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Introduction to Symposium, "Human Rights and Access to Justice in Ethiopia"

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NORTHWESTERN UNIVERSITY PRITZKER SCHOOL OF LAW JOURNAL OF HUMAN RIGHTS

ADDIS ABABA UNIVERSITY LAW SCHOOL JOURNAL OF ETHIOPIAN LAW

INTRODUCTION TO SYMPOSIUM, “HUMAN RIGHTS AND ACCESS TO JUSTICE IN ETHIOPIA”

Thomas F. Geraghty^{*1}

Ethiopia has a proud and complex history. It is a story of great accomplishments and resilience in the face of seemingly insurmountable challenges. It has prevailed against foreign invasions. It has faced famine and extreme poverty. It has been governed by a repressive monarchy, by a brutal military dictatorship, and by a repressive civilian regime. Throughout its history, tensions and conflicts between its nationalities have been prevalent. Needless to say, these historical facts made enforcement of human rights and access to justice very difficult to achieve. With Ethiopia’s recent change of government in 2018 under the leadership of Prime Minister Abiy Ahmed, a new human rights environment has been promised, and, to an extent, delivered. However, the course of progress is not always a straight line. Very recent developments in Ethiopia, including the outbreak of a civil war between Ethiopia’s central government and the forces in Ethiopia’s Tigray region threaten the stability in which progress on human rights and access to justice can be sustained.²The articles authored by leading Ethiopian academics, practitioners and advocates document the long journey that has resulted in an improved environment for progress in human rights and access to justice, as well as the continuing challenge of realizing meaningful change.

¹ *Class of 1967, James B. Haddad Professor of Law, Director Emeritus, Bluhm Legal Clinic, Northwestern University Pritzker School of Law. I wish to thank Ajinkya Yoshi and the editors of the Northwestern Journal of Human Rights for organizing the Symposium and for publishing the papers included in this volume.

² See The Guardian, “Fears of Regional Conflict in the Horn of Africa after rocket attack on Eritrea,” [theguardian.com/world/2020/nov/15/leader-of-ethiopia-tigray-region-claims-responsibility-for-eritrea-strike](https://www.theguardian.com/world/2020/nov/15/leader-of-ethiopia-tigray-region-claims-responsibility-for-eritrea-strike). See also, Shimelis Mulegeta Kene, Solem Feyissa, “The Pitfalls of Ethiopian Elites’ War of Narratives,” Addis Standard, Sept., 30, 2020, <https://addisstandard.com/commentary-the-pitfalls-of-ethiopian-elites-war-of-narratives> (placing Ethiopia’s internal political conflicts in historical context and describing Ethiopia’s current political environment). Shimelis Mulegeta Kene is an LL.M. graduate of Northwestern’s Center for International Human Rights.

Perhaps the most significant evidence supporting the proposition that there has been significant change in Ethiopia's human rights environment is that fact that even five years ago, it was doubtful that scholars, legal educators, and human rights advocates resident in Ethiopia could have published the articles contained in this volume without fear of some form of reprisal from the government. The fact that the views expressed in these articles are authored without fear of retaliation is indeed a welcome sign of Ethiopia's new human rights environment. But many challenges remain, particularly those posed by continuing conflict between Ethiopia's nationalities and the participation in violence by non-governmental actors. As this volume is being published, this violence has devastated many communities in Ethiopia and has created a tragic number of internally displaced refugees. As the scholars whose work is included in this volume note, it is extremely difficult to pursue and to achieve a positive human rights environment under these difficult circumstances.

On February 19, 2020, the Northwestern Pritzker School of Law hosted a symposium, "Human Rights and Access to Justice in Ethiopia." The Symposium was co-sponsored by Northwestern Law School's Journal of Human Rights and Addis Ababa University Law School's Journal of Ethiopian Law. A transcript of the proceedings can be accessed by contacting [the Northwestern Journal of Human Rights Editor-in-Chief or Managing Editor](#). The program featured presentations by Ethiopia's leading legal scholars, legal educators, and human rights advocates. The symposium built upon a long and fruitful partnership between the Northwestern Pritzker School of Law and the Addis Ababa University Law School. The long and productive collaboration between our two schools reflects our common belief that legal education and scholarship play a critical role in preparing future human rights lawyers in the U.S. and in Ethiopia who are committed to justice and the rule of law.³

The collaboration began in 1969 when Northwestern Professor John ("Jack") Beckstrom received a grant from the Ford Foundation's SAILER ("Staffing of African Institutions of Legal Education and Research") program to support faculty and student exchange between Northwestern and Addis Ababa University (then "Haile Selassie University").⁴ For five decades, the collaboration has borne a fruitful exchange of ideas and strengthened the productive bond between lawyers in both countries.

