A Review of Literature on Children's Rights and Legal Pluralism

1. Introduction

In recent years, the intersection between human rights and legal pluralism has been investigated from a wide range of perspectives, including the relationship between the two concepts (Corradi 2014; Provost and Sheppard 2013; Von Benda-Beckmann 2009), the conditions under which legal pluralism may promote or undermine human rights (Provost and Sheppard 2013; Quane 2013; ICHRP 2009), and the various connections between human rights and indigenous, customary, religious and informal law (Gómez Isa 2014; Provost and Sheppard 2013; Sezgin 2011; Farran 2006). Within the subfield of women's rights, important insights have been generated regarding the interplay between international standards and legal pluralities. Amongst others, this body of knowledge demonstrates that women are both individual right holders and members of a family, kinship group and ethnic or religious community, which places them at the intersection of multiple – and often conflicting – normative frameworks. This scholarship underscores the need to examine how women mobilise different normative bodies in concrete struggles, while focusing on how, in such processes, women's rights interact with other legal orders (Sieder and McNeish 2013; Hellum et al. 2007; Merry 2006).

But what about the interplay between children's rights – understood as the human rights of children – and legal pluralism? [1] Within international children's rights law, some recognition of normative diversity is discernible. The preamble of the United Nations Convention on the Rights of the Child (CRC) of 1989 takes "due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child". Article 5 CRC contains a broad and culturally sensitive interpretation of the notion of caregivers. The responsibilities, rights and duties to provide appropriate guidance to the child in the exercise of her rights do not only accrue to parents, but also to "members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child".[2] When a child is temporarily or permanently deprived of her family environment, state parties should provide alternative care. In this

regard, explicit reference is made to the institution of *kafalah* of Islamic law, next to the more Western arrangements of foster placement, adoption and residential care (Article 20 CRC). At a few points in the CRC, there is thus an, albeit limited, recognition of the existence of other normative orders than (secular) state law.

The extent to which international law takes into account the multiple norms that co-regulate the life of children is but one aspect of the relationship between children's rights and legal pluralism. What other entry points have been pursued in research on this topic? This article adopts a bird's-eye view on the scholarship engaging with children's rights and legal pluralism, along two lines of analysis.[3] On the one hand, which research questions have been addressed so far and what are the main insights that emerge therefrom? And on the other, which thematic, theoretical and methodological approaches have been adopted in this literature?

For this purpose, a keyword search was carried out in the EBSCO*host* and Wiley databases, searching for combinations of the term children's rights with legal pluralism, custom*, indigenous*, religious* and plural*, with * indicating wildcard. In addition, the key journals of both fields, *The International Journal of Children's Rights* and *The Journal of Legal Pluralism and Unofficial Law*, were hand-searched. This search was combined with the snowball sampling technique, whereby known or found publications led to additional references. These works were then screened on the basis of the following criteria. Only scientific publications in English until the end of 2014 were considered, leaving out grey literature and reports from international and non-governmental organisations.[4] Moreover, children's rights and legal pluralism needed to be at the core of the analysis; i.e. superficial references to, for instance, the CRC or customary law were not sufficient to be included in the sample. The eventual sample of publications that were further analysed consisted of 51 journal articles and book chapters. These publications were carefully reviewed along the two abovementioned lines of analysis: the research questions and main findings, and the thematic, theoretical and methodological approaches employed.[5] The aim of this exercise was to identify certain trends in academic research and to generate suggestions for further investigation. However, we do not claim to present an exhaustive overview of all relevant research output on the intersection between children's rights and legal pluralism. Moreover,

both the searching method and selection criteria entailed restrictions in the scope of coverage. For example, the search focus on publications in English resulted in a geographical bias to the detriment of, among others, Latin America and francophone Africa.

This article is structured as follows. Section two presents the main research questions and findings that emerge from the literature on children's rights and legal pluralism. Based on this, in section three, we reflect on existing thematic, theoretical and methodological approaches. Throughout the article, we identify a number of avenues for future research. Finally, the conclusion recapitulates and provides some final reflections.

2. Main Research Questions and Findings in the Literature on Children's Rights and Legal Pluralism

Three questions seem to dominate the research on children's rights and legal pluralism: (i) how global standards on children relate to local practices and normative orders and vice-versa, (ii) how justice seekers (children and their custodians) and justice providers navigate plural legal orders, and (iii) how the co-existence of various normative orders interplays with social change and the realisation of children's rights. Some contributions focus exclusively or largely on one of these issues, whereas other works address more than one, or even all of these themes. The identification of these themes, as well as the sub-categorisations made in the sections below, are based on our analysis and understanding of the literature, rather than on the way in which this literature presents itself.

2.1. The Relationship between Global and Local Norms regarding Children

The relationship between 'global' and 'local' norms regarding children is of recurrent interest within the literature on children's rights and legal pluralism. The terms 'global' and 'local' are carriers of many meanings, and moreover cannot always be neatly separated from one another. Nevertheless, an understanding of 'global norms' as those norms enshrined in international legislation and their domestic counterparts in state law (such as children's human rights law, humanitarian law etc.), and of 'local norms' as informal, customary, indigenous or religious norms, may be inferred from the great majority of the literature reviewed. Two main perspectives can be distinguished in the literature analysing the interplay between global and local norms on children: some authors mainly adopt the perspective of

local norms and their connection with global standards; others start from the question of whether *global* standards are able to accommodate the realities of children, including the normative contexts in which they live. Finally, in recent years, a third perspective started to emerge, where some authors have emphasised how distinctions between the local and the global become blurred in situations in which norms originating at different levels encounter each other.

