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Constitutional Rights Without Effective and Enforceable Constitutional Remedies: The Case of Ethiopia

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Constitutional Rights Without Effective and Enforceable Constitutional Remedies: The Case of Ethiopia

Cover Page Footnote

The author can be reached at: mizanie.abate@aau.edu.et. This article is an abridged version of a paper the author presented at the Human Rights and Access to Justice in Ethiopia Symposium, co-organized by Northwestern Pritzker School of Law's Journal of Human Rights and Addis Ababa University School of Law's Journal of Ethiopian Law, on February 19, 2020 at Northwestern Pritzker School of Law, Center for International Human Rights, Chicago, Illinois, USA. The author is grateful to Professor Bridget Arimond of Northwestern Pritzker School of Law for her constructive comments.

CONSTITUTIONAL RIGHTS WITHOUT EFFECTIVE AND ENFORCEABLE CONSTITUTIONAL REMEDIES: THE CASE OF ETHIOPIA

*Mizanie A. Tadesse (PhD)**

ABSTRACT—The Constitution of the Federal Democratic Republic of Ethiopia guarantees a broad range of human rights in its Bill of Rights chapter. However, constitutional remedies for infringement of constitutional rights are rarely applied notwithstanding that the Constitution has been in enforcement for close to twenty-five years. The author of this article contends that lack of a clear and comprehensive Bill of Rights litigation procedure and lack of redress for violations of constitutional rights are contributing factors to the unacceptably low enforcement of the Bill of Rights via constitutional litigation. To augment his position and show the legal gaps and challenges as well as put forward recommendations for constitutional and legal reform, the author has analyzed the Constitution and relevant laws. The author has also consulted the laws of other countries and relevant literature with a view to identifying normative standards and practices from which Ethiopia can learn.

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INTRODUCTION

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) guarantees a broad range of human rights in its Bill of Rights chapter. Chapter three of the Constitution guarantees not only the traditional civil and political rights but also socio-economic and third generation rights. Notwithstanding the entrenchment of human rights in the FDRE Constitution, however, litigation based on the Bill of Rights is extremely rare relative to the magnitude of human rights violation occurring in the country. This article argues that a lack of clear and comprehensive Bill of Rights litigation procedure as well as redress for violation of constitutional rights are contributing factors to the currently unacceptably low enforcement of the Bill of Rights via constitutional litigation.

I. PROCEDURE FOR BILL OF RIGHTS LITIGATION

A. *The Bill of Rights Litigation Procedural Gap*

The fundamental human rights and freedoms recognized in chapter three of the FDRE Constitution would be illusory unless they are supported by enforcement procedural rules. The procedure for litigation of the Bill of Rights can be found scattered throughout the Constitution, Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities Proclamation, Proclamation No. 251/2001 (HF Proclamation) and Council of Constitutional Inquiry Proclamation,

Proclamation No. 798/2013 (CCI Proclamation).¹ However, these laws do not or barely cover important procedural matters, such as joinder of parties, admission of amicus curiae, oral hearing, period of limitation, withdrawal or discontinuance of applications, rules of constitutional interpretation and types of redress for infringement of constitutional rights except in declaration of invalidity of law or conduct.

At this point, it is good to note that the Constitution entitles the Council of Constitutional Inquiry (CCI) to ‘draft its rules of procedure and submit them to the House of the Federation; and implement them upon approval.’² The HF Proclamation, on its part, gives the House of Federation (HF) a specific mandate of identifying and implementing principles of Constitutional interpretation³ and a general mandate of enacting regulations for the implementation of the HF Proclamation.⁴ In view of the fact that procedural rules, such as on remedies, period of limitation, fairness and timeliness of proceedings, and standing have a serious repercussion on substantive human rights, it is submitted that these matters should be regulated by a law to be passed in federal parliament as opposed to the CCI or HF. The power of this organ to issue a comprehensive Bill of Rights enforcement law springs from articles 13(1), 9(2), 51(1) and 55(1) of the Constitution.

