



The coupling of State and Sharia Justice Systems in a Secular State

The Case of Ethiopia

Girmachew Alemu Aneme



SFB-GOVERNANCE WORKING PAPER SERIES • No. 75 • APRIL 2018

SFB-Governance Working Paper Series

Edited by the Collaborative Research Center (SFB) 700 “Governance In Areas of Limited Statehood – New Modes of Governance?”

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Alemu Aneme, Girmachew 2018: The Coupling of State and Sharia Justice Systems in a Secular State: The Case of Ethiopia, SFB-Governance Working Paper Series, No. 75, Collaborative Research Center (SFB) 700, Berlin.

ISSN 1864-1024 (Internet)

ISSN 1863-6896 (Print)

This publication has been funded by the German Research Foundation (DFG).

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Deutsche
Forschungsgemeinschaft

DFG

The Coupling of State and Sharia Justice Systems in a Secular State: The Case of Ethiopia

Girmachew Alemu Aneme

Abstract:

The constitutional recognition of the Sharia justice system in Ethiopia has given rise to normative and judicial plurality. Both state and Sharia justice systems relate to a distinctive basis of legitimacy or justice; the state justice system is based on the Constitution of the Federal Democratic Republic of Ethiopia while the basis for the Sharia justice system is the divine law of Islam as revealed in the Quran. This paper reflects on the incongruences and incompatibilities in the relation between state justice and Sharia justice systems within the Ethiopian legal system. A closer analysis of the landmark case of Kedija Bashir et al. allows some important insight into the issue of constitutional and judicial review of the decisions of Sharia courts. Here, the objective of the paper is to explore the possible common normative grounds that would provide autonomy for each system, while maintaining a minimal normative standard in the sense of 'ordre public'.

Zusammenfassung:

Die verfassungsrechtliche Anerkennung der Sharia Gerichtsbarkeit hat der äthiopischen Rechtswissenschaft eine Diskussion über Rechts- und Justizpluralität beschert. Der vorliegende Beitrag geht der Frage nach, inwieweit es im Verhältnis des Sharia-Rechtssystems zum staatlichen Recht Äthiopiens zu Widersprüchen und evtl. zur Unvereinbarkeit einzelner Regeln und Prinzipien kommt, die durch die Trennung der Gerichtsbarkeiten noch verstärkt werden. Beide Rechtssysteme basieren auf unterschiedlichen Legitimations- und Gerechtigkeitsgrundlagen. Während das staatliche Recht durch die Verfassung der Föderalen Demokratischen Republik Äthiopien legitimiert wird, bezieht das Sharia-Recht seine Legitimation aus dem göttlichen Recht des Islam, wie es der Koran überliefert. Die grundsätzlichen Entscheidungen des Obersten Gerichts und der für die Bewahrung des Verfassungsrechts zuständigen Organe in der Sache Kedija Bashir et al., die hier ausführlich analysiert werden, ermöglichen wichtige Einblicke in die Voraussetzungen und Wirkungen gerichtlicher und insbesondere verfassungsgerichtlicher Kontrolle von Entscheidungen der Sharia Gerichte. Die Untersuchung lotet den Spielraum für eine gemeinsame normative Grundlage beider Rechtssysteme aus, auf der ihnen die gebotene Autonomie gewährt wird und die zugleich einen beiderseits anerkannten normativen Mindeststandard – im Sinne von 'ordre public' – gewährleisten kann.

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1. Introduction¹

Historically, Islam came to Ethiopia in the year 615 A.D. with the arrival of Muslim migrants fleeing persecution in the Arabian Peninsula. This episode of migration was called ‘the first *al-hiğra al-ūlā*’.² Over the centuries, Sharia law has been applied by local Muslim communities in their daily lives. Thus, it is not surprising that by the mid twentieth century, Sharia had entered the public sphere, with the Ethiopian state providing official recognition of classical Islamic jurisprudence (*uṣūl al-fiqh*)³ in 1942, which allowed for the establishment of Sharia courts with the purpose of adjudicating personal and family cases on the basis of Islamic law.⁴ Currently, approximately 34 percent of Ethiopia’s population of 94 million are followers of Islam.⁵

The recognition of Sharia justice system in Ethiopia gave rise to normative and judicial plurality. Normative plurality emerges from the coexistence of different sources of order and leads to judicial plurality through the development and expansion of institutions which serve the various sources of order. The Ethiopian Federal Constitution and regional state laws provide regulations for the official recognition of Sharia courts and of Islamic law as an official source of law. By determining spaces of autonomy for decision-making on the basis of Islamic law, these regulations account for the intercoupling of state and Islamic laws.⁶ Nonetheless, the coexistence of the state and the Sharia justice systems is not always smooth due to the distinctive basis of each system’s legitimacy. In the relationship of two coexisting normative systems, inconsistencies or normative collisions can occur.

This paper reflects on some of the collisions between the state and Sharia justice systems in the context of the Ethiopian legal system. The second section below highlights the principles for the constitutional recognition of the Sharia justice system in Ethiopia. The third section provides an overview of the parallel Ethiopian state and Sharia justice systems and the conditions that underlie the constitutional recognition of the Sharia justice system. The fourth section analyses the landmark *Kedija Bashir et al.* case in a bid to reflect on the issue of constitutional

1 Acknowledgments: I would like to thank Dr. Matthias Kötter and Dr. Hatem Elliesie for their constructive and insightful comments on earlier versions of this article and for their hospitality in Berlin. I am grateful to the management and staff of the Collaborative Research Center at the Free University of Berlin for the opportunity to work on this article as a visiting scholar under the research project ‘Governance in Areas of Limited Statehood’.

2 See Seidel, Katrin/Elliesie, Hatem 2014: The Current Stage of Research on Contemporary Islam in Ethiopia, in: Elliesie, Hatem (ed.): *Multidisciplinary Views on the Horn of Africa*, Köln: Rüdiger Köppe, 75–89 with further references; See also: Hussein, Ahmed 2007: *History of Islam in Ethiopia*. Encyclopaedia Aethiopia III, Wiesbaden: Harrassowitz, 202–208.

3 For more detail, see Elliesie, Hatem 2014: *Binnenpluralität des Islamischen Rechts: Diversität religiöser Normativität rechtsdogmatisch und -methodisch betrachtet*, SFB-Governance Working Papers Series, No. 54, Berlin.

4 Proclamation No. 12 of 1942, The Kadis Court Proclamation of 1942. After two years, the Kadis and Naibas Councils Establishment Proclamation No. 62/1944 was issued to consolidate the Sharia courts.

