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Report

***259 SILENCING THE ETHIOPIAN COURTS: NON-JUDICIAL CONSTITUTIONAL REVIEW AND ITS
IMPACT ON HUMAN RIGHTS**

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INTRODUCTION

The 1995 Constitution of the Federal Democratic Republic of Ethiopia (“FDRE”) provides broad human rights protections in conformity with international human rights laws and principles. Nonetheless, the House of Federation (“HOF”), a parliamentary political organ that represents the political interests of Ethiopia's ethnic groups, is mandated to interpret the Constitution at the exclusion of the judiciary. This Report culminates a semester-long project undertaken by the Walter Leitner International Human Rights Clinic at Fordham Law School, in partnership with faculty and students at Ethiopia's Addis Ababa University Faculty of Law, to study Ethiopia's system of non-judicial constitutional review and to investigate its impact on the protection *260 of fundamental human rights and freedoms. While in Ethiopia, the Leitner Clinic-Addis Ababa Law School delegation met with Ethiopian lawyers, judges, human rights defenders, constitutional law scholars, and representatives from the Ministry of Justice, HOF, and Prime Minister's Office. This Report presents the findings of this research effort.

The list of enumerated fundamental rights and freedoms in the Ethiopian FDRE Constitution is progressive and impressive. [FN1] The question, however, is whether there exist strong and competent institutions to protect and enforce these rights. [FN2] One of the most crucial institutions in the protection of human rights should be the judiciary. [FN3] Yet, when a constitutional dispute arises in Ethiopia courts must forward the case to the HOF for adjudication. [FN4] In Article 13(1), the Constitution states that the judiciary has the duty to enforce the fundamental rights and freedoms in the Constitution. [FN5] However, the judiciary has been *261 stripped

of one of its most powerful tools in guarding against the infringement of constitutionally guaranteed human rights--the power of judicial review. [FN6]

Part I traces the evolution of Ethiopia's constitutional human rights guarantees in each of the country's constitutional manifestations from the period of Emperor Haile Selassie's reign to the present. Part II explores the status of fundamental rights and freedoms in Ethiopia's 1995 FDRE Constitution. Part III describes the players and processes of Ethiopia's complex system of non-judicial constitutional review, including the dominant role played by the HOF and Council of Constitutional Inquiry and the marginalized role of the courts. Part IV presents a comparative analysis of countries engaged in non-judicial constitutional review, including China, the former Soviet Union, and Finland. Part V explores the practical implications of non-judicial constitutional review on the enforcement of human rights in Ethiopia. It argues that the HOF lacks independence from the executive and thus cannot be trusted to adjudicate sensitive political matters involving the Constitution in an unbiased manner. This Part also argues that Ethiopia's system of non-judicial constitutional review weakens the judiciary's power to check the constitutional excesses of the other branches of government; may fail to protect the rights of minority groups in constitutional disputes due to the majoritarian make-up of the House of Federation; and perpetuates an inefficient system that precludes access to justice. Part VI calls for constitutional and judicial reforms that will result in an independent, organized, and efficient system of judicial review in Ethiopia.

I. HUMAN RIGHTS CHALLENGES DURING ETHIOPIA'S CONSTITUTIONAL ERAS

Ethiopia's modern constitutional eras have presented unique human rights challenges. [FN7] Emperor Haile Selassie I ascended*262 the throne in 1930. [FN8] Selassie enacted two Constitutions during his reign. [FN9] Ethiopia's first Constitution came into force in 1931, [FN10] and a revised Constitution was adopted in 1955. [FN11] Both the 1931 and 1955 Constitutions codified the unlimited and inalienable power of the sovereign over his subjects and included few, if any, human rights protections. [FN12] The slow pace and limited nature of Emperor Selassie's political and economic reforms led to an attempted coup in 1960. [FN13] Selassie was blamed for failing to acknowledge and alleviate the suffering of Ethiopians perishing due to drought and famine. [FN14]

The Coordinating Committee of the Armed Forces, Police, and Territorial Army, or the Derg as it was commonly known, was a pan-military dictatorship with communist aspirations, which overthrew Emperor Selassie in a "creeping coup," resulting in Selassie's imprisonment in 1974 and death in 1975. [FN15] In the months prior to Selassie's arrest, the government prepared a draft of a revised Constitution, in an apparent attempt to placate the Derg. [FN16] This draft Constitution attempted to form a constitutional monarchy. [FN17] The draft Constitution, however, was never adopted. [FN18]

Upon assuming control, the Derg immediately suspended *263 the revised 1955 Constitution [FN19] and systematically eradicated all dissent. [FN20] The Derg carried out arbitrary arrests and detentions, torture, and extrajudicial executions of political opponents and opposition elements. [FN21] Major Mengistu Haile Mariam maintained tight control of the Derg [FN22] while Ethiopia operated without a constitution for twelve years. [FN23]

The Derg established the Constitution of the People's Democratic Republic of Ethiopia in 1987. [FN24] The Constitution, which purported to espouse a commitment to basic freedoms and rights, was belied by the Derg's massive human rights violations. [FN25]

During the Derg's reign, the combination of drought, corruption, mismanagement, and the forced resettlement of 1.5 million Ethiopians led to widespread famine and impoverishment. [FN26] Internal and external military operations, including internal insurgencies in Tigray and Eritrea, as well as Somalia's attempted annexation of the Ethiopian region of Ogaden, contributed to the virtual bankruptcy of the government. [FN27] As a result, the Tigray People's Liberation Front ("TPLF") joined with other ethnic groups to form the Ethiopian People's Revolutionary Democratic Front ("EPRDF"), which, together with the Eritrean People's Liberation Front ("EPLF"), brought about the demise of the Derg on May 28, 1991, Ethiopia's National Day. [FN28]

The EPRDF established the Transitional Government of Ethiopia ("TGE"), headed by TPLF leader Meles Zenawi, as well as a transitional charter that included important human rights *264 provisions. [FN29] The transitional charter fully recognized freedom of speech and the press. [FN30] The charter also established the group right to self-determination, [FN31] which led the Oromo Liberation Front and the Ogaden National Liberation Front to mount insurgencies [FN32] and Eritrea to vote to secede in 1993. [FN33]

Under the EPRDF's provisional government, dominated by the TPLF, the Constitution of the Federal Democratic Republic of Ethiopia (the FDRE Constitution) was adopted in 1994 and came into force in 1995. [FN34] The EPRDF comprised approximately eighty-five percent of the Constitutional Assembly which enacted the Constitution. [FN35] The 1995 FDRE Constitution is Ethiopia's most progressive and comprehensive Constitution in terms of fundamental rights and freedoms. [FN36] One-third of the Constitution is devoted to the recognition and protection of human rights. [FN37] It also establishes human rights institutions, such as an Ombudsman and a Human Rights Commission. [FN38] In addition to individual human rights, the Constitution espouses a commitment to ethnic group rights. [FN39]

The FDRE Constitution is anchored by the concept of ethnic*265 federalism, which constitutionalizes Ethiopia's ethnic diversity and recognizes the various ethnic groups as units of self-government, or "Nations, Nationalities, and Peoples" ("NN&P"), with powers to secede or form their own states within the Federal Democratic Republic of Ethiopia. [FN40] According to the 1995 FDRE Constitution, sovereignty rests not with the people or individual citizens of Ethiopia, but with the NN&P of Ethiopia. [FN41]

The Constitutional Assembly's ostensible reasoning for constitutionalizing ethnic federalism was its desire to maintain Ethiopia's unity while ensuring equality among Ethiopia's various ethnic groups and providing a political mechanism for dissipating ethnic tensions. [FN42] There are advantages and disadvantages to ethnic federalism. [FN43] Some argue that a federal government with constitutional recognition of both ethnic group diversity and equality not only allows for national integration and political legitimacy but provides a political framework for harmonious co-existence. [FN44] Others argue that such an emphasis on ethnic divisions, along with an easy means of secession, only entrenches the psychological barriers that separate ethnic groups. [FN45] While *266 Ethiopia's ethnic groups are arranged in a somewhat geographical pattern, espouse varying religious beliefs, and speak separate languages, intermarriage and the transference of cultural practices over centuries and millennia have eradicated most ethnic differences. [FN46] Yet, these emotional ties to community foster a deep and inveterate identity with one's ethnic group. [FN47]

In addition to the constitutionalization of ethnic federalism, the other hallmark of the 1995 FDRE Constitution is the vast array of rights it espouses, including both individual human rights and ethnic group rights. [FN48] Chapter III of the FDRE Constitution includes a detailed and comprehensive list of enumerated fundamental rights and freedoms, including human rights and democratic rights. [FN49] These rights and freedoms include the right to life; security of person; liberty; protections against arbitrary arrest and detention; the right to

trial; equality before the law; and privacy. [FN50] Additionally, Chapter III of the Constitution includes prohibitions against a number of forms of discrimination, as well as protections for freedom of religion, belief, and opinion. [FN51] The enumerated democratic rights include freedom of expression, assembly, association, and movement. [FN52] Article 39 includes the right of secession for any NN&P of Ethiopia. [FN53] Article 41 enumerates economic, social and cultural rights. [FN54] Article *267 44 addresses environmental rights. [FN55]

The 1995 FDRE Constitution also embraces a system of non-judicial constitutional review. The Constitutional Assembly had originally proposed a constitutional court which would have had the power to review the constitutionality of parliamentary and executive action. [FN56] In fact, the Ethiopian Constitution still contains an empty provision directing the HOF to establish a Constitutional Court. [FN57] However, at a certain point during the drafting, the framers decided that the court should become an advisory committee, and the HOF should have the power of constitutional interpretation. [FN58]

According to scholars, constitutional drafters, legal experts, and judges, the Constitutional Assembly opted to have the HOF interpret the Constitution rather than the judiciary for several reasons. The first reason has its roots in ethnic federalism. [FN59] The framers viewed the Constitution as “a political contract,” among the NN&P and therefore believed it is only representatives of the ethnic groups who have the power to interpret the contract. [FN60] The logic is that since the NN&P created the government to represent their interests, those groups alone should retain the power of constitutional interpretation. [FN61] The framers took what they saw as a political power, and vested it in a political body, the HOF, charged with representing the interests of the *268 NN&P. [FN62]

The Constitutional Assembly may have also feared “judicial activism” or creation of a “judicial dictatorship” that would override the will of the NN&P if the judiciary were charged with constitutional interpretation. [FN63] In addition, some argue that the Ethiopian people did not trust the judiciary because centralized executive power under Selassie and the Derg had stunted the development of a well-functioning judiciary capable of conducting judicial review. [FN64] The framers seemed to assume (and one might argue desire) that the judiciary would remain the weakest branch of the government.

