Critical Evaluation of Human Rights Strategies
A Case Study of CEDAW and Women’s NGOs in Ethiopia

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This case study of the Ethiopian Women Lawyers Association shows how an NGO can make positive use of human rights guarantees even when human rights are not enforced. It also urges a more sophisticated and nuanced analysis of the limitations and the value of human rights norms. Insofar as governments all rely on both moral suasion and force, there will be a complex interplay between human rights and governmental legitimacy.

Those of us who do not find war to be an exciting, patriotic and noble endeavor, and those of us who do not consider the growing economic inequality on this earth to be a good way to motivate the poor to work harder and to reward the rich for their superior abilities, their hard work or their cunning greed, feel dissatisfied with the status quo and want to change the direction in which things are moving right now throughout much of the world. We are struggling in many different ways, on many different levels, and in many different parts of the world to attain a more fair global society.

One way that many lawyers and non-lawyers around the world believe they can best promote progress toward a more fair global society and a better life for the peoples of the earth is through establishing, extending and protecting human rights for all. The notion of universal human rights and the popularity of the ideas that everyone in the world should be able to enjoy freedom and that all are entitled to exercise fundamental rights is one of the most stunning achievements of the past half century.

While this notion of achieving a just and fair society through the establishment and protection of human rights has significant appeal, it seems equally clear that the discourse of human rights can be used as well to retard progress and to support a reactionary status quo. Recently, wars of aggression have even been “explained” as an effort to promote human rights for the people living in the country attacked and occupied. While such “justifications” for invading a country ring hollow, less obvious misappropriation and abuses of the generally positive impulse to promote international human rights are also common. Hypocrites, opportunists and government leaders can and do exploit the notion of human rights for their own selfish purposes.

In addition, many governments make a show of “recognizing” and supporting the human rights of their citizens at the same time that they in fact oppress much of the population for the benefit of a small, privileged group. As a result of these practices, a number of thoughtful skeptics question the value of human rights and argue that since human rights are so often absent in public life and present only in constitutions and in insincere endorsements of international treaties and conventions, ratified by unjust

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governments to gain legitimacy in the international arena with no true intention of enforcing them in practice, human rights discourse does as much harm as good.

This paper enters into this debate to challenge the implied dichotomy between “good, democratic” governments and “unjust, oppressive” governments and to urge a more sophisticated analysis of the relationship between human rights and governmental legitimacy. All governments – democratic and non-democratic, benign and imperialistic – control their populations through some mixture of force and persuasion. Democratic governments use force as well as moral suasion; dictatorships can never maintain themselves long by force alone: they always need to persuade most of the population to go along with them. Of course, none of this means there is no difference among governments or that it doesn’t matter whether one lives in a well-functioning democracy or in a dictatorship. But it does mean that both democratic and authoritarian governments may gain legitimacy through their formal support of human rights and that individuals and groups who oppose some action of their government may gain concessions from the government by engaging or threatening to engage in actions that might undermine the government’s legitimacy—again regardless of the generally benign or vicious qualities of the government overall.

Thus, it may not mean very much to say that a government protects human rights or claims to protect human rights “only” to build its legitimacy. Nor would it be accurate to say that human rights norms matter only where governments are “willing” to protect and enforce human rights.

I would suggest therefore that the debate between human rights enthusiasts and human rights skeptics cannot be resolved in the abstract, but only in concrete situations. Moreover, the debate may look at things backwards. Instead of evaluating human rights in terms of whether they are “recognized” or “enforced” in particular situations, it is more useful to evaluate them in terms of the effect they have on people’s ongoing struggles for justice.

This paper presents the formal legal status the Ethiopian Constitution grants to human rights and examines some of the uses that the Ethiopian Women Lawyers Association (“EWLA”) has made of human rights norms in its efforts to improve the role and status of women. Does a reliance on human rights claims benefit or undermine their efforts? By giving the Ethiopian government the opportunity to “prove” its respect for human rights, does EWLA participate in granting undue legitimacy to government officials and government practices, and thus ultimately impede progress toward a more just society? It may well be that the particular practices adopted by activists struggling for a better society turn out to be more important than whatever actual intentions governments may in fact have in mind when they claim to endorse international human rights.

**Constitutional Protection for Human Rights**

Human rights, including women’s rights, enjoy considerable formal protection in the Ethiopian Constitution of 1995. Article 10, entitled “Human and Democratic Rights” declares that “Human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable,” and explicitly states that the “[h]uman and democratic rights of citizens and peoples shall be respected.” The Constitution goes on to endorse the
general notion of human rights as universal, inalienable and inviolable, and stipulates that “[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.”