5 The Ethiopian Central Statistical Agency at <http://www.csa.gov.et>, accessed on October 1, 2017. Estimates from the Population Division of the UN Department of Economic and Social Affairs put the total population at 96,506,031 as of July 1, 2014, while according to the World Bank, the total population of the country in the same year is estimated to be 94,100,756.

6 See Kötter, Matthias 2015: *Non-State Justice Institutions: A Matter of Fact and a Matter of Legislation*, in: Kötter, Matthias/Schuppert, Gunnar Folke/Röder, Tilmann J./Wolfrum, Rüdiger (eds.): *Non-State Justice Institutions and the Law*, Basingstoke: Palgrave Macmillan, 174–175.

and judicial review of the decisions of Sharia courts. The final section will offer concluding remarks.

2. Constitutional Recognition of the Sharia Justice System

In 1995, Ethiopia was reconstituted as a federal republic that recognized its ethnic, cultural, and religious diversity in a radical break with its long unitary past. Consequently, the Federal Constitution⁷ became the first constitution in the legal history of the country to recognize the application of religious and customary laws in personal and family cases.

Article 34(5) of the Federal Constitution provides for the following principle: “This constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute.” According to Article 78(5) of the Federal Constitution, federal and state legislatures have three ways of granting official status to religious and customary courts: the direct establishment of religious and customary courts, the official recognition of existing religious and customary courts functioning *as de facto* informal justice systems, and the reorganization/consolidation of existing religious and customary courts functioning on the basis of official recognition before the promulgation of the Federal Constitution. The federal and state legislatures have taken the third path, i.e. reorganizing/consolidating the religious courts of Sharia that had operated on the basis of earlier subsidiary laws.⁸ To date, the courts of Sharia are the only religious courts in the country.

3. The Parallel Existence of State and Sharia Justice Systems

3.1 The State Justice System

The Ethiopian state justice system is composed of the federal legislature (House of Representatives), regional legislative bodies (State Councils), and a dual state judicial system with two parallel court structures: the federal courts and the regional state courts with their own independent structures and administrations. The federal courts have jurisdiction over cases arising under the Federal Constitution, federal laws, and international treaties, as well as over parties specified in federal laws.⁹ Federal courts are composed at three levels: the Supreme Court (which also incorporates a cassation bench to review fundamental errors of law from

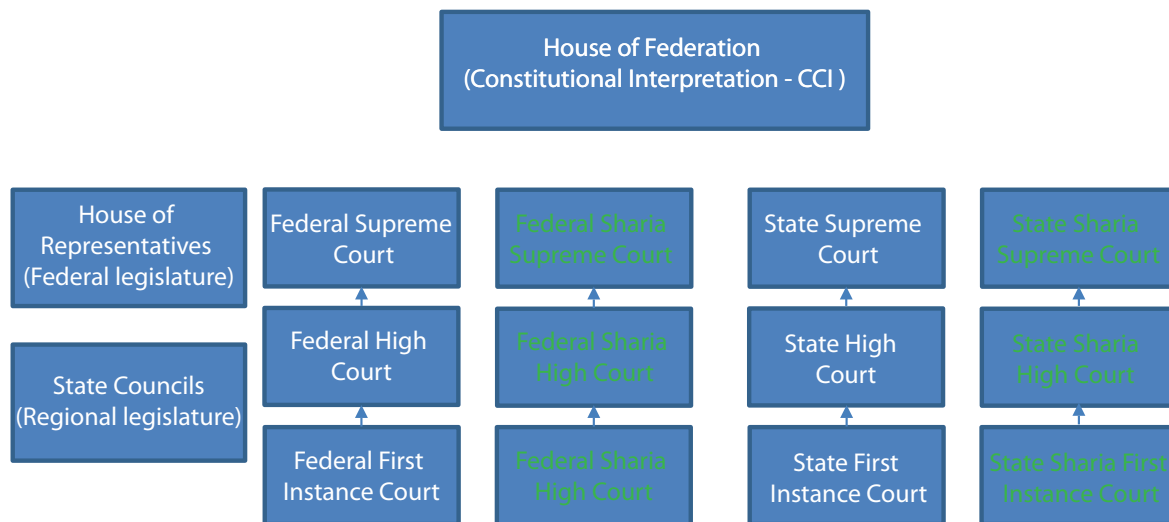
7 Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution), August 21, 1995.

8 The federal government and all regional states but two (the regional states of Gambella and Afar) have issued laws consolidating the courts of Sharia that were operating prior to the promulgation of the FDRE Constitution.

9 See Federal Courts Proclamation 25/1996, as amended by Federal Courts (Amendment) Proclamation 138/1998, Federal Courts (Amendment) Proclamation 254/2001, Federal Courts (Amendment) Proclamation 321/2003, and Federal Courts Proclamation (Re-amendment) Proclamation 454/2005, Article 3.

all lower courts), the High Court, and the First Instance Court.¹⁰ Similarly, all regional states have established their own courts at three levels: state Supreme Courts (which incorporate a cassation bench to review fundamental errors of law on state matters), High Courts, and First Instance Courts.¹¹ The power to preside over constitutional disputes is given to the House of Federation, the federal upper chamber composed of representatives of the different nations, nationalities, and peoples of the country.¹²

Diagram: The Structure of Federal and Regional State and Sharia Courts in Ethiopia.



3.2 The Sharia Justice System

3.2.1 The Structure of Courts of Sharia

The Ethiopian Sharia justice system is composed of federal and regional courts of Sharia that are reorganized on the basis of federal and state laws. All Sharia courts but one throughout the country possess a three-tiered judicial structure.¹³ For example, the Federal Courts of Sharia include:

- (1) the Federal First Instance Court of Sharia;
- (2) the Federal High Court of Sharia; and
- (3) the Federal Supreme Court of Sharia.¹⁴

¹⁰ There also exist municipal and social courts at the federal and regional level in towns and districts, respectively as part of the state justice system.

¹¹ FDRE Constitution (n 7), Article 78(3).

¹² FDRE Constitution (n 7) Article 61(1).

¹³ See diagram above. The exception is the Harari Sharia Court that has only two tiers: supreme court and first-instance court. See the Harari People National Regional Government Courts and Judicial Administration Council Establishment Proclamation 3/1996, Articles 29 and 30.

¹⁴ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 3.