Although ordinary courts do not have the power to interpret the Constitution in general and the Bill of Rights chapter in particular,⁵ they have a crucial role in awarding remedy based on the constitutional interpretation and binding precedent of the HF. However, they cannot effectively play their role due to the absence of Bill of Rights enforcement rules. Distinct rules of procedure that are different from criminal and civil procedural rules are needed that take into account the nature of constitutional litigation in terms of standing, litigation proceeding and remedies.

¹ PROCLAMATION OF THE CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA [F.D.R.E CONSTITUTION] Aug. 21, 1995, arts. 84(2) and (3); COUNCIL OF CONSTITUTIONAL INQUIRY PROCLAMATION NO. 798/2013 [CCI PROCLAMATION] arts. 3-7, 9, 10, 11, 12 and 14 (Eth); CONSOLIDATION OF THE HOUSE OF THE FEDERATION AND THE DEFINITION OF ITS POWERS AND RESPONSIBILITIES PROCLAMATION NO. 251/2001 [HF PROCLAMATION] arts. 1, 7, 8, 10, 11, 14 and 17 (Eth).

² F.D.R.E CONSTITUTION, art. 84(4) (Eth.).

³ HF PROCLAMATION art. 7(1) (Eth.).

⁴ *Id.* at art. 58.

⁵ F.D.R.E CONSTITUTION, arts. 62(1) and 83(1) (entrusting the power of constitutional interpretation to the HF. The HF is authorized to organize the CCI, which could provide support in constitutional interpretation).

B. Application of the Bill of Rights and the Principle of Avoidance

The FDRE Constitution made it clear that both the state and other non-state actors have the duty to respect and ensure the observance of the Constitution in general and Bill of Rights in particular.⁶ Consequently, complaints of individuals or groups involving violation of constitutional rights by government laws and decisions as well as conduct of individuals and other non-state actors could be submitted to the HF via the CCI for constitutional interpretation. However, direct application of the Constitution to resolve disputes should be a measure of last resort and must be avoided to the extent possible. Thus, as much as possible, decisions on violation of constitutional rights must be resolved through judicial application of ordinary legislations and precedents and avoid direct invocation of constitutional provisions.⁷

The doctrine of avoidance is crafted to allow the “Constitution the normative deference that it should command, and put it on par with other legislations that are called into application in everyday judicial decision-making,” and “allow incremental development of norms, and encourage the development and interpretation of other legislations in conformity with the constitution.”⁸ In addition to these reasons which could also be relevant to Ethiopia, another more pragmatic justification for a serious application of the doctrine of avoidance by courts and the CCI in Ethiopia is timely disposition of cases. Due to the part time position of the CCI itself and the HF, as well involvement in other activities, delays in disposition of cases are not uncommon.

The doctrine of avoidance, although not explicitly provided in the Constitution, the HF Proclamation, HF or the CCI Proclamation, is implicit in articles 83 and 84 of the Constitution (which require the intervention of the CCI and HF where there is a need for constitutional interpretation).⁹ But its vigorous application should be made through progressive interpretation of these provisions or legal reform.

C. Standing

An action to challenge infringement of constitutional rights could be submitted to the CCI either through courts or directly by individuals. Be it a constitutional issue that arises from a pending case or out-of court

⁶ F.D.R.E CONSTITUTION, art. 9(2) (Eth.).

⁷ Takele Soboka Bulto, *Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory*, 19 AFR. J. INT’L & COMP. L. 107 (2011).

⁸ *Id.* at 108.

⁹ F.D.R.E CONSTITUTION, art. 83-84 (Eth.).

submission, it is important to determine who has standing to approach this organ.

Article 37 of the FDRE Constitution, entitled as the right of access to justice, is the relevant provision as regards the constitutional requirements of standing.¹⁰ Article 37 is interpreted differently by different authors. On one side, there are authors who argue that article 37 requires personal vested interest in a particular action.¹¹ On the other side, there are writers who took the position that article 37 embraces public interest litigation (PIL).¹² In my view, the interpretation that article 37 of the FDRE Constitution also recognizes a broad standing requirement is plausible. From the way the sub-articles are organized, it is clear that article 37(2) is added (1) not to clarify or qualify the seemingly broad standing requirement under sub-one. It instead adds other grounds of standing as it made clear by the caption of article 37(2) which says ‘the decision or judgment referred to under sub-Article 1 of this Article may *also* be sought by . . . ‘ (Emphasis added).¹³ Thus, in the absence of an explicit condition on the right of everyone to bring a justiciable matter to their own personal interests in 37(1), this vague provision needs to be interpreted broadly so as to include a possibility where by anyone may act on behalf of another person or in public interest. This broad understanding makes sense in the light of realizing the object and purpose of the Constitution.¹⁴ One object and purpose of the Constitution articulated in the preamble,¹⁵ full respect of individual and people’s fundamental freedoms and rights, can be achieved if everyone’s constitutional right of access to justice is realized equally regardless of their socio-economic circumstances. Constitutional rights could be fully vindicated in Ethiopia only where violations could be brought to the attention