Despite the establishment of the new government and Constitution after the toppling of the Derg, the EPRDF ruling party has been the target of criticism for its human rights record. [FN65] In May 2005, parliamentary elections were held in which major opposition parties participated, and voter turnout was high. [FN66] Immediately following the elections, the opposition parties accused the EPRDF of tampering with the election results. [FN67] Prime Minister Meles Zenawi banned all demonstrations, but protests occurred nonetheless. [FN68] In June 2005, 9000 supporters of the leading opposition party, the Coalition for Unity and Democracy (“CUD”), many of whom were students, were arrested. [FN69] Human rights advocates, lawyers, academics, and journalists were also *269 imprisoned. [FN70] Ethiopian security forces shot and killed forty-two people and wounded 200 during demonstrations in Addis Ababa in November 2005. [FN71] Approximately 10,000 more demonstrators and supporters were arrested. [FN72] The CUD party believes that several thousand of its members and supporters have been held in prisons throughout the country without charge since 2005. [FN73] In May 2006, 111 defendants, including members of four political opposition parties, faced charges of treason, genocide, armed conspiracy, and outrages against the Constitution. [FN74] In addition, twenty-five people were tried in absentia. [FN75] In April 2007, twenty-eight of those charged were freed when the presiding judge determined that the government had not established sufficient cases against those defendants. [FN76] Without having presented a defense, thirty-eight were convicted in July 2007. [FN77] These thirty-eight were then pardoned and released on July 20, 2007. [FN78] Of those who had been charged, the last two prisoners were recently released. [FN79]

II. HUMAN RIGHTS AND THE 1995 FDRE ETHIOPIAN CONSTITUTION

A. Incorporation of International Human Rights Instruments into Ethiopian Law

Article 9(4) of the 1995 FDRE Constitution states that, “[a]ll international agreements ratified by Ethiopia are an integral *270 part of the law of the land.” [FN80] The current debate regarding incorporation of international human rights instruments into Ethiopian law is whether ratification alone suffices for domestication or whether publication in the Federal Negarit Gazeta (“Federal Gazette”) (the official law gazette of the federal government) is required. [FN81] Despite the explicit nature of Article 9(4), opponents to incorporation solely through ratification point to the existence of a provision in Article 71(2), describing the powers and functions of the President, which reads, “[h]e shall proclaim in the Negarit Gazeta laws and international agreements approved by the House of Peoples' Representatives in accordance with the Constitution.” [FN82] Those who argue that publication in the Federal Gazette is a requirement for incorporation also point to Proclamation 3, adopted in 1995, which reads, “all federal or regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of Laws published in the federal Negarit Gazeta.” [FN83] Yet, there is nothing in the proclamation or the articles of the Constitution, which indicates that publication is a requirement for incorporation. [FN84]

The issue of publication in the Federal Negarit Gazeta is one of practicality, not legality. [FN85] Publication of human rights treaties in the Federal Gazette would improve access to and comprehension of these instruments and empower the courts to invoke them. [FN86] Publication of the entire text of any international human rights covenant or treaty as an official Amharic [FN87] translation subsequent to ratification followed by the implementation of national legislation is ideal, but it is not an express requirement of the Constitution. [FN88] Thus far, Ethiopia has ratified most of the major international human rights instruments but has *271 published only one, the Convention on the Rights of the Child (“CRC”). [FN89] However, not a single line of the actual text of the CRC was published or officially translated. [FN90] Its publication was but a single sentence in the Federal Gazette indicating that it was henceforth considered as published. [FN91]

B. Status of International Human Rights Instruments with Respect to the Ethiopian Constitution

Another subject of debate is the status of international human rights instruments with respect to the Constitution. [FN92] Article 9(1) of the FDRE Constitution states that the Constitution is the supreme law of the land. [FN93] It continues by stating that any law which contravenes the Constitution is null and void. [FN94] Article 9(4) describes ratified international treaties as an integral part of the law of the land, but not the supreme law of the land. [FN95] It would appear that the Constitution takes precedence over any ratified international human rights instruments; however, Article 13(2) of the Constitution includes a provision, which arguably places certain international human rights instruments on par with the Constitution. [FN96] Article 13(2) reads: “[t]he 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.” [FN97] One could argue that a constitutional requirement to interpret in conformity with the *272 aforementioned international human rights instruments places these instruments on par with the Constitution. [FN98] Yet some scholars argue that providing guidelines for interpreting the Constitution is far removed from establishing international human rights instruments as the supreme law of the land. [FN99]

Article 93 of the Constitution illustrates the problem which arises if international human rights instruments are not considered on par with the Constitution. Article 93 describes procedures for times of emergency, including which fundamental rights and freedoms are derogable. [FN100] Article 93 provides that all fundamental rights and freedoms are derogable during a state of emergency, except for Articles 18 (prohibition on cruel, inhuman, or degrading treatment), 25 (equality before the law), and 39(1) and (2) (ethnic group rights). [FN101] This list shockingly does not include the right to life. [FN102] This fact alone seems to demand that certain international human rights instruments are on par with the Constitution; otherwise, the federal government would have a constitutional basis for violating a citizen's right to life during a state of emergency. [FN103]

III. CONSTITUTIONAL INTERPRETATION IN ETHIOPIA

A. The Players

Ethiopia's federal and state governments possess distinct responsibilities, and each level has its own constitution and executive, legislative, and judicial branches. [FN104] The legislative branch of the government consists of two houses of parliament. [FN105] The two houses of parliament are the House of People's Representatives*273 ("HOPR") and the HOF. [FN106] The HOPR is the law-making body, which represents the individual citizens of Ethiopia. [FN107] The HOPR elects the executive branch, the Council of Ministers and the Prime Minister from among its members. [FN108] The EPRDF currently holds approximately two-thirds of the seats in the HOPR. [FN109] Both the state and federal governments have independent judiciaries. [FN110] The Federal Supreme Court is the highest court in the land, however, the HOF along with the Council of Constitutional Inquiry ("CCI") are responsible for constitutional interpretation. [FN111]

1. House of Federation

The HOF is a representative organ of parliament whose members come from every ethnic group. [FN112] Since the HOF represents all the NN&P of Ethiopia, it is seen as the body with the duty to resolve conflicts, foster cooperation and ensure equality between Ethiopia's numerous ethnic groups. [FN113] Each ethnic group is represented in the HOF by one member with an additional representative per million of its population. [FN114] The HOF is also responsible for mediating disputes between states and between states and the federal government; overseeing any attempts at self-determination or secession; and allocating the federal budget among the states. [FN115] Most importantly, the HOF is the organ of the federal government that is constitutionally mandated to settle constitutional disputes [FN116] and interpret the Constitution.*274 [FN117] The HOF's final decision regarding a constitutional dispute is considered law to be applied in similar cases that arise in the future. [FN118] Two parliamentary proclamations (Proclamations 250 and 251) adopted in 2001 clarify the role played by the HOF in regard to constitutional interpretation. [FN119] The HOF is to interpret the Constitution according to the principles of the Universal Declaration of Human Rights, International Covenants of Human Rights, and other adopted international instruments. [FN120] The HOF organizes the CCI, which plays an advisory role to the HOF in constitutional interpretation. [FN121]

2. Council of Constitutional Inquiry

The CCI is the legal advisory body to the House of Federation. [FN122] The CCI is comprised of eleven members who include the President and Vice President of the Federal Supreme Court; three persons designated

by the House of Federation from among its members; and six legal experts appointed by the President of the Republic with the recommendation of the HOPR. [FN123] The function of the CCI is to assist the HOF in deciding constitutional disputes and to discard cases in which no constitutional interpretation is required. [FN124] Because CCI is merely an advisory body its recommendations are non-binding. [FN125] According to Article 84 of the Constitution, any federal or state court and any *275 interested party, be it an individual, organization, nation, or state, may submit a constitutional challenge to either a state or federal law to the CCI. [FN126] Proclamations 250 and 251 extend the power of constitutional interpretation to include all proclamations, regulations and directives issued by the federal and state government and international agreements that have been ratified by Ethiopia. [FN127] Essentially, all acts of the legislature and the executive are subject to constitutional interpretation by the CCI and HOF.

3. Courts

The courts are required to submit cases to the CCI and HOF if they believe that there is a need for constitutional interpretation. [FN128] If a constitutional dispute exists, the court adjudicating the case does not have the jurisdiction to further investigate or render a ruling on the issue of constitutionality. [FN129] While the courts are loathe to do anything which might indicate that they are engaged in constitutional interpretation, they do have a duty to enforce the Constitution's fundamental rights and freedoms, and the principle of precedent, recently established within the Ethiopian judiciary, may assist them in doing so. [FN130] The Court of Cassation recently invoked the Child Rights Convention in a precedent-setting decision. [FN131] While there is some debate as to the extent of its application, the decision clearly indicated that courts have both the right and the duty to invoke international human rights instruments in their decisions. [FN132] However, despite this breakthrough, courts may still fear citing international human rights instruments in their decisions. In invoking*276 an international human rights instrument, a court could conceivably be triggering the need for constitutional interpretation in its very invocation, requiring a referral to the HOF.

B. The Process

When the HOF receives a case involving a constitutional dispute, it first forwards the case to the CCI. [FN133] According to Article 20 of Proclamation 250, the CCI may “develop and implement principles of constitutional interpretation” which it believes will be helpful in determining if there is a constitutional question at issue. [FN134] The CCI then investigates the issue. [FN135] The CCI may remand a case to the lower courts if it finds that there is no need for constitutional interpretation. [FN136] If the CCI rejects a case based on a finding that there is no constitutional dispute, and a party to the case is dissatisfied with this ruling, the party may appeal directly to the HOF within sixty days from the receipt of the CCI's decision. [FN137] The courts, non-governmental organizations, and individuals can all submit cases to the CCI for adjudication. [FN138]

If the CCI finds that there is indeed a valid constitutional dispute and interpretation is necessary, the CCI legally analyzes the constitutional question and provides a non-binding advisory recommendation to the HOF. [FN139] The HOF must then make a final decision within thirty days of the CCI's recommendation regarding the constitutional dispute. [FN140] Since the CCI is an advisory body, the HOF is free to disregard the CCI's recommendations. [FN141] The HOF may further investigate any pertinent constitutional issues, or alternately, it may choose to call upon another *277 body or organ to investigate the dispute and report back to the HOF prior to its final decision. [FN142]

Both the HOF and the CCI have the capacity to review individual human rights cases pertaining to constitu-

tional rights. As stated in Article 84(2) of the Constitution, any court or interested party can submit a question of constitutional dispute to the CCI which shall consider the matter and then submit it to the HOF for a final decision. [FN143] In addition, under Proclamation 250, “[a]ny person who alleges that his fundamental rights and freedoms have been violated by the final decision of any governmental institution or official may present his case to the CCI for constitutional interpretation.” [FN144] Before an applicant can submit an application to the CCI or HOF for review, however, the individual is first required to exhaust all remedies and appeals within the government institution or body that has allegedly violated his or her rights. [FN145] If the court in its final determination holds that a constitutional question exists, the court then “rejects the case” because they cannot interpret constitutional issues, and the party can then submit the case to the CCI within ninety days from the receipt of the decision of the court. [FN146]

There is some debate regarding the exclusivity of the HOF's authority over constitutional interpretation in relation to the courts. The general consensus is that the courts can apply the Constitution but have no power to interpret the Constitution. [FN147] Some scholars, however, have argued the contrary. [FN148] Assefa Fiseha, a noted Ethiopian legal and constitutional scholar, argues that courts are mandated by the Constitution to enforce the fundamental rights and freedoms enshrined in Chapter III of the Constitution and that such enforcement cannot be achieved without the courts engaging in constitutional interpretation. [FN149] *278 This argument, though providing a theory upon which the present understanding of constitutional interpretation can be challenged, is not part of the general consensus regarding the courts' role in constitutional interpretation. The dominant view maintains that the FDRE Constitution and the HOF and CCI Proclamations deny courts the power of judicial review and confine them to mere application of the laws as promulgated by the legislature. [FN150] In addition, in practice, courts do not engage in constitutional interpretation. [FN151]

IV. COMPARATIVE ANALYSIS OF COUNTRIES ENGAGED IN NON-JUDICIAL CONSTITUTIONAL REVIEW

The Ethiopian constitutional framers' decision to vest the power of constitutional interpretation in a non-judicial body is unusual. Worldwide, most political systems utilize some form of judicial constitutional review, either by way of a supreme court or a constitutional court. [FN152] Many nations with systems of non-judicial constitutional review do not have reputations for fostering democratic freedoms. Such nations include Bahrain, Congo, Cuba, North Korea, and Zimbabwe. [FN153] This Section will describe the political systems in China and the former Soviet Union, where non-judicial constitutional review contributes or contributed to government repression. [FN154] It will also consider Finland's political system, which stands as an anomaly among countries engaged in non-judicial constitutional review, in that Finland generally fosters democratic representation and human rights protections. [FN155]

A. China

In China, the National People's Congress (“NPC”), along with its Standing Committee (“SC”), are the highest political organs in the state [FN156] and have broad powers. [FN157] Among the SC's *279 many functions is interpretation of the Chinese Constitution. [FN158] The Chinese Constitution is the “fundamental law of the state and has supreme legal authority.” [FN159] However, despite its power, the SC has interpreted the constitution less than eight times in fifty years. [FN160] In reality, the NPC and SC serve largely to validate Chinese Communist Party (“CCP”) mandates. [FN161] Many observers have recommended the creation of a Chinese constitutional court to help foster discussion of and adherence to constitutional law. [FN162]

Historically, China has not had a strong, independent judiciary. [FN163] The judiciary, along with most branches of government, is connected to the CCP. [FN164] Judges in China face an enormous amount of pressure to mold rulings to suit the whims of local politicians, prosecutors, and national party officials. [FN165] In addition, judges must refer conflict of laws cases to the SC. [FN166] In 2003, Chinese judge Li Huijuan sparked national controversy when she invalidated a provincial law because it violated national law. [FN167] The NPC characterized the decision as a “serious breach of law.” [FN168] After the controversy over Judge Li's decision, the NPC established a conflict of laws committee, which some consider a nascent constitutional court. [FN169]

In China there are few mechanisms to ensure that individual*280 and collective rights are formally recognized within criminal and civil disputes. [FN170] Constitutional human rights directives have little force without a mechanism to ensure legislative and judicial observance. When limited numbers of government officials have the power to decide constitutional questions, it is unlikely they will engage in true constitutional review. Many Chinese political and judicial organs merely go through the motions of protecting rights. [FN171] Ethiopia must work to ensure that its political system does not create a facade for tyranny, but rather provides substantive review of government action.