3.2.2 Accountability

All but one Sharia court in the entire country are accountable to the federal and regional judicial administration commissions, which are also responsible for the administration of formal state courts.¹⁵ For instance, the Federal Courts of Sharia are accountable to the Federal Judicial Administration Council.¹⁶ The Federal Judicial Administration Council is the organ that appoints and decides on disciplinary matters concerning the judges of the Federal Courts of Sharia.¹⁷ The Council is composed of the following members:¹⁸

- a. The President of the Federal Supreme Court, Chairperson;
- b. The Vice-President of the Federal Supreme Court;
- c. Three members of the House of Peoples' Representatives;
- d. The Minister of the Federal Ministry of Justice;
- e. The President of the Federal High Court;
- f. The President of the Federal First Instance Court;
- g. A Judge selected by all Federal Judges;
- h. A lawyer appointed by the Council from those practicing in the Federal Courts;
- i. Law academic appointed by the Council from a recognized higher education institution;
- j. A distinguished citizen appointed by the Council.

The Federal Courts of Sharia submit a bi-annual report on their performance to the president of the Federal Supreme Court.¹⁹ Moreover, the president of the Federal Supreme Court receives and approves the work plan and budget of the Federal Courts of Sharia.²⁰ Also, it is the president of the Federal Supreme Court that recommends the appointment of judges to the Federal Courts of Sharia by the Federal Judicial Administration Council.²¹

3.2.3 Criteria for the Appointment of *Kadis* (Sharia Court Judges)

A single *Kadi* (judge) sits at each division of the First Instance Court of Sharia, while a presiding *Kadi* and two other *Kadis* sit in each division of the Federal High Court of Sharia and the

¹⁵ The exception is the Tigray Court of Sharia which is accountable to the Regional Sharia Administration Commission. See Proclamation No. 133/2007 of the Tigray National Regional Government issued to consolidate Courts of Sharia, Articles 19–21.

¹⁶ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 3.

¹⁷ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 17(1), (2), (3), and Article 18.

¹⁸ The Federal Judicial Administration Council is primarily concerned with the regulation of formal federal courts. See Amended Federal Judicial Affairs Council Establishment Proclamation No. 684/2010, Article 6.

¹⁹ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 20(3).

²⁰ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 20(4).

²¹ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 17(3).

Supreme Court of Sharia.²² All cases at Sharia courts are heard in public with the exception of cases where the Civil Procedure Code permits otherwise.²³

According to Article 16 of the Federal Courts of Sharia Consolidation Proclamation No. 188/1999, a person must meet the following criteria in order to be appointed to a Federal Court of Sharia as a *Kadi*:

- a. The person must be an Ethiopian citizen.
- b. The person must be trained in Islamic law in Islamic educational institutions, or must have acquired adequate experience and knowledge in Islamic law.
- c. The person must have a reputation for diligence and good conduct.
- d. The person should consent to be a *Kadi*.
- e. The person must be older than twenty-five.

The criteria for the appointment of *Kadis* in the regional Sharia courts are similar. An exception is the Harari regional Sharia court, which requires knowledge of the Arabic language.²⁴

The Supreme Council for Islamic Affairs²⁵ recruits Federal Sharia Court judges at the request of the Federal Judicial Administration Council.²⁶ The Federal Judicial Administration Council approves the appointment of the judges on the basis of recommendation by the president of the Federal Supreme Court.²⁷ The Federal Judicial Administration Council can remove Federal Sharia Court judges from office.²⁸ The Federal Constitution prohibits the removal of judges before retirement age, except for violation of disciplinary rules, gross incompetency or inefficiency, or illness that prevents the judge from carrying out his responsibilities.²⁹ The Federal Judicial Administration Commission makes such determinations and decides on issues of promotion, disciplinary complaints, and other conditions of employment of Federal Sharia court judges.³⁰

²² Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 13(1) and (2).

²³ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 15(2). See subsection 3.2.7 below on applicable laws in Sharia courts.

²⁴ See the Harari People National Regional Government Courts and Judicial Administration Council Establishment Proclamation 3/1996, Article 31.

²⁵ The Supreme Council for Islamic Affairs is a non-governmental representative organ of Ethiopian Muslims.

²⁶ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 17(1).

²⁷ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 17(3). The President and Vice-President of the Federal Supreme Court are appointed by the House of Peoples' Representatives upon the recommendation of the Prime Minister. See FDRE Constitution (n 7), Article 81.

²⁸ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 18.

²⁹ FDRE Constitution (n 7), Article 81.

³⁰ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Articles 17 and 18. See also Amended Federal Judicial Affairs Council Establishment Proclamation No. 684/2010, Article 6.

3.2.4 Budget and the Enforcement of Decisions

Sharia courts are financed primarily by direct budgetary subsidies from the federal and regional governments.³¹ The courts are allowed to acquire financial assistance from other sources, as well.³² All executive organs and individuals are duty-bound by law to execute or compel the execution of decisions and orders from all Sharia courts.³³ Insofar as the courts of Sharia depend on budgetary subsidies from the state, they are faced with problems similar to those of state courts, such as the shortage of work tools and skilled personnel.

3.2.5 Consent as a Basis for Jurisdiction

The mandate of all Sharia courts is based on the voluntary consent of parties to the jurisdiction of such courts.³⁴ Consent should be expressed clearly on a confirmation form provided by the legislature.³⁵ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 5(1). Where one party has objected to adjudication by the courts of Sharia or where no clear consent has been provided from one of the parties, the Sharia court before which the case is brought is obliged to transfer the case to a regular state court.³⁶

Nevertheless, the Federal Courts of Sharia Proclamation also contains elements of implied consent: 'where a party properly served with summons... does not confirm his objection or consent by appearing before the registrar of the court, he shall be presumed not to have objected and the case shall be heard *ex parte*'.³⁷ The Tigray regional courts of Sharia allow a party to present her/his consent or objection before a final decision is passed, upon showing that the individuals in question could not present their objection or consent at the first hearing because of one of the reasons specified in the Tigray regional law on courts of Sharia.³⁸

Even though consent of all parties is a fundamental requirement for the courts of Sharia to exercise jurisdiction, in practice, the issue of consent is not as clear as it appears in the law. For instance, a credible research report found that judges in Sharia courts could simply ignore the requirement of consent.³⁹ In the landmark case of *Kedija Bashir et al.*, the clear and repetitive

31 See for instance the Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 19.

32 See the Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 19(2). These sources are not specified.

33 See the Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 23.

34 Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 5. The requirement of consent is also clearly stated under Article 34(5) of the FDRE Constitution.

35 Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 5(1).

36 Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 5(3).

37 Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 5(2).