It then lists and guarantees a conventional collection of fundamental human rights in Articles 15-27.

The Constitution also specifically guarantees women’s rights both in general and specifically with respect to marriage and traditional practices that oppress women. Article 25 provides that the law shall guarantee equal and effective protection of the law without discrimination on grounds of sex. Article 34 specifies that men and women shall have equal rights entering into marriage, and at the time of divorce. Article 35 is even more explicit. Subpart one provides that “[w]omen shall, [regarding] the rights and protections [of the] Constitution have equal rights with men.” Subpart 2 specifies that women have equal rights with men in marriage. Subpart 3 acknowledges an historical legacy of inequality and discrimination against women and mandates affirmative action to enable women “to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.” Whether one considers marriage a public institution or a private institution, women are to receive “special attention” to enable women to compete and participate in the basis of equality with men in marriage. Subpart 4 provides: "The State shall enforce the rights of women to eliminate the influences of harmful customs. Laws,
customs and practices that oppress or cause bodily or mental harm to women are prohibited."

In addition, Ethiopia has adopted the Convention for the Elimination of All Forms of Discrimination Against Women (“CEDAW”). Thus, the fundamental rights and freedoms that the Ethiopian Constitution grants to women must be interpreted “in a manner conforming to the principles” of CEDAW as well as the Universal Declaration of Human Rights and other International instruments, as specified in article 13 (2).\(^8\)

The Ethiopian Constitution with its explicit and detailed protection of human rights can be contrasted, for example, with the Constitution of the United States. The United States Constitution, as originally adopted, granted only limited so-called negative rights against various forms of oppression by the federal government, and these were mainly tacked on in the form of the first ten amendments to the Constitution, known as the Bill of Rights. These did not include positive rights or even negative rights against oppression by state or local governments.

The amendments added to the Constitution at the end of the United States Civil War, extended rights in two important regards. First, the 13\(^{th}\) Amendment prohibited slavery in positive terms: there shall be no further slavery, thus protecting against private parties’ efforts to enslave others and not simply limiting government action. The state protections not positive originally, grant certain negative The 14\(^{th}\) Amendment extended negative rights by requiring state governments to respect the equal rights of their residents and to afford everyone due process of law. The Supreme Court has interpreted this provision to extend most, though not all, of the Bill of Rights negative freedoms to protect against abusive intrusion by the state and local governments.

Although the record of the United States in ratifying human rights treaties has been spotty, in theory at least treaties become the supreme law of the land. Article VI provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.\(^9\)

Nevertheless, courts have characterized most treaties as not being “self-executing” and refused to treat them as the supreme law of the land.

The United States has not only refused to ratify CEDAW, but it also has refused to enact the frequently proposed Equal Rights Amendment, which would provide at least formal equality for women in the United States Constitution. As it stands now, the only nation-wide provision American women can rely on is the general equal protection clause of the Fourteenth Amendment, and courts have interpreted it as giving even less protection against gender inequality than the already inadequate protection the Fourteenth Amendment gives against racial inequality.

**The Ethiopian Women Lawyers Association**

The Ethiopian Women Lawyers Association was founded by a group of lawyers in 1995, immediately after the Constitution was ratified. It is a non-profit organization managed by an electoral board and provides for full membership for women lawyers and associate membership for non-legal women and men professionals who support the

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\(^8\) See note 3 supra.

\(^9\) United States Constitution, Art. VI (emphasis added).
concerns and objectives of the organization. The stated mission of EWLA is to “promote the economic, political, social and legal rights of women” and to “assist them to secure full protection of their rights under Constitution of the Federal Democratic Republic of Ethiopia and other international human rights conventions.” The association was registered as a civic association by the Ministry of Justice in June 1995 and began its work in 1996. By 2003 it had developed six regional branch offices around the country besides the head office, located in Addis Ababa.

Funded largely by grants from the Scandinavian countries, EWLA carries out its mission through its several programs. Perhaps the most impressive program is its legal aid office, which provides free legal advice and counseling to women involved in civil or criminal cases, and to women who are experiencing domestic violence or other problems that might be amenable to legal intervention. The legal aid office states that it encourages mediation and informal dispute resolution when this is possible. Legal aid staff members also make telephone calls or write letters to government and other offices on behalf of their clients, draft legal documents for their clients, and monitor the progress of cases.

