



Legal Vice Presidency
The World Bank

31385

Ethiopia

Legal and Judicial Sector Assessment



© 2004 The International Bank for Reconstruction
and Development / The World Bank
1818 H Street, N.W.
Washington, DC 20433, USA

All rights reserved
Manufactured in the United States of America
First printing, 2004

A free publication

This report has been prepared by the staff of the World Bank. The judgments expressed do not necessarily reflect the views of the Board of Executive Directors or of the governments they represent.

The material in this publication is copyrighted. The World Bank encourages dissemination of its work and will normally grant permission promptly.

Permission to photocopy items for internal or personal use, for the internal or personal use of specific clients, or for educational classroom use, is granted by the World Bank, provided that the appropriate fee is paid directly to the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923, U.S.A., telephone 978-750-8400, fax 978-750-4470. Please contact the Copyright Clearance Center before photocopying items.

For permission to reprint individual articles or chapters, please fax your request with complete information to the Republication Department, Copyright Clearance Center, fax 978-750-4470.

All other queries on rights and licenses should be addressed to the World Bank at the address above or faxed to 202-522-2422.

Ethiopia
Legal and Judicial Sector Assessment

Contents

ACRONYMS.....	v
FOREWORD.....	vii
ACKNOWLEDGEMENTS.....	ix
EXECUTIVE SUMMARY.....	xi
Introduction.....	1
Legal and Historical Context.....	3
Key Institutions in the Legal and Judicial Sector.....	7
Executive Branch.....	7
<i>Federal</i>	7
Ministry of Justice.....	8
<i>State</i>	8
<i>Municipal Districts</i>	9
Legislative Branch.....	10
<i>Federal</i>	10
<i>State</i>	11
<i>Municipal Districts</i>	11
Judicial Branch.....	12
<i>Federal Courts</i>	12
<i>State Courts</i>	13
<i>Municipal District Courts</i>	14
<i>Other Courts</i>	15
Judicial Administration Commissions.....	17

Judicial Branch	19
Judges.....	19
Judicial Independence and Accountability.....	24
<i>Constitutional Decision-Making Authority</i>	24
<i>Composition of the Judicial Administration Commissions</i>	26
<i>Independence Issues at the Federal Level</i>	27
<i>Independence Issues at the State Level</i>	28
Court Administration.....	30
Legal Education, Training, and Licensing	33
Availability of Laws and Regulations	37
Legal Profession/Bar Associations	39
Access to Justice	41
Practical impediments.....	41
Legal Information.....	43
Public Defender and Legal Aid Services.....	43
Human Rights Commission/Ombudsman.....	44
Civil Society.....	45
Gender.....	45
Commercial Justice	49
The Commercial Code.....	50
The Investment Code.....	53
Arbitration.....	53
Initiatives in Justice Systems Reform	57
National capacity building and justice systems reform (JSRP).....	58
Public Sector Capacity Building Program (PSCAP) and Justice Systems Reform.....	61
Planning and implementation issues for Justice Systems Reform under PSCAP.....	63
Looking Forward.....	67
Conclusion	69
ANNEX I: Recommendations	73
Notes	79

Acronyms

AAU	Addis Ababa University
AFD	Agence Française de Développement (French Development Agency)
AFDB	African Development Bank
CARP	Court Administration Reform Program
CIDA	Canadian International Development Agency
DFID	Department For International Development
EC	European Commission
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
EWLA	Ethiopian Women Lawyers Association
FDRE	Federal Democratic Republic of Ethiopia
GOE	Government of Ethiopia
ICC	International Chamber of Commerce
IDA	International Development Association
JSRP	Justice System Reform Program
KFW	Kreditanstalt für Wiederaufbau (German Bank for Reconstruction)

MCB	Ministry of Capacity Building
MOJ	Ministry of Justice
NCBP	National Capacity Building Program
NGO	Non-governmental Organization
PD	Public Defender
PSCAP	Public Sector Capacity Building Program
SIDA	Swedish International Development Agency
SNNPR	Southern Nations, Nationalities, and Peoples' Region
SWAP	Sector-Wide Approach
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

Foreword

Legal and judicial reform constitutes one of the main pillars in the World Bank's Comprehensive Development Framework (CDF) to promote economic growth and alleviate poverty. Consistent with the CDF philosophy, legal and judicial reform requires working on several levels – changing the law, improving institutions and their capacity, and integrating efforts into the overall country strategy. A critical element of the World Bank's approach is to conduct country-specific legal and judicial sector assessments. The outcomes of these assessments are used as a starting point to identify challenges and priorities; they also facilitate discussions with governments to define objectives design activities, and sequence individual lending operations. In tandem, other assessments review the impact of a country's legal framework, polices, and regulations on a wider spectrum of society, including social, gender, and environment. As legal and judicial reform is a long term process, requiring full commitment by key stakeholders, dissemination of information is a *sine qua non* for the country to reach consensus and action plan for future reforms.