38 The reasons are: A recent death of family member, absence due to work-related travel to a remote area, detention in a police station or imprisonment in jail, and absence due to sickness and treatment that can be certified. See Proclamation No. 133/2007 of the Tigray National Regional Government issued to consolidate courts of Sharia, Articles 6(3) and (4).

39 See Tadesse, Hilina 2001: The Shari'a as Regards Women, in: Berchi: The Journal of Ethiopian Women Lawyers Association, 1 (2), 142, where the author stated: 'During an EWLA workshop some Kadis [judges in Muslim courts] made it clear that they simply ignored Article 34(5)'s consent requirement.'

objection to the jurisdiction of the courts of Sharia by the defendant was ignored by judges at three levels of Sharia courts, giving rise to a constitutional dispute.⁴⁰ The issue of consent is further complicated by the absence of legal aid services well-versed in the Sharia justice system – who might help litigants to make the proper decisions concerning consent.

3.2.6 Material, Subject-Matter, and Personal Jurisdiction

3.2.6.1 Material Jurisdiction

All courts of Sharia have specific material jurisdiction at each level. The Federal Supreme Court of Sharia has jurisdiction over all decisions of the Federal High Court of Sharia, rendered in its first-instance jurisdiction as well as in its appellate jurisdiction.⁴¹ The Federal High Court of Sharia has first-instance jurisdiction over cases involving an amount of over 200,000 birr and appellate jurisdiction over decisions of the First Instance Court of Sharia.⁴² Moreover, the Federal High Court of Sharia has jurisdiction over application for change of venue within the courts of Sharia. The Federal First Instance Court has jurisdiction over cases involving up to 200,000 birr and over cases whose value cannot be expressed in monetary terms.⁴³

3.2.6.2 Subject-Matter Jurisdiction

Article 34(5) of the Federal Constitution proclaims that courts of Sharia have jurisdiction only over personal and family matters. The Federal Courts of Sharia proclamation specifies the following personal and family matters as the basis for a common jurisdiction of the Federal Courts of Sharia:⁴⁴

- (a) any question regarding marriage, divorce, maintenance, guardianship of minors, and family relationships;
- (b) any question regarding *Wakf*, gift/Hiba/, succession of wills;
- (c) any question regarding payment of costs incurred in any suit relating to the aforementioned matters.

3.2.6.3 Personal Jurisdiction

Sharia courts have multiple bases for personal jurisdiction. For instance, in cases arising from marriage, divorce, maintenance, guardianship of minors, and family relationships, the Federal Courts of Sharia have personal jurisdiction if the abovementioned acts were concluded on the

⁴⁰ See section 4 below on the Kedija Bashir et al. case.

⁴¹ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 8(1) and (2).

⁴² Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 9(1), (2) and (3).

⁴³ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 10.

⁴⁴ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 4(1) (a), (b), (c).

basis of Islamic law or if the parties have consented to using Islamic law.⁴⁵ In cases arising out of *Wakf*, gift, or succession of wills, the endower and donor must be Muslim. In the case of succession, the deceased must have been a Muslim at the time of death.⁴⁶

3.2.7 Applicable Laws

All courts of Sharia in Ethiopia adjudicate cases on the basis of Islamic law.⁴⁷ Yet there is no clear guideline for the school of thought concerning the Islamic law that is applied in these courts. Moreover, the courts of Sharia at the federal and regional levels operate independently. As such, they do not synchronize their work in an effort to develop Islamic jurisprudence, in the context of common cases, at a regional level or throughout the country. Furthermore, the Sharia courts do not publish their judgments – an act which would help to reflect upon and build up knowledge on the applied laws and reasoning in Sharia courts.

In addition to substantive Islamic law, the courts of Sharia are required to follow the civil procedure laws promulgated by the state.⁴⁸ Nonetheless, the courts of Sharia are not barred from using Islamic procedural rules. It is not clear what will or should happen in cases of conflict between Islamic law and state procedural law. For instance, Seidel claims that unlike state procedural rules, Islamic law favours testimony from male witnesses and followers of Islam, which is not the case in state procedural rules.⁴⁹

4. The Judicial and Constitutional Review of the Decisions of Courts of Sharia: A Comment Based on *Kedija Bashir et al.* case

This section focuses on the legality and effect of the judicial and constitutional review of the decisions of the courts of Sharia by the Federal Supreme Court and the House of Federation vis-à-vis the status of the courts of Sharia as part of the non-state religious justice system that functions primarily on the basis of Islamic law. To this end, the landmark case of *Kedija Bashir et al.* will be analysed.⁵⁰ The *Kedija Bashir et al.* case passed through all levels of Federal Sharia

⁴⁵ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 4 (1) (a).

⁴⁶ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 4(1) (b).

⁴⁷ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 6(1).

⁴⁸ See Federal Courts of Sharia Consolidation Proclamation No 188/1999, Article 6(2). Proclamation No. 133/2007 of the Tigray National Regional Government issued to consolidate courts of Sharia.

⁴⁹ Seidel, Katrin 2012: State-Recognized Legal Pluralism in Ethiopia: The Relationship between Islamic Family Law and State Law, in: African Law Association (ed.): *Recht in Afrika – Law in Africa – Droit en Afrique*, Köln: Rüdiger Köppe, 228–229.

⁵⁰ The case came to be known as the *Kedija Bashir* case after the applicant who refused to submit to the jurisdiction of the courts of Sharia and went all the way to the Constitutional Inquiry Council (CCI). The case has been cited by a number of writers on human rights and legal pluralism. See, for instance, Assefa, Getachew 2008: *Federalism and Legal Pluralism in Ethiopia: Reflections on their Impacts on the Protection of Human Rights*, in: Alemu, Girmachew/Alemahu, Sisay (eds.): *The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects*, Human Rights Law Series, Vol. 1, Addis Abeba: Addis Ababa University Press. Nonetheless, there has never been a full and proper presentation of the case yet by anyone. This writer has consulted all court documents of the case from the First Instance Naiba Court up to the CCI to prepare the full summary of the case under sections 4.1 through 4.5. All the dates in this review are translated to Gregorian calendar from the Ethiopian calendar used by the courts and state institutions.

courts before its review by the Federal Supreme Court Cassation Division, the Council of Constitutional Inquiry, and the House of Federation.

Sections 4.1 through 4.5 below provide the anatomy of the *Kedija Bashir et al.* case, focusing on the main issues raised in the courts of Sharia, the Federal Supreme Court Cassation Division, the Constitutional Inquiry Council, and the House of Federation. Section 4.6 is a reflection on the legality and effect of the judicial review of the *Kedija Bashir et al.* case by the Federal Supreme Court Cassation Division, while section 4.7 reflects on the constitutional review of the case.