EWLA also commissions and publishes research on issues important to women and uses the research to advocate for law reform. The research significantly advances another major component of their program, which is public education. As the EWLA webpage puts it, the research findings are used “to sensitize the community” on issues affecting women. Public education focuses on “raising awareness among the public on women’s rights and educating women on their rights and how to assert their rights.” The EWLA research papers and a wide variety of other materials are available in a documentation center located at their head office in Addis Ababa. The research department also facilitates policy debate on women’s issues and the impact of women’s issues on poverty and development at the household, community and national levels. In order to secure the legal, economic, social and political rights of women, the public education department plans and carries out training and advocacy workshops, targeting students as well as government and Civil Society Organization (CSO) employees. EWLA reaches a larger audience as well through a regular radio broadcast once or twice a week, through a commissioned full column in a local weekly Amharic newspaper, through its own bi-monthly magazine Dimtsachen and finally through its annual journal Berchi, which also publishes much of the research that EWLA has commissioned.

Problems in the Status of Women in Ethiopia

In an interview at the end of 2003, Meaza Ashenafi, EWLA founder and at the time of the interview executive director of EWLA, characterized Ethiopia as a difficult place to live as a woman:

The position of women is very difficult - economically, politically and socially. They have no voice, they have no economic power, they have no social power, and they are not organised. They cannot put pressure on the government.11

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10 See webpage http://www.etwla.org/about.html (visited April 22, 2007). The organization states its goals as including eliminating “all forms of legally and traditionally sanctioned discriminations against women,” ensuring equal treatment for women in “education, employment, access to public services and benefits,” and advocating “remedial and affirmative measures” to redress the accumulated consequences of years of discrimination.

While she was certainly aware of the benefits of Ethiopia’s ratification of CEDAW and other human rights treaties and of the importance of the explicit protections promised for women’s equality in the Constitution, Meaza Ashenafi was also realistic about the gap between the protection on the law books and the reality in the day-to-day lives of women in Ethiopia. Indeed, as a legal advisor to the Ethiopian Constitution Commission, the body that the transitional government established to draft a new constitution for Ethiopia after the overthrow of the Derg, Meaza Ashenafi prepared draft articles and position papers, and she is generally considered to have played a major role in ensuring that women’s rights receive the attention that they do in the Constitution. One way that she explains the gap between law and reality is Ethiopia’s lack of infrastructure:

[W]e don't have the mechanisms, we don't have the factors to implement those constitutional principles. We have good international standards, but we don't have courts that are capable of interpreting and applying those laws. We don't have the human rights commission in place, an ombudsman, or enforcement.

Of course, this is not unique to Ethiopia. “[L]ike in many developing countries, there are laws, there are policies, but implementation of those laws needs infrastructure, skill and knowledge.”

CEDAW’s report of January, 2004, includes a short, stark summary of some of the problems facing the women of Ethiopia:

Ethiopia is one of the poorest countries in Africa and female genital mutilation, marital rape, early marriages, and abduction are still commonly practised. The [Ethiopian] state delegation [reporting to CEDAW] noted that the elimination of discrimination against women will require a change in attitudes and practices of both men and women.

One could add to that list inadequate education, sexual harassment, violence, and lack of access to resources. As Meaza Ashenafi put it in her 2003 interview:

In the constitution, women are guaranteed the right to land, but this is not happening in practice. Almost in all regions, women do not have any access to land whatsoever. They don't have the right to inherit, and the only option is to get married and have a husband. But when the husband dies, they are also kicked off their land.

While these problems are familiar ones to societies referred to as “traditional,” it is of course important that tradition not be understood to provide a justification for continued inequality and oppression of women. Again, Meaza Ashenafi stated the situation well:

I think traditions are good, customs are good, and we have good customs, but we don't need to live with the bad customs like female genital mutilation, domestic violence and early marriage. It's against development and it's against poverty reduction. Why is it we must hang on to these customs?

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13 See supra note 10.
14 Id.
16 See supra note 10.
17 Id.
EWLA’s Use of “Rights” to Counteract “Bad” Customs – I: Revising the Family Law Code

One of the earliest major victories EWLA could celebrate was the enactment of a new family law code. The old Civil Code, which had for many years governed family law matters, was quite discriminatory against women, putting the husband in control of property and relegating women to a subservient position. Moreover, disputes regarding family breakups and other domestic problems were not heard in the regular court system but instead relegated to a system of “family arbitration” that was even more male-dominated and biased in favor of the husbands than the court system was. EWLA commissioned a research study that demonstrated the injustice of the family arbitration practice and lent strong support for EWLA’s argument that the provisions of the Civil Code violated the articles of the Constitution providing for women’s rights and equality in marriage. Thus, they could argue not only that justice required changes in the law, but also that the adoption of the Constitution required a revision of the family laws.