³ For a history of this collaboration, see Northwestern Law Reporter, *An Enduring Collaboration* 28 (2013), available here.

⁴ The grant was one of many awarded by the SAILER program to U.S. law professors to teach in law schools in Africa. See Jayanth K. Krishnan, *Academic SAILERS: The Ford Foundation and the Efforts to Shape Legal Education in Africa, 1957-1977*, 52 *American Journal of Legal History* 261 (2013).

In the last decade, Northwestern has focused its work in Ethiopia on involvement in various law school and government-led initiatives to support access to justice and legal aid. Faculty from the Bluhm Legal Clinic and AAU have planned and led trainings for over 200 law professors responsible for clinical legal education throughout Ethiopia.⁵ In addition, Northwestern has hosted scores of Ethiopian law professors in Chicago, enabling them to observe first-hand the work of Bluhm Legal Clinic faculty and students, and granting those at Northwestern a rich opportunity to engage meaningfully with and learn from Ethiopia's striving for human rights.⁶

The symposium is yet another example of how two educational institutions committed to the advancement of human rights, to access justice and to the rule of law can work together on a sustained basis to advance these very important objectives. It also provides an opportunity for a new generation of students and faculty from Northwestern University and Addis Ababa University to reflect on and continue the work begun by Professor Beckstrom and his Ethiopian colleagues over fifty years ago.

The latest iteration of this collaboration, the articles included in this volume, presents several core questions regarding implementation of human rights and access to justice. It is relatively easy to set forth high ideals in constitutions and legislative frameworks, but immensely difficult to implement them in practice--on the ground. As recent developments in the U.S. have demonstrated, the struggle for the achievement of equal justice for all is an on-going process that manifests itself in stages as history is better analyzed and as current impediments are identified and addressed. Similar to the experience in the U.S., scholars, legal educators, and human rights activists in Ethiopia seek means of enforcing and making rights available, recognizing and shoring up gaps in the law and by addressing shortcomings in the practice of enforcement.⁷ The contributions made by the authors of the articles in this volume are important contributions that address the following critical question: How are the high ideals embodied in Ethiopia's

⁵ See Gebre Michael Gidey, *The Pedagogical and Social Utility of Clinical Legal Education in Ethiopian Law Schools: Rethinking Beyond the Curriculum*, 2010 Mekele Law Journal 97 (2010), noting that clinical legal education courses are required by Ethiopia's national law curriculum.

⁶ *Id.* at 97.

⁷ In 2014, the Addis Ababa University Center for Human Rights published ACCESS TO JUSTICE IN ETHIOPIA: TOWARDS AN INVENTORY OF ISSUES, Petro Toggia, Thomas F. Geraghty, Kokebe w. Jemaneh, Editors, (2014), containing chapters on human rights and access to justice written by Ethiopian law professors from law schools throughout Ethiopia. It is worth noting that the articles contained in this volume, while contributing to the discussion of human rights in Ethiopia, discussed Ethiopian constitutional and international treaties and conventions guaranteeing human rights but little reference was made to the then current human rights regime in Ethiopia. As noted above, the articles contained in this volume are very Ethiopian specific regarding existing shortcomings in the enforcement of human rights and access to justice in Ethiopia.

Constitution to be addressed in this time of continuing unrest resulting from a long history of tension between the many ethnic groups that comprise modern-day Ethiopia? It is apparent to me, and I think that it will be to the readers of these articles, that the distinguished scholars, legal educators, and advocates who gave so generously of their time and talent to contribute to this symposium, believe that enforcement of the guarantees of human rights and access to justice is key to the future of their rapidly developing country. Their work also demonstrates the important role that law schools can play in realizing this goal.⁸ The presenters are all law school graduates. They all teach or have taught in Ethiopian law schools. They are all recognized as leaders in the effort to bring Ethiopia together around a common understanding of what needs to be done to ensure that, as Ethiopia grows economically, its citizens benefit from humane and equal treatment and the remedies necessary to enforce those right.

I wish to thank our Ethiopian colleagues who traveled to Chicago to participate in this symposium. Thanks also to the Northwestern University Pritzker School of Law for its support for over 50 years of our collaboration with scholars, legal educators, and human rights advocates in Ethiopia. We have learned a lot from them.