This assessment was carried out to provide a better vision of the sector and possible areas for reform and was particularly relevant given the development of the Public Sector Capacity Building Project and the Poverty Reduction Support Credit. It is a companion report to a larger United Nations Development Programme study on

Ethiopia's justice sector. The report's narrow focus -- on the judiciary and supporting legal institutions, such as the Bar Association and legal education -- provides for specific recommendations to improve many of the sector's institutions and build capacity.

Ethiopia is currently one of the poorest countries in the world. The judicial and legal sector of Ethiopia presents a variety of significant challenges. The country's long history, as well as the many ethnicities and religions that make up Ethiopian society have influenced the sector's institutions. A long civil war has also impacted the effectiveness and capacity of these institutions.

This Assessment has benefited greatly from input from the Government and the donor community, and may serve as a road map for future reforms in Ethiopia.

Maria Dakolias
Chief Counsel (Acting)
Legal and Judicial Reform Practice Group

Acknowledgements

This assessment was prepared under the supervision of the Legal and Judicial Reform Practice Group. The text was authored by Michelle Guttman (Consultant) with the assistance of Caroline Mary Sage (Consultant) and Clara Mathieu (LEGLR). Jean-Marc Baïssus and Beth Anne Dabak (LEGLR) also reviewed and commented on the draft.

Navin Girishankar (AFTPR) provided significant input on the Public Sector aspects of the project and coordinated the dialogue between the Government and the World Bank on the draft report. Ethiopia's Secretariat of the Justice Reform in the Ministry of Capacity Building, and its steering committee comprised of the Supreme Court and inferior courts, the Ministry of Justice, and law schools reviewed the report and provided comments on the draft. Donors active in the country – such as the Canadian International Development Agency, UNDP, and the Agence Française de Développement – have also reviewed the report.

Executive Summary

Ethiopia ushered in a new era for the country's legal and judicial institutions with the adoption of a new constitution in 1995. The Constitution recognized the country's diverse ethnic and religious background through the creation of member states with laws and judicial systems that mirrored each region's specific ethnic and religious customs. Moreover, Ethiopia's current legal framework dates to the 1950s and 1960s when Emperor Haile Selassie adopted many facets of the French legal system. Subsequent changes came with the adoption of many commercial law features of the Anglophone common law system. This has created inconsistencies in the country's legal framework, which has been further complicated by weak institutional capacity to absorb these reforms. Resource constraints brought about by natural disaster and war have further impacted the government's overall effectiveness at the Federal, regional, and local level.

There is overall acknowledgement of the need for certain reforms within the Ethiopian legal and judicial system. The Government and donor community are working together to support reforms in the legal system and judiciary. Within the scope of the reform, a number of priorities can be identified and implemented on the medium (two to three years) to longer term (three to ten years). These include:

- **Quality of Justice:** Under the Federal Constitution, the Federal Judiciary rules on cases with national importance; responsibilities and obligations not specified under the constitution are devolved to the regional states or local governments. Furthermore, the Constitution allows regional states to establish courts based along ethnic and religious lines; potentially creating inconsistencies in the application of the law.

- **Dissemination of Legal Information:** There is a pressing need for legal information throughout the country. This need is most acute within the judiciary; a compendium of laws at the Federal, regional, and local level, indexed by type should be created and disseminated. Currently, judges and lawyers do not have access to this type of information, creating further potential for inconsistent application of the law.

- **Legal Education:** Ethiopia's law schools have retained curricula that emphasizes theory over practical experience. This means that law school graduates often enter the legal profession poorly equipped. The quality of a legal education, coupled with low salaries throughout the government mean that the best and brightest from law school often pursue careers in the private sector. The creation of legal clinics within the existing law faculties could provide law students with practical training on developing and presenting a case, and at the same time could help address problems of access to justice by the poor and other vulnerable groups in the country.

- **Access to Justice:** While courts have been established throughout Ethiopia on the Federal, regional, and local levels, Ethiopia's largely rural society and lack of infrastructure creates situations in which local justice is still inaccessible in physical terms, as well as economic terms. Moreover, the judicial system's lack of resources creates situations in which the parties to a case are often responsible for equipping the courts with items such as papers and pens, adding an additional financial hurdle in obtaining justice.

- **Commercial Justice:** As Ethiopia moves toward an open-market, an increasingly predictable and transparent system of dispute resolution will be needed, be it from the formal judicial system or through external mediation and arbitration. While there are existing informal commercial dispute resolution mechanisms, these mechanisms may be biased or available only to a closed group within Ethiopia. The private sector should take an active role in exploring the potential uses and benefits of arbitration, as well as in the identification of business practices that are in need of modernization. This exercise may render solutions to the mere creation of commercial benches, which may create additional and unnecessary strain on already weak institutions.
- **Staging of Reforms:** Because Ethiopia's legal and judicial institutions function under a severe resource restraint, any capacity building and reform should be staged or sequenced to reduce the potential for overburdening the sector's institutions. This is extremely important, as a number of large bilateral and multilateral donors are currently implementing legal and judicial reform programs in the country. A number of smaller reforms with high impact may be staged in the early phases of reform to build consensus throughout such a fragmented sector.