EWLA worked with the government and as a pressure group advocating for the Family Law Code. The Revised Family Code of 2000 replaces the biased family arbitrators with access to a regular court in case of divorce. It also fixed 18 as the legal age for marriage for males and females equally, makes it clear that both men and women should be able to choose their spouse for themselves, and establishes the legal equality of the spouses in marriage.

In practice, the new Family Code is often violated. Girls continue to be married off at age 15, as was legal under the old Civil Code, or even as young as eight or 10, which would not have been legal even before the Revised Family Code. Many observers would say that change is slow, and some might disparage the ability of law to change traditional societies. Under the former Civil Code, though, an unhappy 15-year-old bride had fewer options for resisting than she now has under the Revised Family Code. However difficult it remains for women to demand better treatment, it was harder when they didn’t even have any legal right to equality and when the law would instead lend its support to the men who tried to assert their domination over women. As Meaza Ashenafi put it, “now we have the legal framework, so we can ask for accountability.”

EWLA’s Use of “Rights” to Counteract “Bad” Customs – II: CEDAW and Shadow Reports

The Convention Against All Forms of Discrimination Against Women specifies an impressive list of human rights for women, but it is considered “soft” international law instead of “hard” law. Although there is now an optional protocol that allows individuals to bring their private actions directly to the international Committee responsible for carrying out the Convention, mechanisms for enforcing CEDAW still remain limited. Each country that has ratified CEDAW, however (which includes Ethiopia, but excludes the USA), is to prepare and present a progress report every four years. While this requirement to report does not provide as much pressure toward

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19 For a longer description of the family code and its adoption see Frances Olsen, Ethiopia’s Federal Constitution and Traditional Role of Women: The Example of Family Law, Ethiopian Studies 2004.
20 See supra note 10.
21 Technically, “CEDAW” is the acronym for the Committee, but it is so popularly used also as shorthand for the Convention that I have chosen to follow suit. When I refer to “CEDAW,” it should be apparent from the context whether I intend to refer to the Committee or the Convention.
compliance as one might wish, it certainly serves a “naming and shaming” function. While many countries have been slow in submitting their reports, they do eventually submit them, and in the reports governments try to make the best case they can that they are either in compliance with the Convention or else that they are making good progress toward compliance, given the difficult position from which they begin. In addition, non-governmental organizations (NGOs) are entitled to present to CEDAW what are referred to as “shadow reports.” These reports can amplify the “naming and shaming” effects of the procedure.

In 2003 EWLA submitted such a shadow report, together with another NGO, the Network of Ethiopian Women Association (NEWA). Fifty-two pages long, this shadow report provided a more thorough picture of the situation of women in Ethiopia, correcting omissions and misstatements in the official report.22

The Women’s International League for Peace and Freedom posted on its web page a report by Julika Erfurtf on the 2004 CEDAW session that discussed Ethiopia. The report criticizes the official delegation from Ethiopia in the following terms:

The delegation talked a lot about “educating the women” and presented educational campaigns, rather than political actions, as the remedy to many of the issues. It seemed at several points that the female members of the delegation did not perceive themselves as being part of “the women” of Ethiopia and portrayed the female part of the population as “unenlightened” and “backward”. In the words of the Chairperson, Ethiopia “has a long way to go” until gender equality is realised and women and men enjoy the same rights, freedom and responsibility.23

EWLA’s Use of “Rights” to Counteract “Bad” Customs – III: Cause Célèbres

A number of the legal cases supported by EWLA attracted considerable attention and have had an impact on public attitudes and on government policy. For example, in 1997 EWLA came to the defense of Aberash Bekele, apparently the first Ethiopian to kill a man who had abducted and raped her with the intention of claiming her as his wife. When the police arrested Aberash, she claimed self-defense: “The way I see it, all I did was kill my enemy. I don't feel sorry for him as I would for anyone else. I could have been killed myself.”24 EWLA supported her claim, and the publicity around the case drew international attention to the fact that such abductions and rapes were still tolerated in parts of Ethiopia and brought considerable international criticism against the tradition of “marriage by abduction.” The case also resulted in death threats against Aberash that were serious enough for her to go into hiding. She was eventually acquitted, the court accepting her claim of self-defense.