Within the literature which takes a predominantly local perspective, two streams may again be identified. In a first stream of scholarship, the main concern seems normative: local practices and norms are evaluated in light of international children's rights standards (Mangena and Ndlovu 2014; Bošnjak and Acton 2013; El Jerrari 2002; Syed 1998; Hunt 1993). Research objectives then are, for instance, analysing how marriage at an early age violates certain fundamental children's rights (El Jerrari 2002) and assessing to what extent private family law proceedings respect children's participation rights (Taylor et al. 2012). Findings include that Islamic law conflicts with the prohibition of non-discrimination against non-marital children, and that reservations to the CRC on this matter go against international law (Syed 1998). At the same time, the extent to which local norms are seen to violate international children's rights may heavily depend on an in-depth understanding of these norms: different interpretations of local normativity may render local and global norms either compatible or incompatible. According to Himonga (1998), customary norms in Zambia can be seen to contradict the right of children to participate in decisions that affect them, since children are discouraged from openly expressing their views. Upon closer examination though, these same norms provide for intimate communication between children and their grandparents, the latter having considerable weight in decision-making processes regarding children. In other words, children's rights to participate may be realised by means of local social institutions that are not always properly understood by outsiders.[6]

A second research line takes a more descriptive stance in explaining how local norms either support or undermine selected rights of children (Kurczewski and Fuszara 2013; Twum-Danso 2009; Kaime 2008; Hashemi 2007; Stewart 2007; Wolayo Ssemmanda 2007; Himonga 1998; Kabeberi-Macharia 1998b; Rwezaura 1998a, 1998b, 1998c; Ncube 1998c; Armstrong et al. 1995). This approach can be illustrated by Kaime (2008), who describes the logic of

Lomwe customary practices and norms regarding children. Based on this, he analyses how the key principles of the African Charter on the Rights and Welfare of the Child (i.e. non-discrimination, the 'best interests' principle, the promotion of the child's survival and development, and the requirement of the child's participation) play out in daily practice for Lomwe children. For example, he explains that the communal nature of the extended family sits uneasily with the idea of an individual child's interests being paramount (Kaime 2008, 51). At the same time, the extended family offers a child a 'resource network' that can be mobilised for the satisfaction of her needs (54). Kaime shows that Lomwe social and cultural space offers a platform for the legitimation and the contestation of both the protection and the violation of children's rights. In other words, it is a dynamic space that evolves in response to various influences, such as human rights discourses.

The second perspective adopted concerns the extent to which global norms can accommodate the realities of children at a local level. It is generally recognised that the diversity of contexts in which global standards are to be implemented will inevitably imply differences in the interpretation of these norms (Ncube 1998a; Rwezaura 1998a, 1998c; Alston 1994). This is related to the fact that conceptions of what a child is, what is good for children and what entitlements and obligations they have are linked with the kind of relationships in which children are embedded with respect to their parents, caretakers, custodians and adults in general. This depends, in turn, upon historical, social, economic and cultural dynamics (Ncube 1998b). In this context, the literature reviewed here explores how different normative orders (i) construct childhood/adulthood and child/parent relations (Articles 1 and 5 CRC), (ii) influence the interpretation of the best interests principle and participation rights (Articles 3 and 12 CRC), and (iii) affect the way in which children's autonomy and vulnerability are balanced.

Regarding the construction of childhood, various authors show that there is a clear tension between the static approach of the CRC, according to which "[a] child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (Article 1) and local normative orders, which tend to define childhood/adulthood in more flexible and multidimensional terms. For example, in Muslim legal tradition, adulthood is not only determined by one's age, but also by the concept of

'maturity' (Hashemi 2007, 199). In most of Eastern and Southern Africa, the productive and reproductive capacities of a person may render him/her a child for certain purposes and an adult for others (Armstrong et al. 1995). Also in Bangladesh, chronological age does not play an important role in the process of child development. Whether a person is qualified as a child depends on the specific context as one may be 'too small' for certain work, but 'old enough' for other matters (Blanchet 1996, as referred to in Banks 2007). Possessing 'understanding' also plays a crucial role in determining whether one is grown up (Banks 2007; White 2007). Depending on the circumstances of birth and living conditions, some children (e.g. orphans or young girls employed as domestic servants) are expected to gain understanding more rapidly than other (e.g. middle class) children (Banks 2007).

Similarly, global constructions of child/adult relations are not always in tune with local realities. Armstrong et al. (1995, 341) remark that the CRC employs the terms parent, parental and parenthood as if the meaning of these terms were unproblematic. This is then contrasted with the complexities that exist within extended family relations in Africa, in which various persons who may not be the natural parents of a child discharge different parental functions. According to White (2007), to grasp opposite practices and understanding of children's rights in Bangladesh one needs to understand the different manners in which community is imagined. In the children's rights world of development agencies, the imagined community is global, and children in Bangladesh are defined as exploited and vulnerable. When looking at Bangladeshi society from an insider's perspective, a more positive image of children appears. Here, however, the imagined community is a community of adult males, the guardians. This institution of 'guardianship' is paramount in children's lives; children belong to a community only because of the relationship with their guardian. Children without a guardian consequently find themselves in a very precarious situation. The institution of guardianship is thus key in understanding local practices, but entails both exclusionary and inclusionary aspects.