4.1 The Initial Pleading and the Decisions of the Courts of Sharia

i) The *Kedija Bashir et al.* case was initially instituted at the third Naiba First Instance Court of Sharia⁵¹ in Addis Ababa on November 14, 1999. The plaintiffs were Mrs. Aysha Ahmed, Mrs. Fantu Ali, Mrs. Leila Hussein, and Mrs. Bedria Issa. The defendants were Mrs. Kedija Bashir, Mr. Ibrahim Hassen, Mr. Ahmed Hassen, and Mr. Mohamed Hassen.

ii) The plaintiffs claimed to be heirs to their late grandfather, Mr. Aman Shene. The plaintiffs also claimed that Mr. Aman's residence, a house located in Addis Ababa at Woreda 2, *Kebele* 11, No. 439, was in the hands of the defendants, who are also the grandchildren of the late Mr. Aman Shene. According to the plaintiffs, the defendants refused to recognize their right to their grandfather's house. The plaintiffs pleaded with the court to order the defendants to hand over their share on the 'basis of part 4, chapter 4 of the Sharia law'. The plaintiffs presented a tax document and listed three witnesses who could verify that Mr. Aman Shene was the owner of the abovementioned dwelling house.

ii) On December 14, 1999, the defendants submitted their preliminary objection to the First Instance Sharia Court stating in writing that they did not wish to be adjudicated by the court on the basis of their right to refuse its jurisdiction, pursuant to Article 34(5) of the Federal Constitution. Also, the defendants alleged that the suit was *res judicata*, as the issue had been settled in another case between the parties in a regular state court on the basis of the Ethiopian Civil Code.

iii) In a written response on January 4, 2000 to the First Instance Sharia Court, the plaintiffs rejected the preliminary objection of the defendants. In its session on March 13, 2000, the court issued a decision that overruled the defendants' preliminary objection against its jurisdiction. The reason provided by the court was that the defendants did not appear in court when they were summoned to explain their preliminary objection. The court further found that another case filed by the defendants in the regular state court had nothing to do with the present case and was closed by the time the applicants filed the present case.

⁵¹ The Naiba court was operating on the basis of the Kadis and Naibas Council Establishment Proclamation No. 62/1944, which is repealed by the Federal Courts of Sharia Consolidation Proclamation No. 188/1999.

iv) On July 5, 2000, the First Instance Sharia Court in Addis Ababa passed a judgment on the merits of the case and ordered the defendants to hand over the plaintiffs' share of their grandfather's house.

v) The defendants appealed to the Federal High Court of Sharia and argued that the First Instance Sharia Court had erroneously passed its verdict on the merits of the case, even though the defendants had clearly notified the court that they did not accept its jurisdiction on the basis of Article 34(5) of the Federal Constitution. In their response to the appeal, the respondents (the initial plaintiffs) agreed that Article 34(5) of the Federal Constitution requires consent but contended that the consent of one party was enough for the court to assume jurisdiction.

vi) On April 17, 2003, the Federal High Court of Sharia upheld the decision of the First Instance Sharia Court. In its ruling, the Federal High Court of Sharia stated that Article 34(5) of the Federal Constitution needed enabling law to be applied by the courts of Sharia. According to the court, the present case was filed before the promulgation of the Federal Courts of Sharia Consolidation Proclamation No. 188/99, making the latter inapplicable to the case.

vii) Subsequently, the defendants submitted their second appeal to the Federal Supreme Court of Sharia, which rejected the appeal as inadmissible on May 28, 2003.

4.2 The Ruling of the Federal Supreme Court Cassation Division

On June 1, 2003, the defendants filed their memorandum of appeal to the Federal Supreme Court Cassation Division contending that the decisions of the courts of Sharia (at all three levels) contained fundamental error of law because the courts had ignored their preliminary objection against the jurisdiction of the First Instance Court of Sharia. In its ruling from July 25, 2003, the Federal Supreme Court Cassation Division rejected the submission of the appellants stating that there was no fundamental error of law committed by the courts of Sharia.

4.3 The Petition to the Council of Constitutional Inquiry (CCI)

A) On October 2, 2003, the Ethiopian Women Lawyers Association (EWLA) filed a petition to the CCI⁵² on behalf of Mrs. Kedija Bashir, a member of EWLA and one of the initial defendants in the present case. EWLA based its petition on Articles 17, 20(2), and 23 of Proclamation 250/2001⁵³, Article 4(1) of Proclamation 251/2001⁵⁴, and Articles 9(1), 13, and 83 of the Federal Constitution.

⁵² The FDRE Constitution (n 7), Article 62(1), Article 82(1); Council of Constitutional Inquiry Proclamation 250/2001, Article 17(2), Article 19. The Council of Constitutional Inquiry is an organ established by the Federal Constitution with the power to examine applications that require constitutional interpretation and submit its recommendation to the House of Federation for final decision.

⁵³ Council of Constitutional Inquiry Proclamation No.250/2001.

⁵⁴ Consolidation of the House of Federation and the Definition of its Powers and Responsibilities Proclamation No.251/2001.

B) In its petition, EWLA argued that the decisions of the Federal Supreme Court Cassation Division and the courts of Sharia were in violation of Article 34(5) of the Federal Constitution, one of the basic provisions under the a bill of rights section of the Federal Constitution. EWLA outlined the following main arguments as a basis for its petition to the CCI:

- 1) The decisions of all the courts contradict Article 9(1) and Article 13(2) of the Federal Constitution.⁵⁵
- 2) Article 34(5) of the Federal Constitution shall be interpreted in light of Articles 14 and 18 of the International Covenant on Civil and Political Rights, to which Ethiopia is a party.
- 3) Under Article 34(5) of the Federal Constitution, religious laws cannot be applied unless there is consent from all parties to a dispute.
- 4) The requirement of consent under Article 34(5) of the Federal Constitution should be observed by religious courts without a mandatory reference to subsidiary laws. Moreover, in this particular case, the Federal Courts of Sharia Consolidation Proclamation No. 188/99 had entered into force at the time of the commencement of the case at the First Instance Sharia Court.

4.4 The Recommendation of the CCI

In its December 11, 2003 deliberation, the CCI found that the decision of the First Instance Sharia Court had violated Article 34(5) of the Federal Constitution and recommended the nullification of the decision on the basis of Article 9(1) of the Federal Constitution. The CCI forwarded the following main reasons as a basis for its recommendation:

A) The CCI noted that the First Instance Sharia Court, the High Court of Sharia, and the Supreme Court of Sharia have all admitted that both the Federal Constitution and Proclamation No. 188/99 require consent of the parties to adjudicate cases on the basis of religious law.