¹⁰ F.D.R.E CONSTITUTION, art 37(1) (Eth.) (“[e]veryone has the right to bring a justiciable matter to, and to obtain a decision or judgment by a court of law or any other competent body with judicial power.”).

¹¹ See, e.g., Sisay Alemahu Yeshanew, *The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia*, 8 AFR. HUM. RTS. L.J. 273, 291 (2008); Adem Kassie Abebe, *Towards More Liberal Standing Rules to Enforce Constitutional Rights in Ethiopia*, 10 AFR. HUM. RTS. L.J. 407, 409 (2010).

¹² FASIL NAHUM, CONSTITUTION FOR A NATION OF NATIONS: THE ETHIOPIAN PROSPECT 150 (1997); Yenehun Birlie, *Public Interest Environmental Litigation in Ethiopia: Factors for its Dormant and Stunted Features*, 3 MIZAN L. REV. 304, 321-22 (2017); Yoseph Mulugeta Dadwaza, *Public Interest Litigation as Practiced by South African Human Rights NGOs: Any Lessons for Ethiopia?* (Oct. 31, 2005) (unpublished LLM thesis, University of Pretoria) (on file with Centre for Human Rights, University of Pretoria); Getahun Kassa, *Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System*, 20 AFRICA FOCUS 75, 86 (2007).

¹³ F.D.R.E CONSTITUTION, art. 37(2) (Eth.).

¹⁴ Jeffrey Goldsworthy, *Interpreting Constitutions: A Comparative Study*, 130 (OXFORD UNIV. PRESS) (2006).

¹⁵ F.D.R.E CONSTITUTION, Preamble, Second Para.

of the CCI and the HF by affected individuals and groups as well as public purpose spirited individuals and NGOs.

When an issue of a violation of constitutional rights that requires constitutional interpretation arises in the course of court litigation, the same liberal standing rules of article 37 and 84(2) should apply.¹⁶ However, the standing requirement in the Ethiopia Civil Procedure Code (CPC) provided under Articles 33 and 38 require the existence of vested interest.¹⁷ This requirement designed for civil litigations is, however, incompatible with the very nature of Bill of Rights Litigation.

D. Exhaustion of Administrative and Judicial Remedies

Under the CCI Proclamation, individuals or groups who seek to challenge alleged violations of their human rights by laws, decisions of the government or customary practices before the CCI and HF are generally required to exhaust available administrative and judicial remedies before submitting their pleading to the CCI.¹⁸

While exhaustion of administrative and judicial remedies has a formidable policy rationale, there are times when this requirement could be absurd in which cases it is set aside. Waiver of the requirement of exhaustion of administrative and judicial remedies is justified where exhaustion of administrative and judicial procedures would delay resolution for an unreasonable time. An agency's or court's power to provide effective relief is questionable due to the fact that a complaint is directed against the adequacy and fairness of the agency or court procedure itself; or it is futile to exhaust remedy because the agency or court has hitherto consistently rejected similar complaints. It is strange to see that none of these grounds of exceptions to exhaustion are recognized in the CCI Proclamation. In a country where denial and undue delay of administrative and judicial remedies is rampant, the lack of their recognition flies in the face of the right of access to justice of applicants.

E. Statute of Limitations

While the Criminal Code and Civil Code of Ethiopia have rules governing limitations of actions for criminal and civil cases respectively, the same is not true for cases of violation of constitutional rights. Thus, it is worth wondering: what is the applicable statute of limitation to be by the CCI

¹⁶ CCI PROCLAMATION art. 4 (1) (in article 4(1), the term "interested party" should be understood to mean more than the applicants and respondents of a particular litigation, but also as others who wish to take the matter to the CCI and HF for constitutional interpretation).