The construction of child/adult relations is also connected to the balance between the rights and the responsibilities or duties of children, which differs depending on the normative and cultural context. This is already reflected in international children's rights law, namely in the divergence between the CRC – where no duties of children are mentioned – and the African

Charter on the Rights and Welfare of the Child – which elaborates in Article 31 on the child's "responsibilities towards his family and society, the State and other legally recognized communities and the international community". In Thai society, filial duty is also paramount, especially between children and their mother. Montgomery (2001) shows how prostitution, which is financially much more rewarding than other jobs, is perceived by children as a way of fulfilling their obligations towards their parents.[7]

Furthermore, the way in which participation rights and the best interests principle are interpreted may differ in global and local arenas. Under the CRC, participation is mainly conceived as children explicitly expressing their views on matters affecting them (Article 12). Blanchet-Cohen and Fernandez (2003) show how in indigenous communities in Venezuela, the traditional ways in which children participate are more subtle, and may thus go unnoticed. Children accompany their parents in their daily activities, and as their capacities evolve, they are given more responsibility. Children are a full member of their community – and thus participate – not by loudly giving their opinion, but by observing and taking part. Although the best interests principle is a flexible concept, there are identifiable differences between local and Western interpretations of it. For example, under patrilineal customary norms in Africa, upon divorce, it is frequently considered that it is in the best interests of a child to remain under the custody of the father's lineage, particularly after the age of seven, for this will provide the child with the protection of the ancestors. This contrasts with the more Western view that it is in the best interests of the child to grant custody to the parent that can better provide the child morally, emotionally and materially (Armstrong et al. 1995; Armstrong 1994; Banda 1994).

Finally, the differences between global and local norms regarding the balance between children's autonomy and vulnerability and the legal consequences thereof, have been explored particularly in the context of children in war situations (Ensor and Reinke 2014; Banks 2011; Rosen 2010). The basic question is when a child can be held responsible for certain acts and how this impacts on the determination of guilt and punishment in humanitarian law and transitional justice. Rosen (2010) describes the tension between international humanitarian law's drive to create a universal standard based on the idea of the inherent vulnerability of children, and local norms that make more room for children's agency. From the perspective of

international law, the essential characteristic of a child soldier is that he is a victim. The legal consequence thereof being that criminal liability is allocated to child recruiters, while child soldiers' agency is reduced to a minimum. Rosen (2010) criticises this approach; at the same time, he questions the effectiveness of its underlying rationale, i.e. to discourage the mobilisation of child soldiers. He explains how this hegemonic approach underplays local perspectives in Sierra Leone, in which adulthood is linked to initiation ceremonies, after which new 'adults' are considered ready for warfare. Given the centrality of the balance between autonomy and vulnerability in children's rights, it is suggested that it could be further explored how this balance is achieved in a context of legal pluralism in other than war-related situations.

In recent years, the relationship between global and local norms regarding children has been approached from yet another point of view, namely, how the boundaries between what is 'global' and what is 'local' get blurred in situations in which normative orders originating at different levels encounter each other (Griffiths and Kandel 2011; Kaime 2008). These scholars redirect our attention towards the subjective experience of children; their guardians and justice providers dealing with children in legally plural contexts in which global and local norms meet each other. By focussing on how these actors appropriate, modify, combine and mix global and local norms for different purposes, it is shown that norms originating at both levels are modified by these encounters. Although the link is not explicitly made, such insights resonate with the concept 'inter-legality', i.e. the superimposition, interpenetration and mixture of different legal orders in our minds and actions (de Sousa Santos 2002: 437; see also Hoekema 2006). As we suggest in the next section, phenomenological approaches to the study of children's rights in legally plural settings are, however, rather rare.

2.2. The Navigation of Legally Plural Orders

A second research question addressed in the literature on children's rights and legal pluralism relates to how justice seekers (children and their guardians) as well as justice providers (which may include judges, mediators, traditional chiefs, etc.) navigate multiple normative orders in relation to children's rights. This literature explores the strategies followed by children and their representatives, the reactions of justice providers, as well as the results

thereof in the light of children's rights. A first strand of scholarship focuses on disputing contexts (Farran 2012; Stewart and Tsanga 2007; Kent 2007; Himonga 2001; Belembaogo 1998; Kaplan 1998; Rwezaura 1998b). This scholarship takes the perspective of the courts, often including an analysis of the outcome in terms of children's rights. Farran (2012) has analysed how local courts in the south Pacific region engage with the CRC in a context of plurality of both laws and forums for dispute settlements. She concludes that the relevance of the CRC "is dependent on the forum in which the child is considered and the sources of law applicable in that forum" (204). For instance, persons in non-formal, local courts deciding on matters concerning children, may have little or no knowledge of the CRC.

Kaplan (1998) shows how rabbinical courts in Israel, applying Jewish law, interpret the principle of best interests of the child in accordance with religious values, for instance giving custody to the parent who would provide religious education to the child despite specific custody rules providing otherwise. In contrast, civil courts use secular interpretations, based on insights from psychology and social work, to give meaning to the best interests principle. One of the undesirable consequences of this diverging interpretation is a "jurisdiction race": lawyers advise their clients to rapidly present a divorce suit before the forum whose interpretation is most favourable to them. This may lead to unnecessary divorces and frustrations for the other party.

Drawing on the controversial *Mthembu* case, Himonga (2001) demonstrates that state courts failed to protect the rights of this child by endorsing a discriminatory version of customary law as codified during the colonial times. The case concerned a mother who attempted to enforce in the High Court and Supreme Court of Appeal of South Africa the rights of her seven-year-old daughter to succession from her deceased father. The respondent, the father of the deceased, alleged that he was the only heir since the child was illegitimate under customary law. Himonga shows how the decision of the courts involved in this case, which relied on codified customary law according to which illegitimate children have no rights in the family of their father, contrasts with current customary practices, i.e. 'living customary law', according to which marital and non-marital children of both sexes increasingly have inheritance rights in both families. Stewart and Tsanga (2007) arrive at the same conclusion

when analysing the inheritance rights of women and girl children under official vs. living customary law in Zimbabwe.

Another reason why state courts may fail to protect children's rights in legally plural jurisdictions is the unresolved tension between contradictory norms that apply simultaneously to children. Armstrong (1998) illustrates this point with respect to the sexual abuse of children in Zimbabwe, where the concepts 'child' and 'consent', which are at the core of the definition of 'sexual abuse', are understood differently under two applicable legal orders, i.e. state and customary law. According to state law, at sixteen, a girl has the capacity to consent to have sex, whereas under customary law, a girl is considered ready for marriage and sexual intercourse upon reaching puberty. Consent means individual consent under state law, whereas under customary law it means the consent of the family. This leads to situations in which sexual intercourse is defined in terms of 'abuse' by one system, but not by the other, and vice-versa. Since both legal orders have official status, this generates a dilemma for state officials who need to implement children's rights.