B. The Former Soviet Union (“U.S.S.R.”)

The former Soviet Union (“U.S.S.R.”) sought to maintain control over the former Soviet empire, as well as spread communism, through ethnic federalism, which is the foundation of the Ethiopian Constitution. [FN172] The U.S.S.R.'s political system also utilized non-judicial constitutional review. [FN173] In the U.S.S.R., the Soviet of the Union and the Soviet of the Nationalities, the two chambers of the Supreme Soviet, the highest legislative body of the Soviet Union, could rule on the constitutionality of their own legislation. [FN174] In practice, both Soviet parliamentary bodies' constitutional review powers were largely ceremonial as they affirmed whatever laws were put before them. [FN175]

As in most Marxist countries, the Soviet judiciary was weak by design. [FN176] Marxists viewed the legal profession and the judiciary as bourgeois institutions and law as a tool of the ruling class. [FN177] The Soviets considered separation of powers unnecessary since each branch of government worked towards the common goal of furthering communism. [FN178] In a Marxist regime, the *281 rule of law is subservient to socialist ideology. [FN179] Therefore, most communist countries devoted few resources to a well-developed legal system. [FN180]

The Supreme Soviet elected judges for limited terms, making the judiciary highly dependent on political bodies. [FN181] As in China, the Soviet judiciary was beholden to the Communist Party. [FN182] Structurally, the Soviet judiciary was part of the executive branch [FN183] and became a powerful tool of the Party. [FN184] Communist courts enforced laws as expressions of socialist policy, rather than as directives on societal behavior. [FN185]

In 1988 the Congress of People's Deputies amended the Soviet Constitution to provide for the establishment of the Committee on Constitutional Supervision (“CCS”). [FN186] While the CCS could invalidate unconstitutional laws, other government bodies ignored the CCS's decisions if they were in conflict with socialist doctrine and state power. [FN187] Thus, although the 1977 Constitution enumerated a number of civil, political, economic, and social rights, [FN188] neither the CCS nor the courts were able to enforce them. [FN189] Soviet scholars acknowledged this paradox, constructing and advancing the idea of two distinct de jure and de facto constitutions. [FN190] Similar to the 1977 Soviet Constitution, Ethiopia's Constitution enumerates an impressive list of

human rights. [FN191] These rights are meaningless, however, if Ethiopians *282 do not have an impartial, professional judiciary to interpret the constitution and ensure enforcement.

It is difficult to deny the Marxist underpinnings of Ethiopia's system of non-judicial constitutional review. Ethiopia's brand of ethnic federalism was partly inspired by the Soviet Constitution, which combined the federal states of former nation states into one nation. [FN192] This influence can be seen in similar phrasing of the countries' respective constitutions. [FN193]

The Marxist influence on the Ethiopian political system is also apparent in the weakness of the Ethiopian judiciary, including the deprivation of the power of judicial review. [FN194] As stated previously, Marxist political systems generally vest the power of constitutional review in parliamentary bodies while purposefully weakening the judiciary. [FN195] Under the Derg, which espoused Marxist ideology, the executive branch was very strong and the judiciary was a mere appendage of the executive. [FN196] In the Soviet Union and Eastern European communist nations, courts did not adhere to the separation of powers doctrines that had developed in Western European countries and the United States. [FN197]

The TPLF, which played a major role in the framing of Ethiopia's 1995 Constitution, was once a hard-line, communist group. [FN198] Some have even noted that the TPLF was more devoted*283 to Marxism than the Derg. [FN199] Since the fall of the Derg, the TPLF has been the ruling faction of the EPRDF. [FN200] The TPLF has since embraced capitalist economic development and Western support. [FN201] However, the effects of the early Marxist influences are still apparent in Ethiopia's system of non-judicial constitutional review.

C. Finland

Finland is an anomaly in that it is a stable democracy that effectively utilizes non-judicial constitutional review. [FN202] Finland's government is a unicameral parliamentary government, with no constitutional court. [FN203] The Eduskunta, a proportionally representative parliamentary body, is the supreme legal authority in Finland. [FN204] The Eduskunta appoints a Constitutional Law Committee ("CLC") to interpret the constitution and determine the constitutionality of legislation. [FN205] The CLC decides on the constitutionality of laws prior to enactment of legislation. [FN206] The CLC also determines if legislation is in line with international human rights standards. [FN207]

The CLC draws its membership from the body of the Eduskunta, making it an inherently political, rather than judicial, body. [FN208] The Eduskunta has no obligation to accept the CLC's *284 recommendation but has never rejected a recommendation. [FN209] To ensure compliance with Finnish law and the Constitution, the CLC seeks the advice of legal experts and practitioners whose opinions are met with a great deal of deference by the CLC. [FN210] While Finnish courts do not interpret the constitution or decide on the constitutionality of acts, they do apply constitutional law. [FN211] The courts may also determine the legality of governmental action below the parliamentary level. [FN212]

For the most part, Finland's system of constitutional review has been successful in terms of maintenance of human rights protections. [FN213] Finland's political stability has allowed the country to take the time to refine a fairly unusual system. [FN214] Ethiopia was recovering from a long, drawn-out civil war when the framers drafted an entirely new constitution and system of government. [FN215] Ethiopia does not have the requisite political stability as exists in Finland to engage in the same constitutional experimentation. In addition, the relationship between the Eduskunta, the CLC, and the Finnish courts is less complex than Ethiopia's bureaucratic

system. [FN216] Unlike its Ethiopian counterpart, the Finnish constitution directs courts to apply the constitution without interpretation. [FN217]

V. PRACTICAL IMPLICATIONS OF NON-JUDICIAL CONSTITUTIONAL REVIEW ON THE ENFORCEMENT OF HUMAN RIGHTS IN ETHIOPIA

A. The Independence of the House of the Federation

Ethiopia's system of non-judicial constitutional review has many practical implications for the protection of human rights. A body which is empowered to interpret the fundamental law of *285 the land should be independent and free from any kind of political influence. The HOF's representatives are accountable, not to the Constitution, but to the NN&P of Ethiopia whom they represent. The HOF is also a political organ operating within the context of a federal government dominated by a ruling party, the EPRDF, which has an excess of power in all branches of government. [FN218] The HOF lacks complete independence from the EPRDF and the executive branch of government. [FN219] Thus, the HOF is not likely to rule against the government when adjudicating constitutional disputes. [FN220] As a political organ under the influence of the executive, the HOF should not be called upon to decide sensitive political issues because it cannot be expected to decide such matters in a fair, unbiased manner. [FN221] Fundamental rights and freedoms may lose out to political considerations favoring the ruling party and the executive. [FN222] The HOF is also not capable of ruling against itself. [FN223] HOF members are typically also State Council members and sometimes Regional Chief Executives. [FN224] Therefore, the HOF may be called upon to determine the constitutional validity of either its own state legislation or its own exertions of power as Chief Executives at the regional level. [FN225] In such cases, it is unlikely that the HOF would declare its own exertions of authority to have exceeded constitutional bounds and impinged upon the fundamental rights and freedoms of state citizens. [FN226]

*286 The case brought by the leading opposition political party, the CUD, against the Prime Minister in 2005, is the perfect example of how the HOF is unwilling to rule against another organ of the federal government. The CUD case involved the exertions of power by the Prime Minister following the May 2005 parliamentary elections. The CUD questioned the Prime Minister's constitutional authority to issue a decree banning public demonstrations thereby curbing the constitutional right of assembly for a month following the disputed elections. [FN227] The Federal First Instance Court received the case, ruled that the dispute required constitutional interpretation and referred the matter to the CCI. [FN228] The CUD lawyers appealed the case to the Federal High Court, arguing that mere application of the Constitution would prove that the Prime Minister had overstepped his constitutional bounds. [FN229] The CCI remanded the case to the Federal First Instance Court, ruling that no constitutional interpretation was required because the Prime Minister had not exceeded his constitutional authority. [FN230] The Federal High Court had no choice but to reject the appeal on these same grounds. Subsequently, the Federal First Instance Court came down with a ruling in line with the CCI's decision. [FN231] This indicates an inability on the part of the CCI and the HOF to adjudicate sensitive political issues, because they are not independent from the ruling party. [FN232] This case also indicates the courts' reluctance to engage in constitutional interpretation involving sensitive political issues. [FN233] A Federal High Court Judge noted that since the HOF is not independent from the ruling party, it would never rule against the government or Prime Minister. [FN234]

*287 The Mrs. Kedija Beshir case demonstrates that the HOF is much more comfortable with cases when

they do not touch upon sensitive political issues or involve the government as a defendant. [FN235] The Beshir case involved a Muslim woman who had declined adjudication on a family matter within the Sharia Courts. [FN236] The Constitution states that all parties in a matter before the Sharia Courts must consent to adjudication within the Sharia Court system or the matter must be moved to the civil courts. [FN237] The Sharia Courts refused to acknowledge Mrs. Beshir's constitutional rights. [FN238] She was represented by the Ethiopian Women Lawyers Association ("EWLA") who assisted her in appealing the matter to the CCI. [FN239] The HOF ruled that her constitutional rights had been violated. [FN240] This is a positive example of the HOF upholding the constitutional rights of an individual. [FN241] However, this matter was seen as a simple family matter not touching upon any sensitive political issues. [FN242] As was suggested by an Ethiopian human rights defender, if Mrs. Beshir's case had involved a sensitive political issue such as the government's denial of a woman's right, it would never have been decided in such a manner. [FN243] Thus, although the HOF should be applauded for upholding Kedija Beshir's constitutional rights, this case is insufficient to conclude that the HOF is effectively protecting the constitutional rights of citizens. [FN244] What if, for instance, one of the parties in a certain constitutional case is the government? [FN245] What if a certain case requires limiting the power exercised by the government in order to enforce the constitutional rights of citizens? [FN246] The CUD case following*288 the May 2005 elections perfectly exemplifies this problem.

The National Identity Claim Case in the southern region illustrates the HOF's reluctance to rule against a government body, albeit, in this instance, the government body was a state and not a federal body. [FN247] The Silte people of southern Ethiopia no longer wished to be considered part of the Gurage Nation, but rather, a Nation in their own right. [FN248] The HOF vindicated the rights of the Silte people in their claim for national identity; however, the extreme deference paid to the state government, including the HOF's reluctance to even state that the HOF was directing the state government as to how to respond, demonstrates the HOF's discomfort in confronting another government body. [FN249] Additionally, the HOF waited years before accepting the case, hoping that the Southern Region would resolve the matter themselves. [FN250] The Southern Region, however, did not wish to do so without the constitutional guidance of the HOF. [FN251] It was suggested by an eminent Ethiopian scholar that the National Identity Claim case, if submitted now, would never be accepted by the CCI, nor adjudicated in the same manner by the HOF, due to current political circumstances. [FN252] At the present time, there are currently fifteen other ethnic groups in the Southern region making claims for national identity. [FN253] This is a sensitive political issue because the Southern region already has forty-eight NN&P represented in the HOF. [FN254] This is an example of how a political organ is not the best entity to resolve sensitive political issues that raise constitutional questions. [FN255]

Another issue involving the HOF's independence is the *289 physical proximity of the HOF/CCI and EPRDF offices that occupy the same physical structure in the capital Addis Ababa. [FN256] Since plaintiffs must physically file complaints in the HOF and CCI offices, a potential plaintiff bringing a case against the EPRDF or other branches of government under its influence may be intimidated to do so. Although the CCI Registrar suggested that potential plaintiffs are unlikely to realize that the EPRDF and HOF occupy the same physical structure because of a lack of exterior signage, [FN257] the authors observed signage which clearly indicates the location of the EPRDF offices within the same building as the HOF and CCI.