¹⁷ Civil Procedure Code [CPC] art. 33, 38 (Eth.).

¹⁸ CCI PROCLAMATION art. 3(2), 5(2)-(3).

and the HF for cases? It is also important to ask: what period of limitation is applied by a court for damage claims as redress for violation of constitutional rights?

The silence of the FDRE Constitution and the HF and CCI proclamations on this matter could be interpreted to mean that cases of violations of constitutional rights should not be barred by a period of limitations. This position holds water in light of the effect of a violation of constitutional rights on the society at large. This view is also supported by the experience of other countries where actions relating to infringement of constitutional rights are not either barred by period of limitation at all or barred after a longer period of time.¹⁹

Because damage or specific performance claims for violations of constitutional rights can only be entertained under law of extra-contractual liability under the existing Ethiopian laws,²⁰ courts have no choice but to apply article 2143 of the Civil Code which generally provides for two years of period of limitation.²¹ I am of the opinion that the possible application of the two years period of limitation for damage claims arising from violation of constitutional rights is inconsistent with the nature of Bill of Rights proceedings. Moreover, ‘victims often need many years to overcome the pain of their abuse and time to obtain the courage needed to speak out about the abuse that they have suffered.’²² This problem is acute in Ethiopia where people are generally too scared to bring an action against the government for lack of awareness and the repressive nature of the regimes at least in the past.

II. CONSTITUTIONAL REMEDIES: THE OUTCOME

A. Purpose and Kinds of Constitutional Remedies

Regardless of the forum to which a case of infringement of constitutional rights is submitted, the ultimate motive of the applicant is want of remedies. As the Constitutional Court of South Africa in the *Fose* case emphatically put it, “the object in awarding constitutional remedy should be,

¹⁹ See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Jan. 18, 2014; FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES order. III (Nga.); HUMAN RIGHTS (ENFORCEMENT) ACT art. 19 (Ug).

²⁰ ETHIOPIAN CIVIL CODE [CIVIL CODE] art. 2035.

²¹ *Id.* art. 2143.

²² This kind of position was taken by states of the US in liberalizing laws governing civil claims arising from child sexual abuse. I argue that this reason also works for violation of constitutional rights in Ethiopia. See NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE NATIONAL DISTRICT ATTORNEY ASSOCIATION, STATUTES OF LIMITATIONS FOR CIVIL ACTION FOR OFFENSES AGAINST CHILDREN COMPILATION 1 (2013).

at least, to vindicate the Constitution and deter future infringements.”²³ Constitutional remedies differ from private law remedies because they are “forward-looking, community-oriented and structural rather than backward-looking and individualist and retributive.”²⁴

As regards kinds of constitutional remedies, article 37(1) of the FDRE Constitution, although not explicit, could be construed to capture the principal constitutional remedies, such as declaration of invalidity, declaration of rights, interdicts, habeas corpus, and constitutional damages. What follows in the next subsections is a discussion of issues pertaining to declaration of invalidity, interdicts and constitutional damages.

B. Declarations of Invalidity

Declaration of invalidity of statutes or inconsistency of administrative decisions or customary practice is the jurisdiction of the HF and perhaps the only remedy it can award. Such power emanates from article 9(1), article 62(1) and 83(1) of the FDRE Constitution. The HF Proclamation made it clear that the decision of the House, presumably with underlying motive to foster public order and the common good, will generally have prospective effect and the HF may even give a grace period not exceeding six months.²⁵ By accepting the doctrine of severability, a statute is declared invalid to the extent only of its inconsistency with the Constitution.²⁶ It is only where it is necessary that the entire legislation is declared unconstitutional.²⁷

C. Interdict

Interdict is a constitutional remedy which goes beyond declaration of invalidation and orders a party to either do something (mandatory interdict) or to not do something (prohibitory interdict).²⁸ Thus, be it a permanent interdict or an interim interdict it is “essentially future oriented as they aim to regulate future conduct.”²⁹ Without excluding its relevance to other sets of rights, authors emphasize the effectiveness of this remedy in the context of

²³ *Fose v. Minister of Safety and Security* (6) ZACC 1 (CC) at 16-17 para. 17 (S. Afr.).