INTRODUCTION TO ARTICLES AND AUTHORS

Thomas F. Geraghty

ABSTRACT—Thomas Geraghty has also contributed brief summaries of the articles contained in this volume, beginning with the articles that set the conversation about enforcement of human rights and access to justice in broad context (articles by Dr. Abdi Jibril Ali, Dr. Mizanie Abate Tadesse, and Adnidet Adinew and Enalkachew Abera), and then moving on to the articles that provide specific examples of areas in which enforcement of

⁸ For a very recent and welcome development regarding the role of Ethiopian law schools in training human rights advocates, see, Samuel Getachew, *Working Towards Shaping Legal Education*, The Reporter, May 21, 2020, <https://thereporterethiopia.com/article/working-towards-shaping-legal-education>, accessed 7/21/2020 (describing Addis Ababa University's new Humanitarian Law Clinic, supported by the International Committee for the Red Cross. The director of the new IHL Clinic, Leah Mehari, states that "The IHL Clinic will . . . be a platform for the practical training and learning of IHL. Students will take an active role in the IHL Clinic through role playing and other activities to learn how IHL matters are dealt with in the ground. Students will take the roles of commanding officers, rebel group leaders, and ICRC personnel in order to gain firsthand lessons on how IHL is implemented. We will also work to ensure that all stakeholders learn and understand IHL rules as we believe that knowledge of the rules and the consequences of infringement will go a long way towards improving the implementation of IHL.") *Id.*

human rights and access to justice could be improved in the areas of women's rights (Daniel E. Alemayehu), disability rights (Sirak Akalu Iyassu and Fiona McKinnon), regulation of the legal profession (Tewodros Meheret), and coordination of efforts to provide a nation-wide scheme of legal aid (Seife Ayalew Asfaw). Each summary begins with a quote from the article that captures the theme advanced by the author.

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I. REMEDIES FOR HUMAN RIGHTS VIOLATIONS: A REFORM PROPOSAL FOR ADDRESSING VICTIMS OF CRIMINAL PROCEEDINGS IN ETHIOPIA

BY ABDI JIBRIL ALI*

“The Ethiopian Laws and procedures lay down rules applicable to remedies and reparation of human rights violations, including different forms of reparation such as restitution, compensation, injunctions and other orders. However, the forms of reparation provided by the law are hardly implemented in practice. It appears that the old Ethiopian adage, the king can never be sued extends to every official whose power concerns the arrest, detention, custody, investigation or trial of a suspect.”

Dr. Abdi notes that Ethiopia has ratified all of the relevant international human rights treaties. Provisions of Ethiopia’s Federal Constitution make these treaties part of Ethiopia’s domestic law. In addition, the criminal code of the Federal Democratic Republic of Ethiopia criminalizes violations of human rights, including violations that occur during the course of criminal proceedings. A violation of human rights is a breach of law which, under the Civil Code of Ethiopia, is a tort. Despite these provisions in Ethiopia’s constitution and in its legislation, and despite the fact that Ethiopia has a new and progressive government, violations of human rights are not prosecuted, and citizens lack the ability to sue government actors for violations of their human rights.

Dr. Abdi notes that The United Nations has identified appropriate remedies for human rights violations including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These remedies

can only exist and be effective if the government and the courts are willing to employ them. A culture of impunity now prevails in Ethiopia that allows government actors to commit human rights violations without fear of consequences because of widespread acceptance by the courts of governmental immunity. To address this serious impediment to the protection and enforcement of human rights, Dr. Abdi suggests that legislation be passed to abrogate this doctrine and that government embark on program to educate government officials about their duty to enforce the rule of law.

II. CONDITIONS OF HUMAN RIGHTS IN ETHIOPIA IN THE AFTERMATH OF POLITICAL REFORM

BY ANDINET ADINEW AND ENDALKACHEW ABERA

“This paper focuses on the analysis of violations of human rights in Ethiopia in the aftermath of the political reform. It argues that the patterns of human rights violations have shifted in the post-reform period. While the implementation of reforms launched by the Abiy leadership has the potential to deliver progress on human rights, the consequent political and ethnic violence has instead led to severe human rights violations. These days, the perpetrators of the violations committed were primarily third parties such as individuals, private groups, and other non-state entities; in contrast, in the pre-reform period, the state itself was the primary perpetrator.”