B. Checks and Balances

Constitutional limits on the power of government are necessary for a true democracy to exist. [FN258] The means used to limit governmental authority, such as separation of powers, checks and balances, and promulga-

tion of human rights cannot be enforced without an independent body that can determine whether the government has exceeded the limits of its constitutional authority. [FN259] Separation of powers is based on the idea that no branch of government should be granted excessive power. [FN260] Each branch of government has constitutionally mandated responsibilities and obligations and is given the power to fulfill those responsibilities. [FN261] Branches of government are to act as co-equals and assert their powers as a check and balance on the other branches. [FN262]

The Ethiopian system of non-judicial constitutional review does not serve to protect the human rights of its citizens because it leaves the federal and state governments with virtually unlimited power. [FN263] The executive branch has the power to do as it *290 wishes with no judicial check on its activities. [FN264] The EPRDF, which dominates the executive, also represents the majority party in the HOPR. [FN265] Therefore, it is unlikely that the HOPR would be able to curtail the excessive power of the executive branch. In the absence of a legitimate mechanism to review the constitutionality of the executive branch's acts and decrees, the Prime Minister and Council of Ministers possess unbridled political power. [FN266]

Proclamations 250 and 251, which extend the HOF's power of constitutional review, further weaken the judiciary's ability to serve as a check on executive power. Before promulgation of the Proclamations, some had argued that the judiciary had the power to review executive action as the Constitution limits HOF constitutional review to laws enacted by federal and state legislative bodies. [FN267] However, the Proclamations extended HOF constitutional review to include all acts of the legislature and the executive which precludes the judiciary from any form of constitutional review. [FN268] According to the Proclamations, the HOF has the power to interpret proclamations, regulations and directives issued by the federal and state government and international agreements that have been ratified by Ethiopia. [FN269]

The breakdown of separation of powers in Ethiopia is a result of a system in which a political organ with strong ties to the executive is the final arbiter of the constitutionality of the executive's political acts. One of the outcomes of this system is that judges are fearful of ruling on politically sensitive cases. This form of judicial timidity was evident in the CUD case brought against the Prime Minister after the 2005 elections discussed above. [FN270] The court's timidity perhaps led it to decide that the case involved a question of constitutional interpretation so that it could escape having to rule on the validity of the Prime Minister's actions in a politically sensitive case. However, even if the court had decided to rule on the validity of the Prime Minister's *291 actions by applying the Constitution and finding that the Prime Minister had in fact overstepped his authority, the HOF could have easily overturned such a decision by declaring that there was in fact an issue of constitutional interpretation and therefore it was not within the courts' power to decide the case. [FN271] In other words, by invoking the issue of constitutional interpretation, whether such an issue does or does not exist, the HOF can always deprive the judiciary of the power to adjudicate sensitive cases dealing with the limits of executive power.

C. Protection of Minorities

Constitutional interpretation in Ethiopia, as adjudicated by a political body representing the interests of the NN&P, cannot adequately protect the constitutional rights of minority ethnic groups. This is in direct opposition to the ostensible aims of the Constitution, as an expression of the sovereignty and self-determination of all of the ethnic groups of Ethiopia. [FN272] An impartial body, not constitutionally beholden to any of the ethnic groups, is required to resolve sensitive disputes between ethnic groups. A political body, which represents the various interests of the ethnic groups, is not in a position to resolve such matters.

Though the HOF is meant to protect minority ethnic groups, reflect the diversity of the Ethiopian people and promote equality and unity among Ethiopia's various ethnic groups, this cannot be fully realized due to the HOF's majoritarian make-up. [FN273] Each ethnic group is represented in the HOF by one member with an additional representative per million of its population. [FN274] Accordingly, the Oromos, the largest ethnic group in Ethiopia, and the Amharas, another majority ethnic group, control over fifty [FN275] out of the 112 [FN276] seats in the HOF. Thus, even though the HOF was meant to be a counter-majoritarian balance to the majoritarianism in the HOPR, the larger ethnic groups still maintain a numerical advantage. It is constitutionally mandated that two-thirds of the 112 members of the HOF constitutes a quorum for voting purposes. [FN277] This means that a vote by thirty-eight out the seventy-five present members is enough for a decision to be binding in the HOF [FN278] and could lead to the possibility that certain groups with larger representation can dominate decisions. Accordingly, the majoritarian composition of the HOF could lead to the tyranny of the majority in sensitive constitutional disputes between ethnic groups.

D. Access to Justice

Non-judicial constitutional review in Ethiopia has created an overly bureaucratic, inefficient system of justice that has negatively impacted access to justice for Ethiopia's citizens. In its entire fifteen year history, the HOF has issued only four decisions. [FN279] Although the HOF is technically accessible to every Ethiopian, there is very little public awareness of its existence or function. [FN280] Non-judicial constitutional review has also stopped Ethiopian judges from developing a robust body of human rights jurisprudence. [FN281]

Part of the reason for the HOF's inefficiency in constitutional review rests in the part-time status of the institution. Constitutional review should be a full-time endeavor; yet, the only full-time employee of the CCI is its Registrar who is not involved in adjudicating constitutional cases. [FN282] The HOF is supposed to meet twice a year, [FN283] and the CCI is mandated to meet four times per year, [FN284] but the CCI rarely fulfills its mandate and the HOF routinely does not meet often enough to address all the issues put before it. [FN285] Even when the CCI does convene, many times *293 there is not a quorum, and therefore they cannot conduct any business related to constitutional review. [FN286] The HOF and CCI cannot fully consider cases and address them expeditiously as part-time institutions [FN287] and this has led to public inaccessibility.

A mere seventy-two cases regarding constitutional interpretation have been submitted to the CCI Registrar in fifteen years. [FN288] The HOF and CCI have only accepted four of these cases, rejecting the vast majority on procedural and substantive grounds. [FN289] One cannot but marvel at such a low number of submitted cases emanating from a country of seventy million people that has experienced substantial human rights issues. Of the sixty-eight cases submitted to the CCI, only four or five have been referred from the courts. [FN290] This perhaps signals that courts are either intimidated by the prospect of referring cases to the CCI or are simply unaware of which cases are appropriate for CCI and HOF adjudication. The remaining sixty-four cases were direct appeals from individuals, organizations, and other government bodies. [FN291]

The small number of cases submitted to the CCI and HOF reveals the lack of public awareness regarding the important functions of these institutions. Although the Ministry of Justice and non-governmental organizations have tried to initiate public outreach, [FN292] neither the HOF nor the CCI has educated the public or practitioners on how to navigate this complicated system. The low number also indicates that legal practitioners do not take the CCI seriously due to its lack of capacity. [FN293] Though the level of cases being brought to the CCI and HOF is well below what it should be, the CCI and HOF would not have the capacity to manage an in-

crease in cases above its current level. [FN294]

***294 VI. CONCLUSION: THE NEED FOR AN INDEPENDENT, ORGANIZED AND EFFECTIVE SYSTEM OF JUDICIAL REVIEW IN ETHIOPIA**

Ethiopia's system of constitutional review is broken. As explored in the previous sections, the HOF, which has been in existence for over a decade, has proven itself a conceptual and practical failure in constitutional adjudication. The HOF's inefficiency and political subjectivity in interpreting the FDRE Constitution, and the numerous avenues for abuse, have led and will lead to failure in protecting the fundamental rights and freedoms of citizens. The power of constitutional interpretation should be taken away from the HOF and placed with a strengthened judiciary that must undergo judicial reforms.

The Constitution empowers the judiciary and other governmental organs to respect and enforce the Constitution's human rights provisions. [FN295] The judiciary, however, cannot fulfill this role and enforce the constitutional provisions concerning human and democratic rights and freedoms if its most powerful and important tool--judicial review--is withheld. Because the courts are constitutionally independent and accountable to no one but the law, they are the best option for protecting the human rights enshrined in the Constitution.

The institution of judicial review has not been without its detractors. Those who argue against judicial review contend that it is undemocratic because it allows unelected judges to nullify the acts of democratically elected legislatures who are accountable to the people. [FN296] They also argue that it violates the separation of powers doctrine by allowing the courts, in the process of issuing judgments, to encroach upon the legislature's lawmaking functions. [FN297] Prominent jurists who have argued in favor of judicial review note that necessary governmental limitations are best enforced by the courts. [FN298] Judicial review is one of the institutional***295** checks against excesses by federal and state legislatures. [FN299] If a government's power vis-à-vis its citizens is to be limited, an institution insulated from popular control, like the judiciary, is best placed to assume this role. [FN300] In addition, the courts' closeness to the law creates a special institutional competence for the exercise of the power of constitutional interpretation. [FN301]

When the courts are charged with judicial review and can check the excesses of the other branches of government, they also engage in the safeguarding of their own independence. [FN302] In Ethiopia, the parliament has used its power to annul the effects of judicial decisions. The 2001 Anti-Corruption Proclamation [FN303] is a case in point. Although a court had ordered the release of the former Chief Military General, Siye Abraha, on bail following his corruption case, Parliament subsequently issued an amendment to the proclamation denying the right to bail for persons accused of alleged corruption. [FN304] Abraha and twenty-one others accused of corruption who retroactively lost their right to bail because of the new amendment appealed to the CCI for invalidation of the amendment on the basis of non-retroactivity of criminal law, which is one of the fundamental principles in Chapter III of the Constitution. [FN305] After two years, the CCI recommended to the House of Federation that their claim be rejected, finding that the amending proclamation was not unconstitutional. [FN306]

As the above-mentioned case demonstrates, granting the judiciary the power of judicial review through constitutional reform alone will not suffice. There is also the need for judicial reform to strengthen the judiciary so it is up to the important ***296** task of judicial review and can withstand the strongarming of the executive and legislature. Judicial reforms seek to create an independent and effective judiciary that is able to improve governance and advance development. The Ethiopian government has embarked upon a program of judicial reform. Although this is commendable, the government's program is limited mainly to file management and organiza-

tional issues. [FN307] To make meaningful changes in the true sense of judicial reform, there is much more to be done. Earlier assessments by justice sector reform programs in Ethiopia revealed deficits in the institutional, organizational, human and financial capacity of both the federal and regional courts. [FN308] This in turn can be expressed in terms of the manner judges are appointed, promoted, disciplined and removed. [FN309]

In order to safeguard and strengthen the judiciary's independence and therefore increase its ability to effectively engage in judicial review the system of appointing judges in Ethiopia should be reformed. The president and vice president of the Federal Supreme Court are recommended by the Prime Minister and appointed by the HOPR. [FN310] For other federal judges, the Prime Minister submits candidates selected by the Federal Judicial Administrative Council to the HOPR for appointment. [FN311] The parliament has thus far never denied the appointment of a judge submitted by the Prime Minister. [FN312] This indicates the absence of the checks and balances envisaged by the Constitution. In other countries, Bar Associations, law schools, practicing lawyers and others comprise judicial administration councils that aid in the appointment of judges, [FN313] and lessen the potential for executive abuse in appointments. This practice helps in making the appointments of judges more transparent and should be implemented in Ethiopia.

The need for judicial reform is uncontested. Although the government has embarked upon a judicial reform program, ideas alone, however progressive, cannot bring about desired improvements.*297 Big picture reforms such as constitutional restructuring accompanied by bottom-up reforms that seek to improve the judiciary's infrastructure, disseminate relevant laws to the judiciary, and address the low salaries of judges would help in strengthening the judiciary and improving its ability to conduct judicial review.