In this respect, Rwezaura (1998b, 67) explains that it is necessary to understand the underlying and sometimes invisible influences that the various normative orders at play generate on each other and the entire judicial process. He illustrates this point in relation to children's participation rights in court proceedings in Tanzania. While orphan and street children enjoy less protection of their rights in general, state courts in Tanzania perceive these children as 'outside of childhood'. Because of this, judges grant these children more autonomy and possibilities to express their opinion in court proceedings than children under the custody of an adult. In other words, this implicit normativity interplays with the implementation of children's participation rights, affecting different children differently.

Given the predominant attention in this first strand of scholarship on how *courts* deal with different normative orders, it is suggested that more research could be undertaken on how *other* justice providers manage the challenges of normative pluralism. Moreover, we found very few concrete examples of how justice providers *interact* with each other and the consequences thereof for children. For instance, why and when does a justice provider decide to refer a case to another actor or system? Does the involvement of a minor in the dispute

influence this decision? And is interaction between justice providers conducive to the realisation of children's rights? Furthermore, the perspective of the *justice seekers*, i.e. the perceptions and strategies of children and their custodians, should receive much more attention in research on disputes.[8] From this point of view, more research could also be undertaken on how forum shopping impacts the realisation of children's rights (cf. the jurisdiction race between rabbinical and Israeli civil courts referred to above, Kaplan 1998). The further development of this research line would imply adopting a more sustained users' perspective on the law. Such a users' perspective implies a shift in analytical perspective, and has, for instance, been developed and applied in relation to human rights law (Brems and Desmet 2014). The concept of users can be broadly understood, including not only justice seekers, but also justice providers (Desmet 2014).[9]

Other authors explore the navigation of plural normative orders outside dispute settings. Here, children's coping strategies are more often at the heart of the investigation. An example can be found in Kurczewski and Fuszara (2013, 157), who describe Roma minors' elopement as a strategy to pursue a marriage with a partner of their choice. In this way, these young people avoid their parents agreeing to a marriage against their will, which is 'legal' under Roma law. Rajabi-Ardeshiri (2011) explores the agency of children who are confronted with corporal punishment at UK mosque schools. Based on an independent understanding of their right to physical and emotional well-being, children employed a range of strategies when faced with maltreatment, such as negotiating among themselves and having recourse to other sources of authority (e.g. parents and teachers at state schools). Minors' acceptance, appropriation and resistance to international and national laws is also discussed by Griffiths and Kandel (2011) based on research on the Scottish Children's Hearing System. They demonstrate that factors such as status and class strongly impact on how an international norm such as child participation is understood by the different actors involved in hearings. For children and their families, the "local informal law of loyalty and strong discipline" is more influential in determining their degree of participation than the (inter)national law that panel members – who come from a very different 'world' within the same city – wish to implement.

These insights, as well as the insights presented in the previous section on the relationship between global and local norms, indicate that the web of relationships in which children are

embedded is key in determining their position in society and their access to children's rights. These relationships are governed by a multiplicity of normative orders, state law being only one of them. Therefore, a legal pluralist perspective offers an adequate entry point to try to understand the obstacles and opportunities in the realisation of children's rights and how to go about them. It is to this point that we now turn.

2.3. Legal Pluralism, Social Change and the Realisation of Children's Rights

Many of the rich insights presented above have been linked to the analysis of how social change may be pursued through the use of children's rights, and how social change may lead to the realisation of children's rights in legally plural settings. That the language of children's rights is not necessarily the best avenue for the realisation of the goals envisaged by these standards is evident from a number of studies reviewed. From the research of Griffiths and Kandel (2011) on children's participation rights in hearings in Scotland, a contradictory effect of using legal language emerged. Formal legal language was introduced to strengthen the rights element of the system and to protect children against informalism and coercive state intervention. For practically all the young people interviewed, however, this language was very difficult to understand, precisely because of its formal and technical nature. On the basis of her detailed anthropological account of child prostitution in Thailand, Montgomery (2001, 80) warns for "the difficulties and dangers in realizing rights, even those that seem the most justified", such as the right of the child to be protected against prostitution. Ensuring this right would imply violating the child's right to live with her family and community: "Enforcing one right would mean infringing others that the children claim to value more" (94).

One common thread running through many contributions is that any children's rights strategy needs to be rooted in grounded knowledge about the lived realities of children and the multiple normative orders at play (e.g. Bošnjak and Acton 2013; Griffiths and Kandel 2011; Stewart and Tsanga 2007; White 2007; Blanchet-Cohen and Fernandez 2003; Montgomery 2001; Ncube 1998a; Armstrong et al. 1995). Such knowledge provides a solid basis, not only for analysing which legislative and policy reforms seem desirable, but also for anticipating how these are likely to be received in the different arenas affected by such reforms.