The authors are members of the faculty of Haramaya University Law School, located in south-eastern Ethiopia, a region that has experienced violence at the hands of government and is now in the midst of civil unrest in which non-government actors are violating the human rights of citizens.⁹ They speak from experience as law teachers and scholars who see the daily consequences of violence in their city of Haramaya, and within their university, an institution of higher education that has tried valiantly to maintain an educational program while civil unrest flares within and just outside of the University’s gates. According to the authors, the threat to human rights posed by non-state actors is now as serious, perhaps more serious, than it was before Prime Minister Abiy and his government took

⁹ A recent communication sent to me from the Dean of the Haramaya University Law School graphically describes the situation in Haramaya following the recent death of Hachalu Hundressa, a popular Oromo musician: “The communities around the campus saw widespread unrest with the burning and looting of Amhara homes. Gangs of youths were going house to house with kerosene armed with menchas (local sickle like agricultural tools) attacking homes and ordering all Amharas to leave their homes. I took a number of families in the night to stay with me as there was no police presence anywhere . . .” e-mail message from Richard Wentzell to Thomas F. Geraghty, July 24, 2020, on file with the author.

power in 2018. Ethiopia is experiencing a refugee crisis because of this violence. It is estimated that there are more than 3,000,000 internally displaced Ethiopians living in refugee camps within Ethiopia.¹⁰ The authors argue that the causes of the current human rights crisis include the activities of political extremists, the media spreading “fake news,” lack of employment opportunities for youth, and the lack of adequate government security that should be provided by the government.

The authors propose potential solutions to these continuing human rights violations including focus on the need for political stability, combating youth unemployment, building strong law enforcement, creating public awareness, encouraging political activists to refrain from inciting and leading violence, and hosting national elections in accordance with a legal timeframe.

III. MULTIPLE LEGAL ORDERS IN ETHIOPIA: AN IMPEDIMENT ON THE ENFORCEMENT OF WOMEN RIGHTS

BY DANIEL E. ALEMAYEHU

“It should be noted that use of traditional and religious laws and dispute resolution mechanisms are subject to some important limitations. Article 9 Section (1) [of the FDRE Constitution] provides that any law including customary and religious laws that contravenes the constitution shall have no effect. Among others, this includes customary and religious laws that are contrary to fundamental human rights organized under chapter three of the constitution.”

This article explores the role of customary and religious laws in Ethiopia as they affect the rights of women. The Ethiopian constitution recognizes the enforcement of customary and religious laws but confines them to familial and religious matters. In Muslim communities, family and religious matters are brought to Sharia courts. Customary and religious laws and courts often take action that conflict with human rights norms.

The article identifies issues that arise when customary and religious laws operate and conflict with human rights norms. The issues identified by the author include discriminatory customary and religious laws, consent, forum shopping, financial constraints and lack of awareness of rights within the customary and religious systems. Forum shopping has become a

¹⁰ See *Violence in Ethiopia Underscores Unresolved Ethnic Tensions*, theconversation.com/violence-in-ethiopia-underscores-unresolved-ethnic-tensions-142393, July 14, 2020. See also, U.S. Dept. of State Country Report, Ethiopia, 2019 describing the extent of the internally displaced persons crisis in Ethiopia, at state.gov/uploads/2020/03/ETHIOPIA-2019-HUMAN-RIGHTS-REPORT.pdf.

significant problem. In Ethiopia, parties can switch from one system to the other before or after a decision is rendered in court. There is an absence of a review mechanism in Sharia courts. In Sharia courts, the application of laws can depend on the individual judges' thoughts and background. This is likely to exacerbate gender inequalities. Additionally, consent issues arise and usually negatively impact women. In Sharia courts, when both parties give their express consent, there is jurisdiction. However, the consent of the woman is not ensured by this process.

IV. DISABILITY RIGHTS ARE HUMAN RIGHTS: PUSHING ETHIOPIA TOWARDS A RIGHTS-BASED MOVEMENT

BY SIRAK AKALU IYASSU & FIONA MCKINNON

“For decades empty policies have been introduced, laws enacted but never enforced. On a practical level, the situation is not improving. Building Proclamation no. 634/2009, for instance, requires public offices to be accessible, but most government offices are not. A disabled person who wishes to authenticate a business document, for instance, must climb four flights to reach the Documents Authentication and Registration office. There are few elevators; often they don't work. This is a human rights issue for a disabled person needing to access government services. Unenforceable laws make a mockery of disabled persons' rights.”

The authors, both former instructors at Bahir Dar University School of Law and advocates for the human rights of the disabled in Ethiopia, note that the World Health Organization estimates that 20% of the Ethiopian population is disabled and that majority of the disabled in Ethiopia are uneducated and unemployed. The protection of the rights of the disabled and their ability to access justice are therefore critical issues for Ethiopian society and for the Ethiopian justice system. Yet, as in other areas where enforcement of rights afforded by the Constitution are at stake, the disabled in Ethiopia have not been afforded effective remedies for enforcing their rights. The lack of meaningful attention paid by government and courts to enforcement of the human rights of the disabled is partially attributable to cultural and historical factors. According to the authors, many in Ethiopia still believe that disabilities are a physical manifestations of sinful character. Some also believe that a disabled person is being punished for something one of their relatives did. This thinking is obviously destructive and problematic and contributes to the discrimination experienced by the disabled in Ethiopia.