²⁴ ROBERT LECKEY, *BILL OF RIGHTS IN THE COMMON LAW* 156 (2015) (quoting IAIN CURRIE AND JOHAN DE WAAL, *THE BILL OF RIGHTS HANDBOOK* 181 (6th ed. 2013)).

²⁵ HF PROCLAMATION art. 16 (Eth.).

²⁶ *Id.* art. 12.

²⁷ *Id.*

²⁸ STU WOOLMAN & MICHAEL BISHOP, *Constitutional Law of South Africa* 9-172 (Juta & Company, Ltd., 2d ed. 2013).

²⁹ SANDRA LIEBENBERG, *SOCIO-ECONOMIC RIGHTS: ADJUDICATION UNDER A TRANSFORMATIVE CONSTITUTION* 424 (2010).

socio-economic rights cases.³⁰ While prohibitory interdicts could be ordered in cases where constitutional rights violation occurred as a result of non-observance of a negative obligation, mandatory interdict may be ordered where an infringement to a right arises due to non-observance of a positive human rights obligation.³¹

Interdict orders can specify the timeframe within which it should be executed under court supervision.³² This form of interdict is known by the name “structural interdict.”³³ The purpose of structural interdict is “elimination of systemic violations existing especially in institutional or organisational settings.”³⁴

Notwithstanding that interdicts are one of the best constitutional remedies, the HF and CCI proclamations have no provisions on whether and under what circumstances they could be ordered. The only provision on this is Article 6 of the CCI Proclamation based on which the CCI may order a stay of court proceeding until the HF gives a final verdict on a matter that needs constitutional interpretation.

Although the order is solely made based on the application of the claimant, courts could order temporary injunctions based on Articles 154-159 of the Civil Procedure Code.³⁵ Courts may also order final interdicts based on Articles 2118 and 2121 of the Civil Code, however, the provisions lack detail and are inflexible in respect to structural interdicts.³⁶

D. Constitutional Damages

Owing to lack of distinct and detailed rules dedicated for this purpose under the relevant laws in Ethiopia, the court to which the claim of constitutional damage is brought will apply tort law. However, the application of tort law does not fit the distinct nature and purpose of constitutional damages compared to ordinary tort in private laws. Forward-looking constitutional remedies, such as interdicts and declaratory relief, are

³⁰ CHRISTOPHER MBAZIRA, LITIGATING SOCIO-ECONOMIC RIGHTS IN SOUTH AFRICA: A CHOICE BETWEEN CORRECTIVE AND DISTRIBUTIVE JUSTICE 170 (PULP ed. 2009).

³¹ *Id.*

³² IAIN CURRIE & JOHAN DE WAAL, THE BILL OF RIGHTS HANDBOOK 19 (5th ed. 2005).

³³ LIEBENBERG, *supra* note 29, at 424.

³⁴ *See* MBAZIRA, *supra* note 30, at 176.

³⁵ Art. 155(1) of the Ethiopian Civil Procedure Code of 1965 provides that a temporary injunction may be ordered to restrain the defendant from committing an act prejudicial to the plaintiff.

³⁶ Art. 2118 of the Ethiopian Civil Code of 1960 provides for the conditions where the court may “order the return to the plaintiff of property which has been improperly taken away from him,” and Art. 2121 of the Civil Code governs the situation where “the court may grant an injunction restraining the defendant from committing, from continuing to commit or from resuming an act prejudicial to the plaintiff.”

often more appropriate than backward-looking relief in the form of compensatory damages.³⁷ Nevertheless, there are two circumstances where constitutional damage could have utmost significance. First, is a case where a declaration of invalidity or an interdict makes little sense and an award of damage is then the only form of relief that will vindicate the fundamental rights and deter future infringements.³⁸ Second, where the court believes that the possibility of a substantial award of damages may encourage victims to come forward to litigate, which may in itself serve to vindicate the Constitution and to deter further infringements.³⁹

