutions operate solely in conflict resolution. However, this study reveals that the relationship between *Gereb* institutions and the state extends beyond justice and peace matters, encompassing broader governance and societal activities, while legal and policy recognition may be lacking, institutional recognition is evident. Both regional peace and administration offices actively coordinate the activities of *Gereb* traditional institutions. Additionally, various state institutions identified in this research maintain an institutional relationship with the *Gerebs*, fostering practical collaboration despite the absence of formal legal acknowledgment. Accordingly, this study reveals that *Gereb* institutions maintain strong collaborative relationships with state systems in both intra-communal and inter-communal contexts. Data from the *Gerebs* in Enderta, Aba'la, and Raya Alamata illustrates a cooperative dynamic, where traditional and state institutions work together to address governance, conflict

resolution, and social development. The *Gerebs* partner with various state offices, including Women's Affairs, Agriculture, Administration and Security, Justice, and Police, in their respective *Weredas.* For example, the *Gerebs* collaborate with the Women's Affairs Office to combat harmful traditional practices, assist the Agriculture Office in environmental protection, and coordinate with the Justice Office on sustainable peacebuilding through *irq*, remand, and pardon processes. Additionally, the state provides logistical support, such as transportation and accommodation, for the monthly meetings of the *Abo Gerebs*. This regular interaction fosters a comprehensive approach to maintaining social order and strengthens the alignment between traditional and state efforts.

Despite this effective collaboration, the *Gerebs* operate without formal legal or policy recognition. Both Tigray and Afar regional states provide only *de facto* recognition of the *Gerebs*, reflecting a complex interplay of constitutional constraints, legal ambiguity, and differing views among state officials. While some state authorities acknowledge the value of *Gerebs* and advocate for formal recognition, others express concerns that such recognition could blur the boundaries between traditional and state systems, particularly in criminal matters. Nevertheless, the *Gerebs* continue to play a critical role in preventing inter-ethnic violence and promoting communal peace, as evidenced by their success in addressing conflicts in their respective regions.

In light of Ethiopia's federal structure and the diversity of traditional institutions across the country, this article recommends against a nationwide legal, policy or institutional framework for state-traditional institution relationships. Instead, it advocates leaving the design of such frameworks to regional states. This decentralised approach allows for greater flexibility and adaptability, enabling regions to craft policies and institutional arrangements that reflect their unique cultural, social, and legal contexts. By recognising the pluralistic realities of Ethiopia's governance, this approach ensures that traditional institutions like the *Gerebs* can continue to contribute effectively to peacebuilding, conflict resolution, and community governance. Rather than imposing a rigid, one-size-fits-all model, empowering regional states to address these issues locally ensures a more context-sensitive and inclusive governance framework, enhancing the overall stability and harmony of the nation. While legal frameworks enforcing the decisions of *Gerebs* may be absent, institutional recognition and integration of state and traditional institutions can occur without formal legal provisions, as evidenced by the *Gereb* institutions. This article

provides a fresh perspective on legal pluralism by shifting away from the conventional emphasis on the linear relationship between state and traditional institutions, focusing instead on their broader institutional interactions. The case study shows that the current state-traditional relationship cannot be resolved through generalised models or typologies, instead highlighting the need for tailored approaches that consider local contexts and the complexities of multi-ethnic states, which demand unique, context-sensitive solutions.

Conflict of Interest

The author declares no conflict of interest.