B) Nonetheless, the courts of Sharia rejected the defendants' preliminary objection against the jurisdiction of the First Instance Sharia Court, claiming that the case was filed before Proclamation 188/99 had come into force. However, the CCI noted that Proclamation No. 188/99 had entered into force well ahead of the preliminary objection against the jurisdiction of the First Instance Sharia Court by the defendants. Thus, the application of Proclamation 188/99 could not be taken as a retroactive application of the law.

C) The CCI reasoned that even if the application of Proclamation 188/99 was overlooked, the Federal Constitution had entered into force when the initial plaintiffs in this case filed their petition to the First Instance Sharia Court. The CCI further pointed out that the mere fact that

⁵⁵ Article 9(1) of the Federal Constitution (n 7) states: "The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.;" Article 13(2) of the Federal Constitution states: "The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia."

Article 34(5) of the Federal Constitution refers to enabling law does not alter the fundamental essence of the principle that affirms, in its own right, that no one shall be judged on the basis of religious or customary law without his/her consent.

4.5 The Decision of the House of Federation

The House of Federation deliberated on the legal opinion given by its Standing Committee on Constitutional and Regional Affairs on the recommendation of the CCI on May 7, 2004. On the same day, the House approved the recommendation of the CCI with one abstention.

4.6 The Legal Basis and Effect of the Power of Cassation of the Federal Supreme Court over Courts of Sharia

In the *Kedija Bashir et al.* case, the Federal Supreme Court Cassation Division passed a ruling that rejected the appellants' petition, stating that there was no fundamental error of law committed by the Federal Courts of Sharia.⁵⁶ However, the Federal Supreme Court did not provide the basis for its jurisdiction to review the decisions of the courts of Sharia. The Federal Constitution proclaims that the 'Federal Supreme Court has a power of cassation over any final court decision containing a basic error of law'.⁵⁷ The Federal Courts Proclamation,⁵⁸ the implementing law on the jurisdiction of the Federal Supreme Court, does not grant a power of cassation to the Federal Supreme Court to review the decisions of courts of Sharia.

Moreover, there is no reference to the possibility of cassation review of the decisions of courts of Sharia by the Federal Supreme Court under the Federal Courts of Sharia Consolidation Proclamation. To the contrary, the proclamation provides that the Federal Courts of Sharia are given exclusive jurisdiction over a case brought before them. Once a case is brought before a court of Sharia and consent is clearly given by the parties involved, such a case cannot be transferred to a regular court.⁵⁹ Thus, with the exception of the general and controversial phrase 'over any final court decision' within the Federal Constitution, there is no clear legal basis for the Federal Supreme Court to exercise cassation power over decisions of courts of Sharia.⁶⁰

Even if one were to establish a power of cassation for the Federal Supreme Court over the decisions of courts of Sharia, such a mandate gives rise to range of issues. The first relates to

⁵⁶ The ruling on the absence of fundamental error of law by the Federal Supreme Court Cassation Division contrasts with two recent cases reviewed by the Federal Supreme Court Cassation Division. In *W/o Salia Ibrahim et al. vs. Haji Seman Issa* (Cassation File No. 31906) and *W/o Shamse Yenus vs. W/o Nuria Mame* (Cassation File No. 38745), the Federal Supreme Court Cassation Division found that the violation of the right of individuals to choose between state courts and courts of Sharia constituted fundamental error of law.

⁵⁷ FDRE Constitution (n 7), Article 80(3) (a).

⁵⁸ See Federal Courts Proclamation 25/1996, as amended by Federal Courts (Amendment) Proclamation 138/1998, Federal Courts (Amendment) Proclamation 254/2001, Federal Courts (Amendment) Proclamation 321/2003, and Federal Courts Proclamation (Re-amendment) Proclamation 454/2005.

⁵⁹ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 5(4).

⁶⁰ For analysis of the debate, see Abdo, Muradu 2007: Review of Decisions of State Courts over State Matter by the Federal Supreme Court, in: *Mizan Law Review*, 1 (1), 60–74.

the fact that the courts of Sharia are non-state religious justice institutions established on the basis of the constitutional recognition of the application of religious law in personal and family cases.⁶¹ The rationale for such recognition is the accommodation of diversity in establishing justice systems that are different in their jurisdiction and structure from regular state courts. Thus, cassation review of the decisions of courts of Sharia by the Federal Supreme Court amounts to a review of a separate and parallel non-state justice system by a state justice system. Also, the cassation review of the decisions of Federal Courts of Sharia by the Federal Supreme Court adds to the unwarranted powers of the Federal Supreme Court over the Federal Courts of Sharia, which (at least theoretically) occupy an autonomous position.⁶²

The second problem relates to the applicable substantive law by the courts of Sharia. Even though the courts of Sharia are obliged to apply the civil procedure laws promulgated by the state,⁶³ the substantive law applied by the courts in the adjudication of cases is Islamic law.⁶⁴ The Federal Constitution recognizes the application of Islamic law by the courts of Sharia. The Federal Supreme Court does not have the legal mandate and capacity to review the application of Islamic law. Moreover, limiting the scope of the cassation review to the interpretation and application of state procedural laws applied by Sharia courts may not be a straightforward solution, since such review may result in the unintended interpretation of substantive Islamic law. The only comparable instance that could justify the review of the application of Islamic law by the courts of Sharia would be the protection of constitutional rights, which is not the mandate of the Federal Supreme Court.⁶⁵

The third issue relates to the binding interpretation of law that is rendered by the Federal Supreme Court Cassation Division. Introducing the doctrine of *stare decisis*, Proclamation 454/2005 provides that decisions of the Federal Supreme Court Cassation Division on the interpretation of laws are binding on federal, as well as state courts at all levels, when rendered by no fewer than five judges.⁶⁶ Proclamation 454/2005 does not stipulate that courts of Sharia are to be bound by the interpretation of law rendered by the Federal Supreme Court Cassation Division. Such stipulation would have been absurd considering that Islamic law is the substantive law applicable in Sharia courts.

In practice, the Federal Supreme Court Cassation Division has rendered binding interpretation of law at least in two cases that originated in the Federal Courts of Sharia and in the Oromia

⁶¹ FDRE Constitution (n 7), Article 34(5) and Article 78(5). Article 34(5) of the FDRE Constitution provides the principle: ‘This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.’ For the common jurisdiction of the Federal Courts of Sharia, see the Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 4(1) (a), (b), (c).