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[FN1]. See Rakeb Messele, Enforcement of Human Rights in Ethiopia 15 (2002), available at <http://www.apapeth.org/Docs/ENFORCEMENT%20OF%20HR.pdf>; Interview with Fasil Nahum, Senior Legal Adviser to the Prime Minister, in Addis Ababa, Eth. (Apr. 7, 2008); see also Nicole B. Herther-Spiro, *Can Ethnic Federalism Prevent "Recourse to Rebellion?" A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures*, 21 *Emory Int'l L. Rev.* 321, 345-48, 354-55 (2007); T.S. Twibell, *Ethiopian Constitutional Law: The Structure of the Ethiopian Government and the New Constitution's Ability to Overcome Ethiopia's Problems*, 21 *Loy. L.A. Int'l & Comp. L. Rev.* 399, 409, 418-21, 424-31, 438-46, 448-49 (1999). But see Minas-se Haile, *The New Ethiopian Constitution: Its Impact upon Unity, Human Rights and Development*, 20 *Suffolk*

[Transnat'l L. Rev. 1, 46 \(1996\)](#) [hereinafter Haile, The New Ethiopian Constitution] (arguing that the Constitution's creation of a powerful federal government undermines any rights it confers); Minasse Haile, [Comparing Human Rights in Two Ethiopian Constitutions: The Emperor's and the "Republic's"--Cucullus Non Facit Monachum](#), 13 [Cardozo J. Int'l & Comp. L. 1, 30-32 \(2005\)](#) [hereinafter Haile, Comparing Human Rights in Two Ethiopian Constitutions] (noting that the Constitution suspends basic human rights in times of national emergency); Alemante G. Selassie, [Ethnic Federalism: Its Promise and Pitfalls for Africa](#), 28 [Yale J. Int'l L. 51, 93-96 \(2003\)](#) (arguing that the Constitution's support of ethnic federalism militates against the concept of human rights).

[FN2]. See Haile, [Comparing Human Rights in Two Ethiopian Constitutions](#), supra note 1, at 26-32; Messele, supra note 1, at 15-16; Interview with Fasil Nahum, supra note 1; see also Elena A. Baylis, [Beyond Rights: Legal Process and Ethnic Conflicts](#), 25 [Mich. J. Int'l L. 529, 548-62 \(2004\)](#); Haile, [The New Ethiopian Constitution](#), supra note 1, at 46; Herther-Spiro, supra note 1, at 337-38, 350-52, 354-55, 364-67; Kimberly Medlock Wigger, [Ethiopia: A Dichotomy of Despair and Hope](#), 5 [Tulsa J. Comp. & Int'l L. 389, 399-401 \(1998\)](#); James C.N. Paul, [Human Rights and the Structure of Security Forces in Constitutional Orders: The Case of Ethiopia](#), 3 [Wm. & Mary Bill Rts. J. 235, 239, 246-56 \(1994\)](#); Twibell, supra note 1, at 418-21, 424-31, 438-46, 448-49.

[FN3]. See Messele, supra note 1, at 15-16.

[FN4]. Eth. Const. art. 84 § 2.

[FN5]. Id. art. 13 § 1; see Messele, supra note 1, at 23.

[FN6]. See Haile, [The New Ethiopian Constitution](#), supra note 1, at 54-59.

[FN7]. Ethiopia is an amalgamation of approximately eighty disparate and distinct ethnic groups that speak approximately eighty different languages and adhere to many different faiths, including Christianity, Islam, Judaism, and Animism. See Selassie, supra note 1, at 61; Interview with Fasil Nahum, supra note 1; see also Julie Macfarlane, [Working Towards Restorative Justice in Ethiopia: Integrating Traditional Conflict Resolution Systems with the Formal Legal System](#), 8 [Cardozo J. Conflict Resol. 487, 498-99 \(2007\)](#); Aaron P. Micheau, [The 1991 Transitional Charter of Ethiopia: A New Application of the Self-Determination Principle?](#), 28 [Case W. Res. J. Int'l L. 367, 380-81 \(1996\)](#).

[FN8]. Matthew J. McCracken, [Abusing Self-Determination and Democracy: How the TPLF is Looting Ethiopia](#), 36 [Case W. Res. J. Int'l L. 183, 189 \(2004\)](#).

[FN9]. See Wigger, supra note 2, at 392, 394; John W. Van Doren, [Positivism and the Rule of Law, Formal Systems or Concealed Values: A Case Study of the Ethiopian Legal System](#), 3 [J. Transnat'l L. & Pol'y 165, 184-86 \(1994\)](#).

[FN10]. See Wigger, supra note 2, at 394; Van Doren, supra note 9, at 184-86.

[FN11]. See Wigger, supra note 2, at 394; Van Doren, supra note 9, at 184-86.

[FN12]. See Wigger, supra note 2, at 394; Van Doren, supra note 9, at 184-86.

[FN13]. Federal Research Division, Library Of Congress, Country Studies, A Country Study: Ethiopia (2005), <http://lcweb2.loc.gov/frd/cs/ettoc.html>, at [The Attempted Coup of 1960 and Its Aftermath](#), ht-

[tp://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+et0038\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+et0038)) [hereinafter Ethiopia Country Study].

[FN14]. See Wigger, *supra* note 2, at 394-95.

[FN15]. See Kemal Bedri & Elena Baylis, [Constructing Credibility](#), 6 *Green Bag 2d* 399, 399 (2003); Derege Demissie, [Self-Determination Including Secession vs. the Territorial Integrity of Nation-States: A Prima Facie Case for Secession](#), 20 *Suffolk Transnat'l L. Rev.* 165, 181 (1996); McCracken, *supra* note 8, at 190; Wigger, *supra* note 2, at 397; Micheau, *supra* note 7, at 375; Paul, *supra* note 2, at 239; Van Doren, *supra* note 9, at 169-70.

[FN16]. See Ethiopia Country Study, *supra* note 13, at The Establishment of the Derg, [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+t0038\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+t0038)).

[FN17]. See *id.*

[FN18]. See *id.*

[FN19]. See Wigger, *supra* note 2, at 397; Van Doren, *supra* note 9, at 170, 186.

[FN20]. See Herther-Spiro, *supra* note 1, at 334-35; McCracken, *supra* note 8, at 190-92; Wigger, *supra* note 2, at 398.

[FN21]. See Herther-Spiro, *supra* note 1, at 334-35; McCracken, *supra* note 8, at 190-92; Wigger, *supra* note 2, at 398; Paul, *supra* note 2, at 244.

[FN22]. See McCracken, *supra* note 8, at 189-90; Wigger, *supra* note 2, at 397-98; Paul, *supra* note 2, at 240; Van Doren, *supra* note 8, at 169-70.

[FN23]. See Van Doren, *supra* note 9, at 169-70, 186.

[FN24]. See *id.* at 186.

[FN25]. See Ethiopia Country Study, *supra* note 13, at Citizenship, Freedoms, Rights, and Duties, [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+et0130\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+et0130)).

[FN26]. See Wigger, *supra* note 2, at 397-99.

[FN27]. See McCracken, *supra* note 8, at 190-92.

[FN28]. See Baylis, *supra* note 2, at 568; Demissie, *supra* note 15, at 181; McCracken, *supra* note 8, at 183-84, 190-92; Richard A. Rosen, *Constitutional Process, Constitutionalism, and the Eritrean Experience*, 24 *N.C. J. Int'l & Com. Reg.* 263, 273 (1999); Selassie, *supra* note 1, at 63; Van Doren, *supra* note 9, at 170; Interview with Fasil Nahum, *supra* note 1.

[FN29]. See Anonymous, [Human Rights in the Horn of Africa](#), 11 *Ind. Int'l & Comp. L. Rev.* 543, 548-52 (2001); Bedri & Baylis, *supra* note 15, at 399; Herther-Spiro, *supra* note 1, at 335; McCracken, *supra* note 8, at 183-84, 190-92; Van Doren, *supra* note 9, at 170, 187.

[FN30]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 8.

[FN31]. See Hum. Rts. Watch, *Eritrea & Ethiopia: The Horn of Africa War: Mass Expulsions and the Nationality Issue* 12 (Jan. 2003), <http://www.hrw.org/reports/2003/ethioerit0103/ethioerit0103.pdf>.

[FN32]. See Herther-Spiro, *supra* note 1, at 365; McCracken, *supra* note 8, at 198-201; Selassie, *supra* note 1, at 84.

[FN33]. See Herther-Spiro, *supra* note 1, at 335; McCracken, *supra* note 8, at 183, 191-92; Wigger, *supra* note 2, at 399; Rosen, *supra* note 28, at 273.

[FN34]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 9; Herther-Spiro, *supra* note 1, at 335; McCracken, *supra* note 8, at 183-84, 189-93; Wigger, *supra* note 2, at 399.

[FN35]. See Anonymous, *supra* note 29, at 549. The opposing political parties refused to participate in Constitutional Assembly elections because they had been excluded from participating in the drafting of the 1995 Federal Democratic Republic of Ethiopia (“FDRE”) Constitution. See *id.*; Haile, *The New Ethiopian Constitution*, *supra* note 1, at 9. The Oromo, Ethiopia's largest ethnic group which comprised 40% of the population, left the transitional government and had no hand in writing Ethiopia's Constitution. See Baylis, *supra* note 2 at 547, 550.

[FN36]. See Herther-Spiro, *supra* note 1, at 345-47; McCracken, *supra* note 8, at 183-84; Twibell, *supra* note 1, at 399-409, 438-46.

[FN37]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 53; see also Twibell, *supra* note 1, at 439 & n.296 (stating half).

[FN38]. Eth. Const. art. 55 §§ 14-15; see Twibell, *supra* note 1, at 443.

[FN39]. See Selassie, *supra* note 1, at 54-55, 64-68; Interview with Fasil Nahum, *supra* note 1; see also Demissie, *supra* note 15, at 183; Herther-Spiro, *supra* note 1, at 332-33, 345-48; McCracken, *supra* note 8, at 183-84, 189-94.

[FN40]. Eth. Const. pmb., art. 39; see Baylis, *supra* note 2, at 558; Herther-Spiro, *supra* note 1, at 323, 345-48. The Federation currently consists of nine states, which aim to broadly and roughly represent the delineations between ethnic groups in Ethiopia. The Constitution describes a Nation, Nationality, or People as a group of persons with a common culture, a common language, a predominantly contiguous territory, a common identity, and a common psychological make-up. Eth. Const. art. 39 § 5; see Selassie, *supra* note 1, at 54-55, 58-59, 61, 63-68; Interview with Fasil Nahum, *supra* note 1; see also McCracken, *supra* note 8, at 183-84, 193.

[FN41]. Eth. Const. pmb.; see Selassie, *supra* note 1, at 54-55, 63-68; Interview with Fasil Nahum, *supra* note 1; see also Baylis, *supra* note 2, at 560; Demissie, *supra* note 15, at 183; Herther-Spiro, *supra* note 1, at 345-48; McCracken, *supra* note 8, at 183-84, 193; Makau Wa Mutua, *The Politics of Human Rights: Beyond the Abolitionist Paradigm in Africa*, 17 *Mich. J. Int'l L.* 591, 603-04, 611-12 (1996).

[FN42]. See Selassie, *supra* note 1, at 63-68; Interview with Fasil Nahum, *supra* note 1; see also Baylis, *supra* note 2, at 548-61; Demissie, *supra* note 15, at 181-83; Herther-Spiro, *supra* note 1, at 329-32, 345, 348; McCracken, *supra* note 8, at 183-84, 189-93; Mutua, *supra* note 41, at 603-04, 611-12.

[FN43]. See Selassie, *supra* note 1, at 53-55, 63-68; see also Baylis, *supra* note 2, at 548-56, 558-59; Demissie, *supra* note 15, at 181-83; Herther-Spiro, *supra* note 1, at 329-32, 345; Wigger, *supra* note 2, at 401.

[FN44]. See Selassie, *supra* note 1, at 53-55, 64-68; Interview with Fasil Nahum, *supra* note 1; see also Demissie, *supra* note 15, at 181-83; Herther-Spiro, *supra* note 1, at 329-32, 345, 348; McCracken, *supra* note 8, at 183-84, 189-93; Mutua, *supra* note 41, at 603-04, 611-12.

[FN45]. See Selassie, *supra* note 1, at 53; see also Baylis, *supra* note 2, at 548-56, 558-59; Demissie, *supra* note 15, at 181-83; Herther-Spiro, *supra* note 1, at 329-32, 348; McCracken, *supra* note 8, at 183-84, 189-93; Wigger, *supra* note 2, at 401; Mutua, *supra* note 41, at 603-04, 611-12; Jerome Wilson, [Ethnic Groups and the Right to Self-Determination](#), 11 *Conn. J. Int'l L.* 433, 484 (1996).