The article describes the human rights violations suffered by the disabled in Ethiopia and proposes that an aggressive campaign be mounted by civil society organizations to address those violations. Such action is

needed despite the fact the Ethiopian Parliament ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2010 and that ratification seemed to signal a shift in how Ethiopians viewed and treated disabled people. However, since ratification of the CRPD, little has changed. In part, this is attributable to the passage of the Charities and Civil Societies Proclamation of 2009 that sharply curtailed the ability of NGO's to advocate for disability rights. Even with the recent repeal of 2009 law, enforcement is still lacking and the penalties for discriminating against the disabled are insufficient to deter discrimination. The authors also note that a "medical model"-based response to the plight of the disabled, that focuses on rehabilitation rather than on assertion of basic human rights, has ill-served the disabled population. The article goes on to explain in detail why the changes the CRPD calls for-- accessibility to public buildings, housing, transportation, information, and communication—are not being implemented in Ethiopia.

Conditions are not improving for disabled Ethiopians even under Prime Minister Abiy's government. The authors argue that the solution lies in human rights advocates working with civil society organizations and activists to raise public awareness of the plight of the disabled in Ethiopia and of their right to redress under domestic and international law.

V. REFORM OF REGULATION OF LEGAL PRACTICE IN ETHIOPIA: DOES IT IMPROVE ACCESS TO JUSTICE?

BY TEWODROS MEHERET*

"One of the hurdles to ensuring access to justice, the realization of human rights, and the vindication of rights is lack of legal service or its effectiveness . . . [T]he existence of a legal profession bound together [by] respect for rules made by the profession itself is an essential means of safeguarding human rights."

Lawyers can and should play a key role in advancing the causes of human rights and access to justice. Until recently, however, the Ethiopian Government discouraged and on occasion took active steps to prevent the formation of organized Ethiopian bar associations, fearing that an organized bar could be a challenge to the power of government.¹¹ Some bar associations

¹¹ See *What Happened to the Ethiopian Women's Lawyers Association*, woyingi.wordpress.com/2010/10/11/what-happened-to-the-ethiopian-women's-lawyer-association/. Along with other NGO's, bar associations were the target of the 2009 Charities and Civil Societies Proclamation. See generally, Saskia Brechenmacher, SURVEILLANCE AND STATE CONTROL IN ETHIOPIA, carneгиеendowment.org/2017/05/18/surveillance-and-state-control-in-ethiopia-pub-69960 (describing the fates of the Ethiopian Bar Association and the Ethiopian Women Lawyers Association after the 2009 Charities and Civil Societies Proclamation).

and their members were prosecuted.¹² However, when the new government took power in 2018, it embarked upon a law reform program with the goal of reforming a few selected laws.¹³ Among them were the laws regulating the legal profession. An advisory council was established to oversee the reform of these laws.¹⁴ The advisory council did research on international best practices in order to draft propose legislation. This article evaluates the draft bill focusing on the important goal of establishing an independent legal profession.

Tewodros Meheret, a distinguished practitioner, former professor of law at Addis Ababa University, and President of the Ethiopian Federal Bar Association, describes the historical fact of government control of the Ethiopian legal profession through the licensing power of the office of the Attorney General of Ethiopia. Tewodros explores international standards relevant to regulation of the legal profession, particularly the policy surrounding the independence of the profession. The draft law is examined under these standards. The existing framework for regulation of Ethiopia's legal profession the author describes does not meet the UN standards for independence of the profession.

Tewodros examines the question of what independence of the profession means and how the draft bill aims to implement independence by re-allocating the power to regulate the profession from the attorney general to a statutorily created administrative body with a government-run administrative board. Tewodros concludes that until the attorney general has significantly less power, the legal profession will never be truly independent.

¹² *Id.* The head of the Ethiopian Women's Lawyers Association was forced to flee the country to avoid prosecution by the government.

¹³ See International Bar Association, *Report on the Independence of the Lawyers Profession in Ethiopia*, [c:/usergeraghty/downloads/IBA-BIL-Report-on-independence-of-the-lawyers-profession-in-ethiopia-2020Apr%20\(1\).pdf](c:/usergeraghty/downloads/IBA-BIL-Report-on-independence-of-the-lawyers-profession-in-ethiopia-2020Apr%20(1).pdf).

¹⁴ *Id.*