As demonstrated by the literature on how global and local standards interrelate, it is necessary to engage with the underlying logic and rationales of practices that are seen to undermine children's rights. This requires, firstly, the deconstruction of how a certain normative universe legitimates these practices (Ali 2014; Rajabi-Ardeshiri 2014; Francavilla 2011; Ouis 2009; Kaime 2008; Himonga 2001). For example, as regards child sexual abuse, Ali (2014) explains how the honour ideology, which is prevalent in collective societies (including, but not limited to, Islamic societies, see also Ouis [2009]), blames the victim for the abuse and focuses on restoring the damaged honour of family and child. Secondly, the identification of competing or alternative interpretations that support children's rights is needed. Continuing with the example on child sexual abuse, it is suggested to use the Islamic doctrines of *al-maqasid al-shari'ah* (the objective and purpose of Islamic law) and *maslalah* (the promotion of human welfare and the prevention of harm, as symbolising the objective of Islamic law) to challenge the honour ideology.[10] This approach may find acceptance more easily on the ground than secular models. To bridge the gap between the divergent interpretations of the best interests principle of rabbinical and civil courts in Israel, identified above, Kaplan (1998) suggests a modern interpretation of Jewish law, which attaches major importance to the best interests principle, on the one hand, and the assistance of social workers and psychologists in rabbinical courts, on the other (see also Kaplan 2006). Other scholars focus on how change occurs within non-state normative regimes, as one cannot assume that all normative orders evolve in the same way as state law, i.e. by modifying abstract rules (Francavilla 2011; Kaplan 2006, 1998). The work of Francavilla (2011) dealing with child marriages in India is illustrative. He points out that in the Hindu context, exemplary behaviour is what constitutes the dominant normativity. Therefore, in order to change the practice of child marriage, it is necessary to cooperate with influential leaders so that they adapt their behaviour.

Various contributions qualify the central role of state law in realising children's rights, in two ways: state law is neither always the dominant order in determining children's fate, nor is it always the most favourable one to children's rights. The former aspect implies that state legislation abolishing a practice considered detrimental to children or imposing certain standards will often not be enough to change realities on the ground (Rwezaura 1998c). If children's rights are sought to be implemented by state law, understanding the interplay

between state law and social arrangements is paramount (Armstrong et al. 1995). This issue has been particularly explored in relation to gender-specific violations of children's rights, such as discrimination of girl children, control of female sexuality and sexual abuse and exploitation (Stewart and Tsanga 2007; Armstrong 1998; Rwezaura 1998b; Armstrong et al. 1995). This literature shows that these violations have a structural character embedded in the social, cultural and normative systems of many societies. Therefore, the role of state legislation should not be seen in isolation, but as part of a broader campaign for social change, in which legislation and court decisions can be used as springboards for social action. Moreover, state legislation is not always the normative order that is most supportive of children's right standards (Kent 2007; Blanchet-Cohen and Fernandez 2003; Goonesekere 1994). Kent (2007, 529) describes the case of a woman in rural Sierra Leone who approaches paralegal assistance in demanding maintenance for her two children. In Sierra Leone, state law vests the responsibilities for the maintenance of children with the father. Since the father was nowhere to be found, state law would leave these children unprotected. Rather than resorting to state law, paralegals therefore drew on customary law interpreted in the light of the best interests of children in order to demand support from the extended family on behalf of the father. Similarly, in indigenous Venezuelan communities, traditional practices are generally believed to be somehow more respectful of children. State education and television, among others things, have negatively impacted on the possibility to reproduce these practices. (Blanchet-Cohen and Fernandez 2003). Rather than ignoring or replacing these normativities and practices, state institutions should seek ways to accommodate them.

In addition, some authors underscore the importance of understanding how material socio-economic conditions interplay with normative orders and influence the realisation of children's rights (Montgomery 2001; Ncube 1998a). Regarding child prostitution in Thailand, for instance, Montgomery (2001) is cautious about seeing the clash between global and local norms as a matter of culture only, as the material specificities which arise from Thailand's position in globalised political and economic relations are as important as cultural factors in perpetuating sexual exploitation. Overall, however, more attention continues to be paid to 'culture' and 'tradition' as factors that underpin normative orders, rather than socio-economic

structures. More research seems thus necessary on the interplay between socio-economic factors and the normative orders affecting the position of children in society.

On the whole, realising children's rights often seems to be a matter of changing power relations, in particular at the intimate level of intra-family relations (Letuka 1998; Rwezaura 1998b, 1998c). Due to the fact that children are often dependent on or cared for by women, it is necessary to understand how gendered power relations operate at the micro-level of the household, as well as how children's and women's rights interact (Kabeberi-Macharia 1998a, 1998b; Armstrong et al. 1995). For example, women's lack of participation rights within customary decision-making processes undermines their capacity to encourage children to express themselves (Armstrong et al.1995).

3. Reflections on thematic, theoretical and methodological approaches

In the previous section, we suggested that the findings emerging from the literature on children's rights and legal pluralism could be broadly categorised within three overarching research questions dealing with global-local relations, the navigation of plural legal orders and social change. In this section, we reflect on some identifiable trends in terms of the thematic, theoretical and methodological approaches adopted in this literature.

3.1. Thematic approaches

As regards themes, a substantial part of the works revised focus on intra-family relations. Topics that have received particular attention include child marriage (Bošnjak and Acton 2013; Francavilla 2011; Ouis 2009; El Jerrari 2002), corporal punishment in a family context (Mangena and Ndlovu 2014; Banks 2007), adoption (Snow and Covell 2006; Rwezaura 1998b)[11] and non-marital children (Himonga 2001; Syed 1998; Ncube 1998c). Another section of the scholarship deals with the position of children and young people in wider society, addressing issues such as child sexual abuse, sexual health and child prostitution (Ali 2014; Ouis 2009; Armstrong 1998; Kabeberi-Macharia 1998b), child soldiers (Rosen 2010), juvenile justice, restorative justice and informal systems of justice (Banks 2011, 2007; Griffiths and Kandel 2011; Rwezaura 1998b), criminal law (Rajabi-Ardeshiri 2014; Farran 2012) and corporal punishment in educational settings (Rajabi-Ardeshiri 2011; Kaplan 2006). Most of the contributions in both categories thus deal with problematic aspects connected

with ‘being a child’ in contexts where different normative orders co-exist. A possible explanation for this prevalence of ‘negative’ issues could be that – especially for academics coming from a children’s rights background – attention for ‘other’ normative orders than the ones most commonly known (such as state law and international human rights law) is more easily triggered when these other orders are seen as engendering problematic consequences for children. It is of course logical and justified that problematic situations receive extensive scholarly attention. Nevertheless, it is argued that it would be interesting to carry out more research on the interplay between children’s rights and legal pluralism in the day-to-day lives of children, when they are not confronted with a (potential) violation of their rights. For example, such research could explore how the legal consciousness of children develops in contexts of legal pluralism.