[FN46]. See Selassie, *supra* note 1, at 59; Herther-Spiro, *supra* note 1, at 333.

[FN47]. See Selassie, *supra* note 1, at 59.

[FN48]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 53-54; Interview with Fasil Nahum, *supra* note 1; see also Herther-Spiro, *supra* note 1, at 345-48; McCracken, *supra* note 8, at 195; Twibell, *supra* note 1, at 399-409, 424-31, 438-46.

[FN49]. Eth. Const. ch. 3; see Interview with Fasil Nahum, *supra* note 1; see also Herther-Spiro, *supra* note 1, at 345-48; McCracken, *supra* note 8, at 195; Twibell, *supra* note 1, at 438-46. But see Twibell, *supra* note 1, at 425-28, 438-46 (discussing the downfalls of specifically enumerating these rights).

[FN50]. Eth. Const. arts. 14-17, 19-20, 25-26; see also Haile, *The New Ethiopian Constitution*, *supra* note 1, at 53.

[FN51]. Eth. Const. arts. 25, 27, 38; see also Haile, *The New Ethiopian Constitution*, *supra* note 1, at 53; McCracken, *supra* note 8, at 195; Interview with Fasil Nahum, *supra* note 1.

[FN52]. Eth. Const. arts. 29-32; see Haile, *The New Ethiopian Constitution*, *supra* note 1, at 53; Herther-Spiro, *supra* note 1, at 345-48; McCracken, *supra* note 8, at 195.

[FN53]. Eth. Const. art. 39; see Herther-Spiro, *supra* note 1, at 345-48; McCracken, *supra* note 8, at 183-84, 189-93, 195.

[FN54]. Eth. Const. art. 41; see generally Rakeb Messele, *supra* note 1, at 28-36.

[FN55]. Eth. Const. art. 44. But see Twibell, *supra* note 1, at 443 (deriding this provision as “fashionable”).

[FN56]. See Interview with Getahun Kassa, Expert on the Council of Constitutional Inquiry, in Addis Ababa, Eth. (Mar. 25, 2008); see also Interview with Assefa Fiseha, Professor of Law, Addis Ababa University Faculty of Law, in Addis Ababa, Eth. (Mar. 25, 2008); Interview with Fasil Nahum, *supra* note 1.

[FN57]. Eth. Const. art. 62(2).

[FN58]. See Interview with Getahun Kassa, *supra* note 56; see also Interview with Assefa Fiseha, *supra* note 56; Interview with Fasil Nahum, *supra* note 1; Interview with Tilahun Teshome, Professor of Law, Addis Ababa University Faculty of Law, in Addis Ababa, Eth. (Mar. 27, 2008).

[FN59]. See Assefa Fiseha, *Federalism and the Adjudication of Constitutional Issues: The Ethiopian Experience*, 52 *Neth. Int'l L. Rev.* 1, 4 n.7 (2005) [hereinafter *Federalism and Adjudication*]; Interview with Getahun Kassa,

supra note 56; Interview with Fasil Nahum, supra note 1.

[FN60]. See Interview with Assefa Fiseha, supra note 56; Interview with Anonymous, High Court Judge, in Addis Ababa, Eth. (Mar. 26, 2008).

[FN61]. See Federalism and Adjudication, supra note 59, at 16; Interview with Assefa Fiseha, supra note 56; Interview with Getahun Kassa, supra note 56; Interview with Fasil Nahum, supra note 1 (“They say it is our constitution, therefore, it is we who should interpret it.”).

[FN62]. See, e.g., Fasil Nahum, Constitution For A Nation Of Nations: The Ethiopian Prospect 74 (1997) [hereinafter *The Ethiopian Prospect*]; Interview with Assefa Fiseha, supra note 56; Interview with Fasil Nahum, supra note 1; Interview with Eshetu W. Semayat, Ministry of Justice Official, in Addis Ababa, Eth. (Mar. 26, 2008).

[FN63]. See Interview with Assefa Fiseha, supra note 56; Interview with Fasil Nahum, supra note 1.

[FN64]. See Interview with Fasil Nahum, supra note 1.

[FN65]. See, e.g., Anonymous, supra note 29, at 548-51; Chaloka Belanyi, Recent Developments in the African Human Rights System 2004-2006, United Nations and Regional [Human Rights Systems: Recent Development](#), 7 *Hum. Rts. L. Rev.* 582, 591-92 (2007); Herther-Spiro, supra note 1, at 337-38, 364-67; McCracken, supra note 8, at 183-84, 189-93, 195; Mutua, supra note 41, at 603-04, 611-12; Selassie, supra note 1, at 63-68, 75, 78-79; Twibell, supra note 1, at 426-27, 438-46; Wigger, supra note 2, at 399-401.

[FN66]. See Herther-Spiro, supra note 1, at 337-38, 364-67; see also Amnesty Int'l, Ethiopia: Prisoners of Conscience on Trial for Treason: Opposition Party Leaders, Human Rights Defenders and Journalists 2-3 (May 2, 2006), <http://www.amnesty.org/en/library/asset/AFR25/013/2006/en/dom-AFR250132006en.pdf> [hereinafter *Prisoners of Conscience*].

[FN67]. See *Prisoners of Conscience*, supra note 661, at 3; see also Herther-Spiro, supra note 1, at 337, 364-67.

[FN68]. See *Prisoners of Conscience*, supra note 661, at 3.

[FN69]. See *id.* at 3.

[FN70]. See *id.* at 2-3, 5, 7.

[FN71]. See *id.* at 4; see also Belanyi, supra note 65, at 591-92; Herther-Spiro, supra note 1, at 364-67.

[FN72]. See *Prisoners of Conscience*, supra note 66, at 4; see also Herther-Spiro, supra note 1, at 364-67.

[FN73]. See *Prisoners of Conscience*, supra note 66, at 4.

[FN74]. See *id.* at 1.

[FN75]. See *id.* at 17.

[FN76]. See generally Amnesty Int'l, Background: Ethiopia Releases 38 Prisoners of Conscience (July 20, 2007), [ht-](#)

[tp://www.amnestyusa.org/all-countries/ethiopia/background-information-victory--ethiopia-releases-38-prisoners-of-conscience/page.do?id=1181002&n1=3&n2=30&n3=902](http://www.amnestyusa.org/all-countries/ethiopia/background-information-victory--ethiopia-releases-38-prisoners-of-conscience/page.do?id=1181002&n1=3&n2=30&n3=902) [hereinafter Ethiopia Releases].

[FN77]. See Ethiopia: Political Repression Must Stop, (Amnesty Int'l, London, U.K.), Aug. 2007, available at <http://www.amnestyusa.org/document.php?id=ENGAFR250132007&lang=e>.

[FN78]. See generally Ethiopia Releases, *supra* note 76.

[FN79]. See generally Amnesty Int'l, Activists Released From Prison in Ethiopia (Mar. 31, 2008), <http://www.amnesty.org/en/news-and-updates/good-news/activists-released-prison-ethiopia-20080331>.

[FN80]. Eth. Const. art. 9 § 4; see Haile, Comparing Human Rights in Two Ethiopian Constitutions, *supra* note 1, at 26-29; Messele, *supra* note 1, at 15; see also Herther-Spiro, *supra* note 1, at 352-53; Haile, New Ethiopian Constitution, *supra* note 1, at 45-50.

[FN81]. See Messele, *supra* note 1 at 15.

[FN82]. Eth. Const. art. 71 § 2; see Messele, *supra* note 1 at 15.

[FN83]. A Proclamation to Provide for the Establishment of the Federal Negarit Gazeta, Proc. No. 3, art. 2 § 3 (1995) (Eth.); see Messele, *supra* note 1, at 15.

[FN84]. See Messele, *supra* note 1, at 15.

[FN85]. See *id.* at 15, 25, 39.

[FN86]. See *id.* at 39.

[FN87]. Amharic is the official language of Ethiopia. See U.S. Dept. of St., Background Note: Ethiopia (2008), <http://www.state.gov/r/pa/ei/bgn/2859.htm>.

[FN88]. See Messele, *supra* note 1, at 25.

[FN89]. See Herther-Spiro, *supra* note 1, at 352-53; Messele, *supra* note 1, at 25, 40; see also Paul, *supra* note 2, at 236-37.

[FN90]. See Messele, *supra* note 1, at 25.

[FN91]. See *id.*

[FN92]. See Haile, Comparing Human Rights in Two Ethiopian Constitutions, *supra* note 1, at 26-29; Haile, New Ethiopian Constitution, *supra* note 1, at 45-50; Messele, *supra* note 1, at 15; see also Twibell, *supra* note 1, at 409.

[FN93]. Eth. Const. art. 9 § 1; see Haile, Comparing Human Rights in Two Ethiopian Constitutions, *supra* note 1, at 26-29; Messele, *supra* note 1, at 15; see also Haile, New Ethiopian Constitution, *supra* note 1, at 45-50; Twibell, *supra* note 1, at 409.

[FN94]. Eth. Const. art. 9 § 1; see Haile, Comparing Human Rights in Two Ethiopian Constitutions, *supra* note

1, at 26-29; Haile, *New Ethiopian Constitution*, supra note 1, at 45-50; Messele, supra note 1, at 15; see also Twibell, supra note 1, at 409.

[FN95]. Eth. Const. art. 9 § 4; see Messele, supra note 1, at 38.

[FN96]. Eth. Const. art. 13 § 2; see Messele, supra note 1, at 15.

[FN97]. Eth. Const. art. 13 § 2; see Haile, *Comparing Human Rights in Two Ethiopian Constitutions*, supra note 1, at 26-29; see also Haile, *New Ethiopian Constitution*, supra note 1, at 45-50; Herther-Spiro, supra note 1, at 352-53; Twibell, supra note 1, at 409.

[FN98]. See Haile, *Comparing Human Rights in Two Ethiopian Constitutions*, supra note 1, at 26-29; see also Haile, *New Ethiopian Constitution*, supra note 1, at 45-50; Twibell, supra note 1, at 409.

[FN99]. See Haile, *Comparing Human Rights in Two Ethiopian Constitutions*, supra note 1, at 26-29; Messele, supra note 1 at 39; see also Haile, *New Ethiopian Constitution*, supra note 1, at 45-50; Twibell, supra note 1, at 409.

[FN100]. Eth. Const. art. 93; see Haile, *Comparing Human Rights in Two Ethiopian Constitutions*, supra note 1, at 29-32; Haile, *New Ethiopian Constitution*, supra note 1, at 45-50.

[FN101]. Eth. Const. art. 93; see Haile, *Comparing Human Rights in Two Ethiopian Constitutions*, supra note 1, at 29-32; Haile, *New Ethiopian Constitution*, supra note 1, at 45-50.

[FN102]. See Haile, *Comparing Human Rights in Two Ethiopian Constitutions*, supra note 1, at 30-31; Haile, *New Ethiopian Constitution*, supra note 1, at 48.

[FN103]. See Haile, *New Ethiopian Constitution*, supra note 1, at 49.

[FN104]. Eth. Const. art. 50.

[FN105]. *Id.* art. 53.

[FN106]. *Id.*

[FN107]. *Id.* arts. 54-55. The members of the House of People's Representatives serve five year terms. *Id.* art. 54. There are approximately 530 members. See Eth. Const. art. 54 § 3; Haile, *New Ethiopian Constitution*, supra note 1, at 13.

[FN108]. Eth. Const. arts. 55 § 13, 73.

[FN109]. See Ctr. for Strategic and Int'l Studies, *Ethiopia in 2005: The Beginning of a Transition?* 3 (2006), http://www.csis.org/media/csis/pubs/anotes_0601.pdf [hereinafter *Beginning of a Transition*]. Prior to the 2005 elections, they held approximately ninety percent of the seats. See *id.* at 2.

[FN110]. Eth. Const. art. 78.

[FN111]. *Id.* arts. 80, 84.

[FN112]. Id. art. 61.

[FN113]. Id. arts. 61-62.

[FN114]. Id. art. 61. The members of the House of Federation (“HOF”) are either elected by the State Councils or the State Council can hold elections to have the representatives elected by the people. Id.

