

**THE POTENTIAL ROLE OF CONSTITUTIONAL REVIEW IN THE
REALISATION OF HUMAN RIGHTS IN ETHIOPIA**

By

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Submitted in fulfilment of the requirements for the degree

Doctor Legum (LLD)

In the Faculty of Law, University of Pretoria

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26 October 2012

Declaration

I declare that this thesis, which I hereby submit for the degree Doctor Legum (LLD), at the University of Pretoria, is my own work and has not been previously submitted by me for a degree at this or any other tertiary institution.

Adem Kassie Abebe

Signature.....

Dedication

This thesis is dedicated to my family. Your prayers and support keep me going. I also dedicate the thesis to my two cousins, Ab Mar Tezera and Hamdiye Ahmed, who passed away in 2011. May God bless your souls!

Acknowledgment

Writing a doctoral thesis is clearly a mammoth task that cannot be accomplished by the candidate alone. I could not have made it this far without the relentless support of several persons. Many have contributed to the growth of my academic career and personal life during my stay at the Centre for Human Rights.

My foremost gratitude goes to my supervisor Professor Frans Viljoen, thank you very much for leading me, and I believe many others, by example. You are a living testimony of how to be great yet humble. If I have become a better researcher, you have a lot to do with it. You have always challenged me to do things in a different and better way. Your insightful comments and suggestions were immensely useful. Despite your hectic schedule, you always read and commented on the draft chapters within a short time. You have ably guided not only my work but also my academic career.

I must thank my co-supervisor Dr Magnus Killander. Your comments were critical yet constructive and to the point. You were always ready to help. Your attention to detail was particularly helpful. Thank you very much for your unreserved direction and guidance.

I thank you both very much for facilitating my research visits abroad. The research visit at the Centre of Good Governance and Human Rights (CGHR), University of Cambridge, could not have materialised without the support of Professor Frans Viljoen. I also thank the Director of CGHR, Dr Sharath Srinivasan, for making my stay at the CGHR as productive as possible. Professor Erika de Wet helped me to arrange a two-months-fellowship at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany. Thank you very much.

The Centre Family, it was a real honour to be part of some of the most efficient and productive group of people. You always make me feel at home. Thank you very much for arranging literally everything I needed.

I also thank my family outside the Centre, the 'Weyallas'. It was wonderful to have you around through the years.

Adem Kassie Abebe

Acronyms and abbreviations

Council	Council of Constitutional Inquiry
CSOs	Civil Society Organisations
EHRC	Ethiopian Human Rights Council (Human Rights Council)
ELA	Ethiopian Lawyers Association
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
Ethiopian Commission	Ethiopian Human Rights Commission
EWLA	Ethiopian Women Lawyers' Association
FDRE Constitution	Federal Democratic Republic of Ethiopia Constitution
FJAC	Ethiopian Federal Judicial Administration Council
FSC	Ethiopian Federal Supreme Court
HoF	Ethiopian House of Federation
HPR	Ethiopian House of Peoples' Representatives
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
SSC	Regional/State Supreme Court

Summary of the thesis

The constitutionalisation of rights is seen as one of the main drivers of the proliferation of constitutional review. Experiences from around the world reveal that constitutional review can play a considerable role in the realisation of human rights. This thesis identifies that the existence of a justiciable bill of rights, an independent constitutional adjudicator and potential litigants provides the necessary normative and institutional precondition for successful constitutional review. Despite the existence of a robust bill of rights, the role of constitutional review in the realisation of human rights in Ethiopia has been insignificant. This thesis critically examines the Ethiopian constitutional review system through the prism of the effective protection of human rights. The thesis is intended to stimulate, and contribute to, a constitutional reform agenda concerning an appropriate constitutional adjudication system.

This thesis argues that the main reason for the failure of constitutional review system is the fact that the power of constitutional review is granted to the House of Federation, the upper chamber of parliament, a political entity that is designed to be part of and work in harmony with other political organs. It is submitted that the Ethiopian constitutional review system cannot effectively protect human rights. It is argued that independent constitutional adjudicators serve as the principal constituencies for human rights. Moreover, the thesis provides a theoretical exposition to the establishment, and retention, of a politically dependent constitutional review system. It argues that institutional choices are shaped by the interests and ideological bent of dominant political groups. The thesis concludes that the constitutional adjudication system was designed to reinforce and legitimise the status quo, justify the exercise of political power, and countenance executive and parliamentary supremacy as opposed to constitutional supremacy. Based on this, the thesis develops a 'legitimation' theory of constitutional review.

The absence of litigation-centred CSOs, opposition parties, and other human rights advocates that actively resort to constitutional adjudication has further compounded the insignificant role of constitutional review. The reluctance of these potential litigants is directly related to the lack of an independent constitutional adjudication system. In the absence of the prospect of 'supply' of rights by constitutional adjudicators, it is difficult to expect 'demand' for rights in the form of constitutional complaints. The lack of independence inhibits the submission of constitutional complaints including from the 'usual suspects', such as CSOs and political parties. Besides, there is no tradition of reliance on constitutional adjudication in Ethiopia. The failure to establish an independent constitutional review system and to create an environment conducive to the operation of CSOs is a direct consequence of the

lack of a rights-based political and legal culture. However, despite the importance of the politico-legal culture, this thesis focuses on the normative and institutional aspects of constitutional review.

The constitutional review system in Ethiopia has been invisible and so far largely irrelevant. Given the absence of an independent constitutional adjudicator, the thesis concludes that the Ethiopian Constitution is a constitution without a guardian. The thesis outlines a theoretically sound and practically viable alternative constitutional review design from the perspective of the effective realisation of human rights. It recommends that the Constitution should be overhauled to grant the power of constitutional review to an independent adjudicator.

List of key terms

Constitutional review – Human rights – Ethiopian Constitution – House of Federation – Council of Constitutional inquiry – Counter-majoritarian difficulty – Ethiopian judiciary – Domestic status of international instruments – Constitutional litigants – Legitimation theory.



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