In line with the object of constitutional damages, courts in a number of jurisdictions have wider discretion on whether to award damages and the quantum thereof, in particular, where the claim is against public bodies and officials.⁴⁰ By availing themselves of their power, courts may decide to deny or award damages. Quite often, courts are reluctant to order large sums of money against the government and its officials.⁴¹ This reluctance is justified by a combination of factors, including: “qualified immunity” which “enables government officers to go about their business without debilitating fear of damages liability,”⁴² the need to direct resources “away from cash compensation for past injury and toward the prevention of future harm” and reform.⁴³ Should courts choose to deploy it, Ethiopian tort law also has room to use this flexibility under article 2090(2) of the Civil Code.⁴⁴ Based on article 2090(2), the court may deviate from monetary damage as long as it has reason to believe that other non-pecuniary measures, such as injunction and reinstatement, could limit damage by preventing its likely occurrence or reoccurrence.⁴⁵

However, rules leading to awards of more than actual damage, such as those that encourage victims to come forward to litigate and deter future violations, are absent from the Ethiopian Tort Law.⁴⁶ It should be noted, however, that punitive or exemplary damages are awarded in legal systems

³⁷ Michael L. Wells, *Constitutional Remedies: Reconciling Official Immunity with the Vindication of Rights*, 88 ST. JOHN’S L. REV. 713, 744 (2015).

³⁸ See CURRIE & DE WAAL, *supra* note 32, at 209.

³⁹ *Id.*

⁴⁰ See generally PETER H. SCHUCK, *SUING GOVERNMENT: CITIZEN REMEDIES FOR OFFICIAL WRONGS* 59–81 (1983); John C. Jeffries Jr., *The Right-Remedy Gap in Constitutional Law*, 109 YALE L.J. (1999).

⁴¹ John C. Jeffries, Jr., *supra* note 40.

⁴² *Id.* at 90.

⁴³ *Id.*

⁴⁴ CIVIL CODE art. 2090(2) (Eth.).

⁴⁵ GEORGE KRZECZUNOWICZ, *THE ETHIOPIAN LAW OF COMPENSATION FOR DAMAGE* 34–37 (1977).

⁴⁶ *Id.* at 240.

throughout the world “by way of punishment or deterrence, given entirely without reference to any proved actual loss suffered by the plaintiff.”⁴⁷ The general requirement for awarding these kinds of damages is that “the conduct of the defendant be malicious, reckless, oppressive, abusive, evil, wicked, or so gross that some type of deterrent or punishment is necessary.”⁴⁸

CONCLUSION

Full respect of human rights is believed to have a central role in achieving the Ethiopian national objective of building a political community founded on rule of law and democratic order. Cognizant of this, the FDRE Constitution guarantees a broad range of human rights in its Bill of Rights chapter. However, Bill of Rights litigation involving the government is unacceptably low notwithstanding that the Constitution has been in enforced for close to twenty-five years and human rights violations have been routinely perpetrated by the government.

Admittedly, no single reason can explain the unacceptably low level of Bill of Rights litigation. In this article, the author argued that part of the problem is the absence of a clear and comprehensive Bill of Rights litigation procedure as well as redress for violation of constitutional rights. The procedure for litigation of the Bill of Rights and remedies can be found scattered in the Constitution, the HF Proclamation, CCI Proclamation, the Civil Code and CPC. These laws, however, lack comprehensiveness and clarity as well as contain procedural standards that are not tailored to the specific nature of constitutional litigation. Accordingly, the federal parliament should adopt a comprehensive Bill of Rights enforcement law that could be applied by the HF, CCI and courts based on the power vested on it under articles 13(1), 9(2), 51(1) and 55(1) of the Constitution.

The would-be comprehensive Bill of Rights enforcement law should explicitly recognize, *inter alia*, the doctrine of avoidance which makes constitutional litigation as a measure of last resort; liberal standing rules including PIL; legitimate exceptions to the requirement of exhaustion of administrative and judicial measures; no or longer statute of limitations for violations of constitutional rights; (structural) interdicts as a remedy with the necessary guidance; and judicial discretion in award of constitutional damages.

⁴⁷ DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 403 (3rd ed. 2015).

⁴⁸ *Id.* at 405.