[FN115]. Id. art. 62.

[FN116]. Id. art. 83 § 1.

[FN117]. Id. art. 62 § 1.

[FN118]. A Proclamation to Consolidate the House of the Federation of the Federal Democratic Republic of Ethiopia and to Define Its Powers and Responsibilities, Proc. No. 251, [art. 11 § 1 \(2001\)](#) (Eth.), available at http://www.hofethiopia.org/pdf/PROCLAMATION_NO_251_2001.pdf [hereinafter Proclamation 251].

[FN119]. Proclamation 250 elucidates how a court or an individual goes about submitting a constitutional issue to the Council. Council of Constitutional Inquiry Proclamation, Proc. No. 250 (2001) (Eth.), available at http://www.hofethiopia.org/pdf/PROCLAMATION_NO_250_2001.pdf [hereinafter Proclamation 250]. Proclamation 251 expounds upon the way in which constitutional questions reach the HOF via the Council of Constitutional Inquiry (“CCI”). Proclamation 251, *supra* note 118. Part Two, Articles 4-18, elaborates upon the way in which the HOF shall engage in constitutional interpretation. Id. arts. 4-18.

[FN120]. Proclamation 251, *supra* note 118, [art. 7 § 2](#). These include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

[FN121]. Id. [art. 3 § 2, 5 § 1](#).

[FN122]. Eth. Const. arts. 83, 84 § 1.

[FN123]. Id. art. 82.

[FN124]. Id. art. 84.

[FN125]. See *id.* § 1.

[FN126]. See *id.* § 2.

[FN127]. Proclamation 251, *supra* note 118, [art. 2 § 2](#); Proclamation 250, *supra* note 119, [art. 2 § 5](#).

[FN128]. Proclamation 250, *supra* note 119, art. 21; see Haile, *Comparing Human Rights in Two Ethiopian Constitutions*, *supra* note 1, at 55.

[FN129]. Proclamation 250, *supra* note 119, art. 21; see Haile, *Comparing Human Rights in Two Ethiopian Constitutions*, *supra* note 1, at 55.

[FN130]. See Messele, *supra* note 1, at 26; A Proclamation To Reamend The Federal Courts Proclamation Number 25/1996, Proc. No. 454, (2005) (Eth.), available at <http://www.hofethiopia.org/pdf/PROC//>

www.ethiopar.net/type/Amharic/2term5y/2t5y/hopre/bills/1997/454ae.pdf.

[FN131]. See generally Ethiopia: Child Forum Backs Court Decision Over CRC Implementation, *The Daily Monitor* (Addis Ababa, Eth.), Mar. 11, 2008, available at <http://allafrica.com/stories/200803111224.html>.

[FN132]. See Haile, Comparing Human Rights in Two Ethiopian Constitutions, *supra* note 1, at 54-59; Twibell, *supra* note 1, at 409, 418-21, 438-46.

[FN133]. Proclamation 251, *supra* note 118, art. 6.

[FN134]. Proclamation 250, *supra* note 119, art. 20 § 1. Article 26 indicates that the governmental body in question, when a law is in dispute, will have an opportunity and an obligation to explain the constitutionality of the law. *Id.* art. 26. Article 27 provides that the Council may call any other pertinent institutions, professionals, or organizations to testify or submit information as it deems necessary. *Id.* art. 27.

[FN135]. *Id.* art. 17 § 2.

[FN136]. Eth. Const. art. 84 § 3.

[FN137]. Proclamation 250, *supra* note 119, art. 18. According to Proclamation 251, however, the HOF is not obliged to respond to these appeals. It is only obliged to respond to the CCI. See Proclamation 251, *supra* note 118, art. 5.

[FN138]. See Bedri & Baylis, *supra* note 15, at 400.

[FN139]. Proclamation 250, *supra* note 119, art. 17.

[FN140]. Proclamation 251, *supra* note 118, art. 13 § 2.

[FN141]. Eth. Const. arts. 83, 84 § 1.

[FN142]. Proclamation 251, *supra* note 118, arts. 8-10. The HOF may also call upon other government institutions, bodies, or organs, those responsible for enacting the law in question, members of the court handling the case, the parties to the case and other persons, institutions, or organizations that may be able to offer evidence pertinent to the case, in order to make its final decision. *Id.*

[FN143]. See Eth. Const. art. 84 § 2.

[FN144]. Proclamation 250, *supra* note 119, art. 23 § 1.

[FN145]. *Id.* § 2.

[FN146]. *Id.* art. 22 § 3.

[FN147]. See Interview with Anonymous, *supra* note 60.

[FN148]. See Federalism and Adjudication, *supra* note 59, at 20-21.

[FN149]. Interview with Assefa Fiseha, *supra* note 56.

[FN150]. Interview with Anonymous, *supra* note 60.

[FN151]. *Id.*

[FN152]. See, e.g., Baylis, *supra* note 2, at 577-79.

[FN153]. See Francisco Ramos Romeu, The Establishment of Constitutional Courts: A Study of 128 Democratic Constitutions, 2 *Rev. L. & Econ.* 103 n.1 (2006).

[FN154]. See *id.*

[FN155]. See *infra* Part C.

[FN156]. Xian Fa [Constitution] art. 57, § 1 (1982) (P.R.C.).

[FN157]. See *id.* arts. 58, 62-63.

[FN158]. See *id.* art. 67; Cao Siyuan, Legal: Five Recommendations for Chinese Constitutional Reform, III(4) *Harv. Asia Q.* (1999), available at <http://www.asiaquarterly.com/content/view/46/40/>.

[FN159]. Xian Fa pmb. (1982) (P.R.C.); see also Steven L. Chan, [Differences Between British and Chinese Views of Law Forebode Uncertainties for Hong Kong's People After the 1997 Transfer](#), 15 *UCLA Pac. Basin L.J.* 138, 190 n.338 (1996) (noting that Chinese law is secondary to the Constitution).

[FN160]. See, e.g., Hong Kong's Constitutional Debate: Conflict Over Interpretation 189-90 (Johannes M.M. Chan et al. eds., 2000) (citing varying numbers); Baylis, *supra* note 2, at 577 n.155 (claiming the Standing Committee has never exercised its power).

[FN161]. See Chan, *supra* note 160, at 180-82.

[FN162]. See Siyuan, *supra* note 158; Veron Hung, China's Constitutional Amendment is Flawed, *Int'l Herald Trib.*, Mar. 5, 2004, at 8.

[FN163]. Wong Kai Shing, Hum. Rts. Solidarity, China: Reforming China's Judiciary (2001), <http://www.hrsolidarity.net/mainfile.php/2000vol10no06/555/>.

[FN164]. See Chan, *supra* note 159, at 178. The author notes that this was true in the former Soviet Union as well. See *id.*

[FN165]. See Shing, *supra* note 163.

[FN166]. See Jim Yardley, A Judge Tests China's Courts, Making History, *N.Y. Times*, Nov. 28, 2005, at A1.

[FN167]. See *id.*

[FN168]. See *id.*

[FN169]. See *id.*

[FN170]. See Randall Peerenboom, [Assessing Human Rights in China: Why the Double Standard?](#), 38 *Cornell*

[Int'l L.J. 71, 147-48 \(2005\).](#)

[FN171]. See [supra](#) notes 159-70 and accompanying text.

[FN172]. See [Haile, Comparing Human Rights in Two Ethiopian Constitutions](#), [supra](#) note 1, at 10-11.

[FN173]. See [Konstitutsiia SSSR \(1977\) \[Konst. SSSR\] \[USSR Constitution\] art. 73 § 11.](#)

[FN174]. See [id.](#) art. 121 § 5.

[FN175]. See [Baylis](#), [supra](#) note 2, at 577 n.155.

[FN176]. See [Mauro Capalletti, Judicial Review in the Contemporary World 7 \(1971\)](#) (noting that the Soviets viewed judicial review of legislative activity as “bourgeois doctrine”).

[FN177]. See [id.](#)

[FN178]. See [Anna M. Kuzmik, Rule of Law and Legal Reform in Ukraine: A Review of the New Procuracy Law](#), 34 [Harv. Int'l L.J.](#) 611, 614 (1993).

[FN179]. See [Molly Warner Lien, Red Star Trek: Seeking a Role for Constitutional Law in Soviet Disunion](#), 30 [Stan. J. Int'l L.](#) 41, 65-67 (1994).

[FN180]. See [id.](#) at 66.

[FN181]. See [Konstitutsiia SSSR art. 152.](#)

[FN182]. See [Chan](#), [supra](#) note 159, at 178.

[FN183]. See [Scott P. Boylan, The Status of Judicial Reform in Russia](#), 13 [Am. U. Int'l L. Rev.](#) 1327, 1334 (1998).

[FN184]. See [id.](#) at 1327-28 (recounting the ad hoc Soviet legal process of having the judge telephone a party official to determine how to rule).

[FN185]. See [Kuzmik](#), [supra](#) note 178, at 611.

[FN186]. See [Lien](#), [supra](#) note 179, at 85 n.215.

[FN187]. See [id.](#) at 87-88.

[FN188]. See, e.g., [Konstitutsiia SSSR chs. 6-7](#) (listing “Citizenship of the U.S.S.R/Equality of Citizens' Rights” and “The Basic Rights, Freedoms, and Duties of Citizens of the U.S.S.R.”); see also [Harold J. Berman, Counter-revolution or Transition: A Response to Human Rights and the Emergence of the State of the Rule of Law in the USSR](#), 40 [Emory L.J.](#) 903, 906 (1991).

[FN189]. See [Lien](#), [supra](#) note 179, at 87.

[FN190]. See [id.](#) at 81.

[FN191]. See *supra* Part II.

[FN192]. See Baylis, *supra* note 2, at 577 n.155.

[FN193]. The Soviet constitution stated:

The Union of Soviet Socialist Republics is an integral, federal, multinational state formed on the principle of socialist federalism as a result of the free self-determination of nations and the voluntary association of equal Soviet Socialist Republics.

The U.S.S.R. embodies the state unity of the Soviet people and draws all its nations and nationalities together for the purpose of jointly building communism.

Konstitutsiia SSSR art. 70 (emphasis added). The Marxist influence is evident in the Ethiopian Constitution, which begins, '[w]e, the Nations, Nationalities and Peoples of Ethiopia ... in full and free exercise of our right to self-determination, to building a political community' Eth. Const. pmbl.(emphasis added).

[FN194]. See Baylis, *supra* note 2, at 577 n.155; Interview with Mahdere Paulos, Director, Ethiopian Women Lawyers Association, in Addis Abbaba, Eth. (Mar. 25, 2008) ("[The] HOF has such power.").

[FN195]. See Zdenek Kühn, *Worlds Apart: Western and Central European Judicial Culture at the Onset of the European Enlargement*, 52 *Am. J. Comp. L.* 531, 539-40 (2004).

[FN196]. See Interview with Eshetu W. Semayat, *supra* note 62.

[FN197]. See Kühn, *supra* note 195, at 539-40.

[FN198]. See generally Peter Biles, Profile: Ethiopian leader Meles Zenawi, BBC News, Aug. 10, 2005, <http://news.bbc.co.uk/2/hi/africa/4545711.stm>.

[FN199]. Interview with Anonymous, Professor of Law, Addis Ababa University Faculty of Law, in Addis Ababa, Eth. (Mar. 2008).

[FN200]. See generally Biles, *supra* note 198.

[FN201]. See generally *id.*; Haile, Comparing Human Rights in Two Ethiopian Constitutions, *supra* note 1, at 10.

[FN202]. See Baylis, *supra* note 2, at 579 n.161; U.S. Dept. of St., Country Reports on Human Rights Practices, Finland (2007), <http://www.state.gov/g/drl/rls/hrrpt/2007/100558.htm> [hereinafter Finland Human Rights Practices]. But see Maria Dakolias, Are *We There Yet?: Measuring Success of Constitutional Reform*, 39 *Vand. J. Transnat'l L.* 1117, 1137 (2006) (reporting declining voter confidence in the Finnish government).

[FN203]. See Suomen Perustuslaki [Constitution] §§ 24, 74 (Fin.).

[FN204]. See Jaakko Husa, *Guarding the Constitutionality of Laws in the Nordic Countries: A Comparative Perspective*, 48 *Am. J. Comp. L.* 345, 364-65 (2000).