⁶² See Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 17(3), Article 18, Article 20(3) & (4).

⁶³ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 6(2).

⁶⁴ Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 6(1).

⁶⁵ See section 4.7 below on the constitutional review of decisions of the courts of Sharia.

⁶⁶ See Federal Courts Proclamation Re-amendment Proclamation 454/2005, Article 2(1).

Courts of Sharia.⁶⁷ Nonetheless, the idea of maintaining a uniform interpretation of law⁶⁸ through binding decisions from the Federal Supreme Court Cassation Division is contrary to the recognition of courts of Sharia as institutions that apply a different set of rules on the basis of their own method of interpretation and reasoning.

At this juncture, it is worth noting that the Federal Supreme Court of Sharia is not endowed with the power of cassation review, which might have been used to maintain uniform interpretation of substantive and procedural laws within the Sharia justice system. An ad-hoc cassation hearing is held in the Federal Supreme Court of Sharia when a fundamental difference between the divisions of the Federal Supreme Court of Sharia in the interpretation of Islamic law occurs.⁶⁹ Such oversight does not extend to the differences of interpretation that may occur in the First Instance and High Courts of Sharia. Moreover, the review mandate does not cover the differences in the interpretation of state procedural laws applied by the courts of Sharia.⁷⁰

4.7 The Constitutional Review of the Decision of Courts of Sharia

4.7.1 The Legal Basis for Constitutional Review

As outlined under section 4.3 above, EWLA's petition to the CCI states that the decisions of the Federal Supreme Court Cassation Division and the courts of Sharia have violated Article 34(5) of the Federal Constitution. The CCI is an organ established by the Federal Constitution with the power to examine applications that require constitutional interpretation and to submit its recommendation to the House of Federation for final decision.⁷¹ The Council of Constitutional Inquiry Proclamation specifies that the CCI has the power to investigate a petition that alleges that 'any law or decision given by any *government organ* or official' is contrary to the provisions of the FDRE Constitution.⁷² Article 2(6) of the English version of the Council of Constitutional Inquiry Proclamation defines 'state organ' rather than 'government organ'. Nonetheless, the

⁶⁷ See Mrs. Salia Ibrahim et al. vs. Haji Seman Issa (Cassation File No. 31906) and Mrs. Shamse Yenus vs. Mrs. Nuria Mame (Cassation File No. 38745) in Federal Supreme Court Cassation Division Decisions, Volume 9.

⁶⁸ See Abdo 2007: 70. See also 'Message from the President of the Federal Supreme Court', Federal Supreme Court Cassation Division Decisions, Volume 9.

⁶⁹ Federal Courts of Sharia Consolidation Proclamation No 188/1999, Article 20 (6) states: 'He [the Chief Kadi] may, on his own initiative, or suggestions made to him by the divisions of the court or upon petitions made by parties to a dispute, direct cases involving a basic difference between divisions of the Federal Supreme Court of Sharia, as regards interpretation of Islamic law, to be heard by a division composed of not less than five Kadis.'

⁷⁰ Strangely enough, the criteria for appointment of Kadis of the Federal Courts of Sharia do not include knowledge of state procedural laws, even though the Federal Courts of Sharia are obliged to apply state procedural laws. The Federal Courts of Sharia Consolidation Proclamation No. 188/1999, Article 16 provides the following criteria for the appointment of Kadis: 'Any Ethiopian who: 1) is trained in Islamic law in Islamic Educational Institutions or has acquired adequate experience and knowledge in Islamic law; 2) is reputed for his diligence and good conduct; 3) consents to assume the position of a Kadi, and 4) is more than twenty five years of age'.

⁷¹ FDRE Constitution (n 7), Article 62(1), Article 82(1); Council of Constitutional Inquiry Proclamation 250/2001, Article 17(2), Article 19.

⁷² Council of Constitutional Inquiry Proclamation 250/2001, Article 17(2). Emphasis added.

Amharic version of Article 2(6) is consistent with Article 17(2) when it refers to ‘*Yemengist Akal*’ to mean federal and state legislative, executive and judicial organs, and other organs that are granted judicial power.⁷³

In the *Kedija Bashir et al.* case, the CCI investigated the petition for constitutional review of the decisions of the courts of Sharia and of the Federal Supreme Court Cassation Division, all judicial organs that are listed under Article 2(6) of the Council of Constitutional Inquiry Proclamation. Thus, *lex lata*, it is clear that the CCI and the House of Federation have the power to review the decisions of the Federal Supreme Court Cassation Division and of the courts of Sharia.⁷⁴ What is not clear, however, is whether the CCI and the House of Federation can review the final judgment of the courts of Sharia passed on the basis of Islamic law. The next section considers this issue.

4.7.2 The Constitutional Review of the Judgments of Courts of Sharia

We can identify four instances where violation of the Federal Constitution may occur in the operation of courts of Sharia:

- (1) where the consent of all parties to a dispute is not provided;
- (2) when the subject matter of a case does not fall within the jurisdiction of the courts of Sharia;
- (3) when there is error in the application of state procedural laws;
- (4) when the final judgment of a case contradicts the Federal Constitution.

Constitutional review in the first three instances listed above is not controversial. This is because consent, jurisdiction, and procedural laws are all part of state-made laws. The CCI recommendation and the decision of the House of Federation in the *Kedija Bashir et al.* case is an example of constitutional review in the first instance.

The constitutional review at the fourth instance i.e. the review of the final judgment of courts of Sharia, is controversial due to the application of Islamic law in dealing with cases before these courts. For instance, Mohammed Abdo states that ‘if parties to a dispute voluntarily take their case to a sharia court, the outcome should be exempted from constitutional standards’ and further argues that ‘...subjecting [the] final decision of sharia courts to the supremacy clause and the human rights norms of the constitution goes against the very essence of legal pluralism advocated by the Constitution.’⁷⁵ Even though it is true that the Federal Constitution protects normative and judicial pluralism, such protection is not a *carte blanche*, especially vis-à-vis the recognition and protection of human rights under the constitution. In fact, the Federal Constitution clearly proclaims that the obligation of the state relates to ‘the duty to

⁷³ See Council of Constitutional Inquiry Proclamation 250/2001, Article 2(6) English and Amharic versions.