As to geographical coverage, Africa is the region best represented in the English-language scholarship on children’s rights and legal pluralism (Mangena and Ndlovu 2014; Ngema 2013; Banks 2011; Rosen 2010; Twum Danso 2009; Kaime 2008; Kent 2007; Stewart 2007; Stewart and Tsanga 2007; Wolayo Ssemmanda 2007; Himonga 2001; Ncube 1998a; Armstrong et al. 1995; Armstrong 1994; Banda 1994; Belembaogo 1994). Other research concerns the Asia-Pacific region (Farran 2012; Banks 2011, 2007; White 2007; Montgomery 2001; Goonesekere 1994); Europe and North America (Bošnjak and Acton 2013; Rajabi-Ardeshiri 2011; Griffiths and Kandel 2010; Snow and Covell 2006); Islamic states (Rajabi-Ardeshiri 2014; El Jerrari 2002) and Israel (Kaplan 1998, 1996).[12] The lack of research included on Latin America (but see Blanchet-Cohen and Fernandez 2003) is to be explained by the language criterion employed in the selection of literature (supra). Furthermore, some works do not have a particular geographical focus, but analyse at a more general level the interplay between children’s rights and one or more other normative orders, such as Islamic law and/or the honour ideology (Ali 2014; Ouis 2009; Hashemi 2007; Syed 1998). Overall, we see a preponderance of research on the Global South, with the African continent being the best represented, and Latin America being practically absent in the English-language literature on this topic.[13]

3.2. Theoretical approaches

More often than not, theoretical underpinnings are not made explicit. This implies that underlying assumptions as well as authors' understanding of key concepts, such as children's rights, legal pluralism and childhood, may remain unclear, although in many cases this becomes at least partially evident from reading the text. Nevertheless, the risk exists that complexities and nuances of concepts with which one is more acquainted (as either a legal anthropologist or human rights scholar) will be more readily highlighted, whereas other, less familiar concepts may be more easily accepted as unambiguous.[14]

A first question that arises regarding the theoretical approaches adopted by these scholars is how children's rights are constructed. Are children's rights viewed as static norms or as a 'process' (Moore 1973)? In many publications, particularly those adopting a descriptive-analytical perspective, children's rights seem to be perceived as porous or semi-autonomous, i.e. children's rights result from processes of interaction between multiple normative orders (e.g. Kaime 2009; Twum-Danso 2009; Ncube 1998a; Armstrong et al. 1995). This view is less reflected in publications that develop a normative analysis on whether local norms comply with children's rights or do not, which tend to adopt a more static view of norms (Mangena and Ndlovu 2014; Bošnjak and Acton 2013; Ngema 2013; El Jerrari 2002; Syed 1998). This, in turn, seems to impact on the kind of 'recipes' that are prescribed in order to realise children's rights. For example, authors who understand children's rights as semi-autonomous tend to look beyond state law when reflecting on how to give effect to these rights (e.g. Ncube 1998a).

In most publications, children's rights are put on par with the CRC and/or other instruments of international or regional human rights law. Reference is then made, for instance, to "the rights of children (*as defined* by UN Convention on the Rights of the Child)" (Bošnjak and Acton, 2013, 662).[15] In children's rights scholarship, it is being increasingly acknowledged that children's rights research should not be limited to rights as they are enshrined in legal instruments. Children's own conceptions of their rights – their 'living rights' (Hanson and Nieuwenhuys 2013) –, which may differ from international standards, may be as relevant for the effective realisation of these rights. For the moment, there seems to be a gap in this kind of knowledge. In most of the studies included in this review, the questions probed for children's views and experiences on certain practices such as early marriage, honour violence

and sexual abuse (Bošnjak and Acton 2013; Ouis 2009), custody and guardianship (Molokomme and Mokobi 1998), compulsory schooling (Muianga 1998) or on certain proceedings (Griffiths and Kandel 2011), rather than on children's understanding of children's rights as such. More explicit information on the rights consciousness of children was found in the research of Rajabi-Ardeshiri (2011) on corporal punishment in UK mosques, where children turned out to be well-informed about their rights and the legal structures that could protect them against abuse. It is therefore suggested that research on children's rights and legal pluralism adopts a broader understanding of children's rights that includes children's own perceptions of the relevance and appropriateness of the rights language and framework, and in particular how legal pluralism interplays with such perceptions.

In relation to how legal pluralism is understood, some publications seem to reflect a dichotomous approach as they address the relationship between children's rights and one other normative order. A minority of publications takes up the more multifaceted and complex challenge of accounting for the fact that in a social field, various normative orders are usually pertinent to children and young people, such as Islamic law and the honour ideology next to state law (Ali 2014; Ouis 2009). Moreover, a number of scholars demonstrate that the relevance of these normative orders in the life of children and the realisation of their rights does not depend on whether these normative orders are officially sanctioned by state law (Griffiths and Kandel 2011; Rwezaura 1998b, 67). Finally, certain practices, especially customary and informal ones, are not always explicitly conceptualised as forming part of a normative order. Reference is then made to, for instance, "kinship and social obligations" (Montgomery 2001), a "local culture of guardianship" (White 2007), "African customs" (Mangena and Ndlovu 2014) or "culture" (Banks 2011). As a consequence, the fact that local actors may conceive these practices as binding and sometimes even as enforceable may not be appropriately taken into account in the analysis.