[FN205]. See Suomen Perustuslaki § 74. The Constitutional Law Committee ("CLC") reviews around twenty legislative acts per year. See Dakolias, *supra* note 202, at 1163.

[FN206]. Ministry of Justice, Finland--The Judicial System of Finland, <http://www.finland.fi/en/about/justice>

[tp://www.om.fi/en/Etusivu/Ministerio/OikeuslaitositeJurisdiction_](http://www.om.fi/en/Etusivu/Ministerio/OikeuslaitositeJurisdiction_) [hereinafter Judicial System of Finland].

[FN207]. See Veli-Pekka Hautamäki, *Authoritative Interpretation of the Constitution: A Comparison of Argumentation in Finland and Norway*, 6.3 *Electronic J. Comp. Law*, 1, 7 (2002), available at <http://www.ejcl.org/63/art63-1.pdf>.

[FN208]. See Suomen Perustuslaki § 35; Hautamäki, *supra* note 207, at 7.

[FN209]. See Hautamäki, *supra* note 207, at 7.

[FN210]. See *id.*

[FN211]. See Judicial System of Finland, *supra* note 206.

[FN212]. See Suomen Perustuslaki §§ 106-07; European Judicial Network In Civil And Political Matters, Legal Order--Finland, http://ec.europa.eu/civiljustice/legal_order/legal_order_fin_en.htm (last visited Oct. 4, 2008).

[FN213]. See generally Finland Human Rights Practices, *supra* note 202.

[FN214]. See Jaakko Nousianen, *The Finnish System Of Government: From A Mixed Constitution To Parliamentarism*, 8, <http://www.om.fi/en/Etusivu/Perussaannoksia/Perustuslaki> (follow “The Finnish System of Government” hyperlink).

[FN215]. See *supra* Introduction and Part I.

[FN216]. See *supra* Part II.

[FN217]. See Suomen Perustuslaki § 106.

[FN218]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 6, 59; see also Anonymous, *supra* note 29, at 549-50; Herther-Spiro, *supra* note 1, at 337-38; Medlock Wigger, *supra* note 2, at 401; Selassie, *supra* note 1, at 75, 78-79; Twibell, *supra* note 1, at 446.

[FN219]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 52-53; see also Wigger, *supra* note 2, at 401; Selassie, *supra* note 1, at 78-79.

[FN220]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 52-53; see also Baylis, *supra* note 2, at 553-54; Wigger, *supra* note 2, at 401; Selassie, *supra* note 1, at 78-79; Twibell, *supra* note 1, at 448-49.

[FN221]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 59; see also Baylis, *supra* note 2, at 553-54; Wigger, *supra* note 2, at 401; Selassie, *supra* note 1, at 78-79; Twibell, *supra* note 1, at 447.

[FN222]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 54-59; see also Baylis, *supra* note 2, at 553-54; Herther-Spiro, *supra* note 1, at 337-38; Medlock Wigger, *supra* note 2, at 401; Selassie, *supra* note 1, at 75; Twibell, *supra* note 1, at 447.

[FN223]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 54; see also Twibell, *supra* note 1, at 447.

[FN224]. See Stephanie Kodish, [Balancing Representation: Special Representation Mechanisms Addressing the](#)

[Imbalance of Marginalized Voices in African Legislatures](#), 30 *Suffolk Transnat'l L. Rev.* 1, 81-83; Selassie, *supra* note 1, at 78-79.

[FN225]. See Twibell, *supra* note 1, at 447.

[FN226]. See Haile, *The New Ethiopian Constitution*, *supra* note 1, at 59; see also Baylis, *supra* note 2, at 553-54; Wigger, *supra* note 2, at 401; Selassie, *supra* note 1, at 78-79; Twibell, *supra* note 1, at 447.

[FN227]. See Dagnachew Teklu, *Court Sends Meles Zenawi's Case to Inquiry Council*, *The Africa Monitor*, June 7, 2005, at B1, available at <http://www.theafricamonitor.com/resources/55%20English%CC20issue%CC20June%CC207,%202005.pdf>; Interview with Anonymous, *supra* note 60.

[FN228]. See Teklu, *supra* note 227; Interview with Anonymous, *supra* note 60.

[FN229]. See Interview with Anonymous, *supra* note 60.

[FN230]. See *id.*

[FN231]. See *id.*

[FN232]. See Anonymous, *supra* note 29, at 549-50; Haile, *supra* note 1, at 54-59; Herther-Spiro, *supra* note 1, at 337-38, 350-52, 354-55, 364-67; Selassie, *supra* note 1, at 78-79; Twibell, *supra* note 1, at 446-49; Interview with Anonymous, *supra* note 60.

[FN233]. See Twibell, *supra* note 1, at 446-49; Interview with Anonymous, *supra* note 60.

[FN234]. Interview with Anonymous, *supra* note 60.

[FN235]. See Interview with Mahdere Paulos, *supra* note 194; see generally House of the Federation, *Appeal of Mrs. Kedija Beshir Against Being Judged by Sheria Court and Decision of House of Federation by which Decision of 3rd Naiba Court Repealed (2004)*, http://www.hofethiopia.org/pdf/CI%20Dessionion_4.pdf; see also 2 *Ethiopian Women Lawyers Association, Selected Cases* 4-5.

[FN236]. See generally *Ethiopian Women Lawyers Association*, *supra* note 235.

[FN237]. See *id.*; Eth. Const. art. 34 § 5.

[FN238]. See generally *Ethiopian Women Lawyers Association*, *supra* note 235.

[FN239]. See generally *id.*

[FN240]. See generally *id.*

[FN241]. See generally *id.*

[FN242]. See generally *id.*

[FN243]. See Interview with Mahdere Paulos, *supra* note 194; Interview with Anonymous, *supra* note 60.

[FN244]. See Interview with Mahdere Paulos, *supra* note 194.

[FN245]. See *id.*

[FN246]. See *id.*

[FN247]. See generally House of the Federation, Decision of the House of the Federation Regarding Resolution of Claim for Identity (2001), [http:// www.hofethiopia.org/pdf/CI%20Dessionion_2.pdf](http://www.hofethiopia.org/pdf/CI%20Dessionion_2.pdf) [hereinafter HOF, Silte]; see Bedri & Baylis, *supra* note 15, at 400-02; Baylis, *supra* note 2, at 565-68.

[FN248]. See Bedri & Baylis, *supra* note 15, at 400-01.

[FN249]. See generally HOF, Silte, *supra* note 247; see also Baylis, *supra* note 2, at 567.

[FN250]. See generally HOF, Silte, *supra* note 247; see also Baylis, *supra* note 2, at 566-67.

[FN251]. See Baylis, *supra* note 2, at 566.

[FN252]. See Interview with Getachew Assafa, Constitutional Law Professor, Addis Ababa University Faculty of Law, in Addis Abbaba, Eth. (Mar. 27, 2008).

[FN253]. See *id.*

[FN254]. The Federal Democratic Republic of Ethiopia, House of Federation, History: The House of Federation, http://www.hofethiopia.org/HOF/HOF_History.html [hereinafter HOF History].

[FN255]. See Twibell, *supra* note 1, at 447-48.

[FN256]. Interview with Registrar, Council of Constitutional Inquiry, in Addis Ababa, Eth. (Mar. 28, 2008).

[FN257]. *Id.*

[FN258]. See Haile, The New Ethiopian Constitution, *supra* note 1, at 50.

[FN259]. See *id.* at 53.

[FN260]. Sudha Setty, The President's Question Time: Power, Information, and the Executive Credibility Gap, 17 Cornell J.L. & Pub. Pol'y 248, 248 (2008).

[FN261]. See Sean Mulryne, A Tripartite Battle Royal: Hamdan v. Rumsfeld and the Assertion of Separation-of-Powers Principles, Seton Hall L. Rev. 279, 297 (2008).

[FN262]. *Id.*

[FN263]. See Haile, The New Ethiopian Constitution, *supra* note 1, at 46.

[FN264]. See Proclamation 250, *supra* note 119, art. 21; Haile, The New Ethiopian Constitution, *supra* note 1, at 55.

[FN265]. See Beginning of a Transition, *supra* note 109, at 3.

[FN266]. See Haile, *The New Ethiopian Constitution*, supra note 1, at 46.

[FN267]. See *Federalism and Adjudication*, supra note 59, at 21.

[FN268]. See Interview with Assefa Fiseha, supra note 56.

[FN269]. Proclamation 251, supra note 118, art. 2 § 2; Proclamation 250, supra note 119, art. 2 § 5.

[FN270]. See supra Part V.A.

[FN271]. See supra note 128 and accompanying text.

[FN272]. See supra note 40 and accompanying text.

[FN273]. Tsegaye Regassa, *State Constitutions in Federal Ethiopia: A Preliminary Observation 2-3* (2004), available at <http://camlaw.rutgers.edu/statecon/subpapers/regassa.pdf>.

[FN274]. Eth. Const. art. 61 § 2.

[FN275]. Ethiopia's total population is approximately 82 million. Central Intelligence Agency, *The World Factbook, Ethiopia* (2008), <https://www.cia.gov/library/publications/the-world-factbook/geos/et.html>. The Oromos make up 32.1% of the population while the Amharas make up another 30.1%. *Id.*

[FN276]. HOF History, supra note 254.

[FN277]. Eth. Const. art. 64 § 1.

[FN278]. See *id.*

[FN279]. See Interview with Registrar, supra note 256; Interview with Getahun Kassa, supra note 56.

[FN280]. See Interview with Registrar, supra note 256.

[FN281]. See Interview with Tilahun Teshome, supra note 58.

[FN282]. Eth. Const. art. 67.

[FN283]. See Interview with Registrar, supra note 256.

[FN284]. Proclamation 250, supra note 119, art. 13.

[FN285]. See Interview with Registrar, supra note 256; Interview with Getahun Kassa, supra note 56.

[FN286]. See Interview with Registrar, supra note 256.

[FN287]. See *id.*

[FN288]. See *id.*

[FN289]. See *id.*

[FN290]. See id.

[FN291]. See id.

[FN292]. See Interview with Eshetu W. Semayat, *supra* note 62.

[FN293]. See Interview with Getahun Kassa, *supra* note 56.

[FN294]. See id.

[FN295]. See *supra* Part III.3.

[FN296]. See Dennis Davis et. al., *Democracy and Constitutionalism: The Role of Constitutional Interpretation, in Rights and Constitutionalism: The New South African Legal Order* 1, 6 (Dawid van Wyk et. al. eds., 1994).

[FN297]. See Bruce G. Peabody, [Legislating From The Bench: A Definition And A Defense](#), 11 *Lewis & Clark L. Rev.* 185, 217-18 (2007).

[FN298]. See Henry J. Abraham, *The Judicial Process: An Introductory Analysis of the Courts of the United States, England, and France* 314 (1993).

[FN299]. See id.

[FN300]. See Walter F. Murphy et. al., *American Constitutional Interpretation* 267 (1995).

[FN301]. See id. at 266.

[FN302]. See Abraham, *supra* note 298, at 315.

[FN303]. Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation, Proc. No. 239 (2001) (Eth.), available at <http://www.federalsupremecourt.gov.et/Negarit%20Gazeta/Gazeta-1993/Proc%20No.%20239-2001%20Anti-Corruption%20Special%CC20Procedure%CC20and%20Rul.pdf>.

[FN304]. See Getachew Kitaw, *Ethiopian Bar Association, Judicial Reform For Harnessing Economic Growth And Development* 13, <http://www.eaecon.org/EEA/conferences/papers/Getachew%20Kitaw%20-%20PROBLEMS%20OF%CC20THE%CC20ETHIOPIA%CC20UDICIARY.doc>.

[FN305]. Eth. Const. art. 22.

[FN306]. See Interview with Eshetu W.Semayat, *supra* note 62.

[FN307]. See Kitaw, *supra* note 304, at 15.

[FN308]. See id. at 10.

[FN309]. See id. at 10-12.

[FN310]. Eth. Const. art. 81 § 1.

[FN311]. Id. § 2.

[FN312]. See Kitaw, *supra* note 304, at 10-12.

[FN313]. See *id.*
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