A case EWLA championed in 2001 again brought international attention and shed light upon “traditional” practices harmful to women. Abadjema Woineshet Zebene Negash, a 13 year old girl, was brutally abducted, held captive and raped for two days by a man wishing to marry her. With her father’s support, she refused to marry him and insisted that he and his accomplices be prosecuted. Instead, he was released on bail and he again brutally abducted and raped her, holding her captive this time for at least 15 days before she could escape. His family then beat her and forced her to sign a “marriage contract.” She was so terrorized that she insisted on the security of a prison cell. Apparently because of the extreme brutality and injury he inflicted, the rapist was

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22 Available from the Ethiopian Women Lawyers Association.


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convicted and sentenced to 10 years. His accomplices were given sentences of 8 years. A short time later, however, a secret hearing was held and a judge released both the primary perpetrator and his accomplices. The judge made the astounding assertion that “Woineshet was most likely in love” with her abductor “and ready for marriage.” Woineshet and her family had no notice or opportunity to be heard; the prosecutor was present at the hearing but supported the judge’s ruling. In an interview, the judge suggested that Woineshet’s family was “only out for revenge,” and hypothesized, “[m]aybe they don't want her to marry him. So they accuse him of rape.”

Resisting threats and bribes, the father and daughter, with the support of EWLA, appealed. In April 2007 EWLA reported:

The Cassation Bench of the Oromia Supreme Court in December 2005 refused to hear Woineshet’s appeal on the basis it believed no error of law had been committed by the lower courts. All domestic legal recourse is now closed to Woineshet. Anecdotal information suggests abductions and rapes ceased when the outcome of Woineshet’s case was uncertain, but resumed when it was clear the perpetrators would go unpunished. Woineshet’s rapist and abductors are still at large and unconfirmed reports suggest the rapist abducted another girl, aged 14, whom he married and now has a baby. Equality Now, in conjunction with the Ethiopian Women Lawyers Association (EWLA), continues to explore other legal avenues, including at the regional level, to obtain justice for Woineshet with the aim also of encouraging implementation of the new Penal Code measures on rape.25

A third high profile case EWLA supported involved severe harassment of a woman and her family by her supposed admirer over a period of 8 years. Negussie Lemeneh claimed to be infatuated with Hermela Wossenyeleh and physically assaulted her, including shooting her in the face. He also seriously injured two of Hermela’s sisters with a machete26 and cracked open the skull of a younger sister with an axe.27 Although Negussie was arrested several times, he was never sentenced to more than a few months in jail and the harassment escalated. EWLA tried repeatedly to convince or induce law enforcement officials to act more effectively. Eventually, EWLA urged Hermela to tell her story on Ethiopian Television; and Meaza Ashenafi, executive director of EWLA, raised Hermela’s case in an interview with a local newspaper. The publicity led to widespread public outcry and criticism of the Ministry of Justice. The Ministry of Justice responded to this public criticism by suspending EWLA from operating on the basis that it had been "acting beyond its mandate and code of conduct". The suspension did not silence or calm the criticism and eventually Negussie was sentenced to 18 years in jail. He later died when he was shot attempting to escape from prison.

Government Retaliation? Role of “Human Rights” Network in Defending EWLA

The apparent effort of the Ministry of Justice to silence EWLA’s criticism backfired. Instead of retreating in face of the suspension, EWLA rallied support from other local and international NGOs, civic organizations, academics, and other members of society. The Ministry of Justice had issued its suspension order against EWLA at the end of August or early September 2001. By the middle of October news of the suspension had...

spread throughout the world and several international human rights organizations, including Human Rights Watch and the Lawyers Committee for Human Rights, wrote scathing letters to the Prime Minister. On October 17, the government lifted the suspension against EWLA, and the Minister of Justice was removed from his position.

Two years later, in November of 2003, Meaza Ashenafi, the executive director of EWLA, was able to assert in an interview that EWLA’s relations with the Ethiopian government were “very good - we don't have any specific problems, and in fact we work very closely with the women's affairs office.” She added, “Of course, we always want to keep our independence and keep our distance, because we want to continue our advocacy work and act as a pressure group.”

Conclusion
Using the rubric of human rights can be helpful and effective, especially in cases in which the government’s legitimacy may be challenged. EWLA appears to have made productive use of human rights arguments to further social change. The human rights approach also facilitated the intervention of the Lawyers Committee for Human Rights and Human Rights Watch, which in turn bolstered the effectiveness of the support EWLA received from elements of Ethiopian civil society.

28 See supra note 10.