⁷⁴ The power of the House of Federation to review the decisions of courts is controversial. See for instance Mulatu, Abebe 2011: Issues of Constitutional Interpretation under the 1995 Federal Democratic Republic of Ethiopia Constitution: The Case of *Kedija Beshir et al. vs. Ansha Ahmed et al.*, in: Wonber-Alemayehu Haile Memorial Foundation’s Periodical, 8th Half Year, 46–54.

⁷⁵ Abdo, Mohammed 2011: Legal Pluralism, Sharia Courts and Constitutional Issues in Ethiopia, in: *Mizan Law Review*, 5 (1), 100.

support, on the basis of equality, the growth and enrichment of cultures and traditions *that are compatible with fundamental rights, human dignity, democratic norms and ideals, and the provisions of the Constitution*.⁷⁶ Moreover, the Federal Constitution imposes a specific duty on all legislative, executive, and judicial organs across the country to respect and enforce the provisions of the bill of rights under the constitution.⁷⁷ Thus, the normative and judicial plurality recognized under the Federal Constitution is subject to the supremacy clause of the constitution and the protection of those rights recognized under the constitution.⁷⁸ Constitutional review, in this sense, is used to ‘ensure the compatibility of’ the Sharia justice system ‘with a decent standard of human rights protection and due process’.⁷⁹

Absent the possibility of constitutional review, those who choose to utilize religious laws and religious justice systems on the basis of their religious belief will be accorded less protection or no protection at all of their constitutional rights.⁸⁰ Moreover, one should not assume that all judgments of the courts of Sharia would violate the Federal Constitution. Also, Islamic jurisprudence should be taken as an evolving set of rules that may benefit from in-depth constitutional review in the context of the latest notions and interpretations of rights.⁸¹

5. Conclusion

The constitutional recognition of the Sharia justice system in Ethiopia poses challenges common to the process of recognition of non-state justice systems. As shown in the analysis of the *Kedija Bashir et al.* case, these challenges lead to a decrease in the institutional and normative unity of the law and of the courts system. To ensure the maintenance of a common effective legal order, the following two issues must be addressed:

First, the integrity of the Sharia justice system must be constantly assessed and improved in relation to the capacity of the judges of Sharia courts, institutional capacity, and autonomy from state courts. Judges in Sharia courts lack capacity in their knowledge of both Islamic law and state law. Apart from a common course in Islamic law at public universities, there is no institution dedicated to the education and training of *Kadis* in Islamic law as well as in constitutional principles. As such, the capacity of *Kadis* in courts of Sharia leaves much to be desired. The problem of capacity affects the quality of justice rendered by the courts and derails the development of the Sharia justice system as a viable and dynamic justice system. The absence of training may also push *Kadis* to resort to and apply customary rules rather than

⁷⁶ Article 91 of the FDRE Constitution (n 7), emphasis added.

⁷⁷ Article 13(1) FDRE Constitution (n 7).

⁷⁸ Article 9(1) of the FDRE Constitution (n 7).

⁷⁹ Kötter 2015: 178.

⁸⁰ It is thus unfortunate and hasty for Mohammed Abdo to make the following statement: ‘If final decisions rendered by the sharia courts are reviewed by the House of Federation and finally declared unconstitutional, this may be treated by Muslim communities as an onslaught on their religious values and identity.’ See Abdo 2011: 100.

⁸¹ On the evolving nature of Islamic jurisprudence, see Schacht, Joseph 1982: *An Introduction to Islamic Law*, Oxford: Oxford University Press, 69–75; see also Council of Constitutional Inquiry Proclamation 250/2001, Article 20(2) on the principle of interpretation in cases that involve the human rights protected under the FDRE Constitution.

Islamic law. Moreover, no reporting and publication of Sharia court decisions and judgments exists. Sharia courts are under the extensive administrative and judicial control of the state justice system.

Insofar as they apply Islamic law, the Sharia courts can be considered to be religious courts. Nonetheless, Sharia courts can also be classified as semi-state courts when seen in light of the mandatory application of state civil procedure laws, in light of their accountability to judicial administration commissions, and in light of their dependency on government subsidies. On the one hand, it is possible to discern the intention of the state in providing standards that allow the Sharia justice system to function within the scope of constitutional safeguards. On the other hand, extensive regulation may result in the adoption of the more confrontational and less productive procedures of the state, rather than community-based mediation and informal processes, which are relatively effective and legitimate in the eyes of the followers of the Islamic religion.⁸² Notably, the review of the decisions of the courts of Sharia by the Federal Supreme Court Cassation Division is contrary to the recognition and existence of the courts of Sharia as part of a separate and autonomous justice system that lives a parallel existence within the regular state justice system.

Second, the state and Sharia justice systems must adhere to a common minimal constitutional standard. The most feasible mechanism is constitutional review of all decisions by the state and Sharia justice systems to ensure the enforcement of minimal normative standards, e.g. the observance of human rights as provided by the Federal Constitution. Unlike the cassation review, the constitutional review of decisions of courts of Sharia has a clear legal basis: the supremacy clause of the Federal Constitution proclaims that any decision including decisions of courts of Sharia that contradict the constitution shall be void. As such, the recognition of judicial and legal plurality is a qualified recognition that should operate within the framework of the rights protected under the Federal Constitution. Moreover, those who consent to the jurisdiction of the courts of Sharia deserve equal protection of their constitutional rights; and as an evolving system, Islamic jurisprudence benefits from an in-depth constitutional review process in the context of the development of notions and interpretations of the rights protected under the Federal Constitution. In this regard, it is worth noting that the CCI must develop the capacity to deal with applications that may involve the review of final judgments of courts of Sharia.

⁸² An-Na'im, Abdullahi Ahmed 2011: Religious Norms and Family Law: Is it Legal or Normative Pluralism?, in: *Emory International Law Review*, 25 (2), 786.

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Research Framework

Governance has become a central theme in social science research. The Collaborative Research Center (SFB) 700 Governance in Areas of Limited Statehood investigates governance in areas of limited statehood, i.e. developing countries, failing and failed states, as well as, in historical perspective, different types of colonies. How and under what conditions can governance deliver legitimate authority, security, and welfare, and what problems are likely to emerge? Operating since 2006 and financed by the German Research Foundation (DFG), the Research Center involves the Freie Universität Berlin, the University of Potsdam, the German Institute for International and Security Affairs (SWP), the Social Science Research Center Berlin (WZB) and the German Institute for Global and Area Studies (GIGA).

Partner Organizations

Host University:
Freie Universität Berlin



University of Potsdam



German Institute for International and Security Affairs (SWP)



Social Science Research Center Berlin (WZB)



German Institute for Global and Area Studies (GIGA)