Regarding the conceptualisation of children, the theoretical framework most recurrently, albeit often implicitly, adopted, is that of the '(new) sociology of childhood'. This means that childhood is understood as socially constructed and children are considered competent social agents (see e.g. James and Prout 1997) – in reaction against the previously prevalent childhood image of the incompetent child. Much as in the case of the conceptualisation of

children's rights, the conceptualisation of childhood also impacts on how scholars envisage social change. Rajabi-Ardeshi (2014), for instance, argues for the relevance of a social constructionist approach as regards the issue of child execution in the Islamic context. In many domains of life and similar to evolutions elsewhere, in recent times childhood has been prolonged in the Middle East, because of, among other factors, compulsory education and legislation establishing a minimum age of marriage. As a consequence, children's full participation in society is also postponed. Criminal law regarding children, however, continues to be based on a pre-modern understanding of childhood, from a time when children fully participated in society at a much earlier age. A social constructionist understanding of childhood offers these insights and therefore supports the abolition of the execution of minor offenders in Islamic countries such as Iran today.

Other authors seem to view competing constructions of childhood, parenthood and child/adults relations in terms of different forms of knowledge (global and local) with asymmetric power. For example, Banks (2011, 190) questions why indigenous modes of dispute settlement in South Sudan are excluded for the purposes of transitional justice unless they are more protective of children's rights than international standards. Similarly, Rosen (2010) criticises international humanitarian law's ethnocentrism with respect to child soldiers. At the same time, some scholars warn us that due to rapid socio-economic transformations, local norms and social institutions that used to protect children in societies that were organised under the logic of community-centred subsistence economies, may become ineffective in individualistic, cash economy contexts (Ncube 1998a; Armstrong et al. 1995). For example, African customs that discouraged children from participating openly in decisions affecting them were compensated by the idea that 'the child belongs to everyone', which provided for community controls of adult behaviour towards children. In urban contexts, such controls are diluted, while the persistence of an ethos denying children the possibility to express their interests increases their vulnerability (Himonga 1998).

3.3. Methodological approaches

When looking at the methodological approaches, a wide range of the spectrum is covered. There are several desk studies, based on legal analysis and/or literature review (e.g. Ali 2014;

Rajabi-Ardeshiri 2014; Farran 2012; Banks 2007; Hashemi 2007; White 2007[16]; Syed 1998). Various authors adopt a comparative perspective (e.g. Taylor et al. 2012; Banks 2011; Kaplan 2006, 1998; Hashemi 2007; El Jerrari 2002; Goonesekere 1994). Qualitative research strategies employed include interviews (e.g. Bošnjak and Acton 2013; Blanchet-Cohen and Fernandez 2003); interviews and attendance at training sessions (e.g. Griffiths and Kandel 2010); focus group discussions and life stories (e.g. Ouis 2009); interviews, focus group discussions and participant observation (e.g. Rajabi-Ardeshiri 2011); ethnographic fieldwork (e.g. Montgomery 2001); and a qualitative survey (Taylor et al. 2012). In a quantitative survey, attitudes towards adoption were investigated among Aboriginal and non-Aboriginal university students in Canada (Snow and Covell 2006). In all these empirical studies, children and young people were among the research participants. The substantive research gaps identified by this article point to the need for more qualitative research, and especially sustained ethnographic fieldwork.

Finally and more generally, an increased collaboration seems warranted between those scholars that adopt a prescriptive approach to the study of children's rights and legal pluralism and those that study this topic from a descriptive angle. In relation to restorative justice and indigenous practices, for instance, Banks (2011, 190) noted the very limited interaction between legal anthropologists, who study indigenous dispute settlement processes, on the one hand, and restorative justice advocates and practitioners setting transitional justice mechanisms, on the other. This led to an underestimation of the potential of indigenous processes as regards restorative justice.

3. Conclusion

In this article, we reviewed and reflected upon the English-language academic literature on children's rights and legal pluralism. Pursuant to our first line of analysis, three research questions were identified as having been mostly addressed by this scholarship. The first question, how global children's rights standards interrelate with local norms and practices, has been mainly approached either from the perspective of local norms, or from the point of view of global standards. In research starting from a local perspective, a normative stream (evaluating local practices in the light of children's rights standards) and a more descriptive stream (examining how local norms and institutions may support or undermine children's

rights) were identified. Taking the entry point of global children's rights standards, other authors have examined to what extent these standards accommodate the lived realities of children. In particular, this literature has explored the construction of children and child/parent relations, the functioning of the best interests principle and participation, as well as the balance between autonomy and vulnerability in various normative orders. In recent years, a third perspective emerged, which emphasises the blurring of the boundaries between the 'global' and the 'local'. A second research question relates to how children and their custodians, as well as justice providers, navigate diverse normative orders, both within and outside disputing contexts. Within disputing contexts, the perspective of the courts has been predominant, whereas outside disputing settings, strategies of children lie more often at the core of the analysis. The third research question concerns the relationship between legal pluralism, social change and the realisation of children's rights. A common finding is that any children's rights strategy needs to be grounded in a deep understanding of children's realities and the normative orders at play. A deconstruction of how certain norms legitimate practices that are seen to undermine children's rights should be accompanied by an identification of alternative interpretations that support children's rights. Moreover, the often presumed key role of state law is to be nuanced, as state law is neither always the most dominant normative order determining children's fate, nor necessarily the most supportive one of children's rights.

After having reviewed these main research questions and findings emerging from the literature on children's rights and legal pluralism, we addressed our second line of analysis, namely the thematic, theoretical and methodological approaches that characterise this scholarship. As regards themes, intra-family relations have been somewhat more widely studied than the position of children in society. In both categories, a focus on 'problematic' situations regarding children predominates. Geographically, much research deals with the Global South, with Africa being the most covered region, and Latin America almost absent in the English-language literature on this issue. Theoretical underpinnings are often not made explicit. Nevertheless, a variety of approaches may be discerned, especially as regards the conceptualisation of children's rights (e.g. as semi-autonomous or static) and legal pluralism (e.g. as dichotomous or multi-level). The concepts of children and childhood are mostly understood on the basis of a social constructionist approach.

Throughout the article, we formulated various suggestions for future research on children's rights and legal pluralism. Such research could for instance explore how autonomy and vulnerability of children are balanced in other than war-related legally plural contexts. As far as the navigation of plural legal orders in disputing settings is concerned, the perspective of justice providers other than courts in managing legal pluralism and the interaction between various justice providers deserve more scholarly attention. From the point of view of the justice seekers, the perceptions and strategies of children and their custodians, as well as the impact of forum shopping on the realisation of children's rights have also remained understudied. Regarding the relationship between social change, legal pluralism and children's rights, more attention should be paid to how socio-economic factors interplay with the various normativities affecting children, on the one hand, and to the interplay between children's rights and legal pluralism in the daily life of children, for instance in the development of their legal consciousness, on the other. Furthermore, we suggested that research on children's rights and legal pluralism adopts a broader understanding of children's rights that includes children's own perceptions of their rights, and in particular how legal pluralism interacts with such perceptions. To address these substantive research gaps, more sustained ethnographic fieldwork seems necessary. Finally, similar research efforts are to be undertaken for the Spanish, French, German and other scholarly literature, to see whether similar approaches are adopted and whether findings concur or diverge.

As exemplified by the works discussed here, scholarship on children's rights can gain important insights by looking at the sources of normativity regulating the relationships in which children are embedded from an empirical point of view. Although not by definition, in most cases, this will reveal that multiple normative orders regulate these relationships, independently from whether these normative orders have official status in state law. Therefore, research on the multiple interconnections between legal pluralism and human rights is likely to continue to attract the attention of scholars from various disciplinary backgrounds. So far, this literature seems to have paid more attention to gender issues and women's rights, than to children's rights. For example, Hashemi (2007, 195) has noted that "[c]oncerning the relationship between personal aspects of Muslim legal tradition and human rights, there is a wealth of literature on women's rights but very little on the rights of

children". The findings and gaps emerging from the literature reviewed for this article suggest that further developing this subfield is worthwhile for at least two reasons. On the one hand, such knowledge is necessary because of its specificity. For example, various issues or 'areas of relations' are particularly relevant for children, such as adoption, child marriage and non-marital children. In addition, in the majority of cases, children need to access justice by means of a representative. While this may also be the case for women in certain normative orders, overcoming the challenges in accessing justice entailed by this 'mediated position' may require a different approach in the case of children. On the other hand, some of the research gaps identified here seem equally valid for the literature on legal pluralism and human rights more generally, including the literature on women's rights. A case in point concerns the lack of knowledge on how processes of interaction between different justice providers impact on access to human rights. In other words, pursuing some of the research lines proposed in this article may not only enrich our understanding of the position of children in legally plural contexts, but also contribute to the knowledge on legal pluralism and human rights more generally.

[1] Throughout this article, the terms 'legal' and 'normative' pluralism are used in an interchangeable way. The definitions of 'law' and 'legal' have been the topic of extensive academic debates (see, e.g., Von Benda-Beckmann [2002]; Tamanaha [2000]; Woodman [1998]). For the purposes of the present review, we adopt an analytical definition of legal pluralism in terms of the co-existence in a same locality of multiple prescriptions regarding children, which generate social expectations, reasons to act and perceptions of appropriateness and obligatoriness. These constitute important features of the contexts and conditions in which children's rights operate, independently from whether these prescriptions are recognised or not by state law.

[2] Nevertheless, in the remainder of the CRC, this broad interpretation of caregivers does not reoccur in the same way, which reinforces the impression that the drafters of the CRC mostly had the Western nuclear family in mind (Barsh 1989).

[3] Similar efforts have been undertaken as regards children's rights research in general (Reynaert, Bouverne-de-Bie, and Vandevelde 2009) and in education (Quennerstedt 2011).

[4] Although we recognize the value of grey literature, the focus of our undertaking was academic research.

[5] Preliminary findings of this research were presented at the Conference of the Commission on Legal Pluralism in August 2013 in Manchester, UK. We are grateful to the panel participants for their comments and suggestions.

[6] But see the reflection in section 3 about social institutions that become dysfunctional due to rapid socio-economic changes.

[7] But see section 2.3 on the importance of economic constraints.

[8] But see Lecoyer and Simon in this issue.

[9] Justice providers may be qualified as 'judicial users' (when they *impose* the realisation of human rights, e.g. courts) or 'supportive users' (when they *support* the realisation of human rights, e.g. mediators) (Desmet 2014, 130-131).

[10] Compare with Ouis (2009), who proposes to use the progressive aspects of Islam, together with laws and the CRC, to challenge customs relating to sexual abuse. According to Ali (2014, 513), however, Ouis leaves the tensions between Islam and human rights unexplored.

[11] See also Mulitalo and Corrin in this issue.

[12] One comparative research (Taylor et al. 2012) includes case studies from Australia, India, Israel and New Zealand, which defies the categorisation made here.

[13] Although some of their names point to possible roots in other regions, the overwhelming majority of authors are institutionally based in Europe or North America, with the exception of the scholarship dealing with the African region. This may of course be due to our selection criteria, focusing on international academic publications in English, and it does not imply that no research on children's rights and legal pluralism is done by researchers affiliated to institutions in the Global South beyond Africa. Nonetheless, this at least indicates that the latter do not find their way to the 'mainstream' academic output channels, and consequently have less influence on the international academic discourse on children's rights and legal pluralism.

[14] On the challenges related to interdisciplinary research on children's rights, see further Desmet et al. (2015, 421-423).

[15] Original emphasis.

[16] But based on prior fieldwork.

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