Introduction

Ethiopia is the oldest state in sub-Saharan Africa. It is unique among African countries in that it escaped colonization and maintained its independence, except for a brief period of Italian occupation from 1936-1941. Today the country is striking in its ethnic, culture, linguistic diversity and its complex history seeped in tradition. The population is estimated in excess of 65 million, of which approximately 85 percent is involved in rural agriculture, and includes a range of pastoral, nomadic, semi-nomadic, and other types of communities, ethnicities, and life styles. At present, Ethiopia officially recognizes over 100 distinct "nations, nationalities, or peoples" and more than 75 languages spoken within its territorial borders, although many more exist without official recognition. Tensions between ethnic and other groups are not uncommon and are often based on long and complex histories. The population is majority Christian or Muslim, with a small proportion of other religions.

Ethiopia is currently one of the poorest countries in the world. Agriculture is the mainstay of the economy, providing a livelihood to the vast majority of the population. The majority of land under cultivation consists of subsistence holdings. Only a small proportion of crops are taken to market or exported. Manufacturing that does exist generally involves processing of agricultural and livestock products; other industries include textiles and clothing, construction materials and metal goods. Almost all land, property and business in Ethiopia is state owned, although this appears to be changing slowly.

The judicial and legal sector of Ethiopia presents a variety of significant challenges. The legal system as it exists today combines elements of both civil and common law¹ with traditional practices, resulting in multiple layers intermingling and superimposing distinct types of modern, traditional, and religious laws and processes. An examination of all the different elements of these systems and the resulting challenges is beyond the scope of this assessment. Many of the distinct challenges of such a complex system cannot be explored in depth here; some are the subject of other or ongoing studies and evaluations.

The aim of this assessment is to provide an overview of the current system focusing on four key issues—judiciary, access to justice, commercial justice, and sequencing of reform efforts. Other issues are commented upon briefly where possible to provide context and elucidate interconnections between issues. It is also important to note that the assessment focuses mainly on the formal legal system as it is established by the 1995 Constitution. The complex array of customary practices that exist at differing forms at the local level across the country are, for the most part, beyond the scope of this report. The assessment itself was undertaken using a literature and document review, as well as extensive interviews with major stakeholders in the sector, consultations with other donors, and contributions from other World Bank staff working in Ethiopia. The World Bank's Legal and Judicial Sector Assessment Manual² formed a useful framework during the investigative process and the compilation of information for the assessment.

Notwithstanding the focal areas of this assessment, the need for attention to other existing issues and challenges should not be disregarded or minimized. There is a clear need for more in-depth research to be undertaken in order to gain a deeper understanding of the complex relationships between the different layers of the system. In particular, there is a need for greater understanding of local level practices, the effects of the current pluralistic system and the relationships between traditional systems and the formal legal and judicial sector. Toward that end, a larger study of the legal and judicial system is currently being undertaken by the United Nations Development Programme (UNDP).

Legal and Historical Context

Ethiopia's imperial lineage is reputedly traced to King Solomon and the Queen of Sheba, and the empire was one of the last remaining feudal states of the modern era. The country was built by a large succession of emperors, arguably the most important being Menelik II in the late 19th century, who brought together numerous smaller kingdoms encompassing various Middle Eastern and African ethnic and religious groups. The last Emperor, Haile Selassie I, was crowned in 1930 and during his rule he undertook to consolidate and unite the country and reclaim former Italian colonies—Eritrea and Somaliland. These claims arguably caused ongoing tensions in areas such as Eritrea, the Nile basin countries and the northern states. Despite his enactment in 1931 of an imperial constitution that created a bicameral parliament and a system of courts, all real power and authority remained firmly entrenched in the emperor and the traditional ruling class.

Emperor Haile Selassie's rule came to an end in 1974, when he was deposed by a military junta known as the *Derg* ("Committee"). The *Derg* suspended the constitution and established a highly centralized socialist state ruled by a military dictatorship and characterized by brutal oppression of its own people. A coalition of opposition forces — the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) — overthrew the *Derg* in 1991. The EPRDF established a transitional government with an interim constitution (Transitional Charter) and embarked on a wide-ranging process of democratic decentralization.

A new Ethiopian constitution was ratified in 1994, and took effect in 1995. The 1995 Constitution replaced the nation's centralized unitary government with a federal republic based on a democratic form of government. The federation consists of nine member states (also referred to as regions or regional states) and two municipal districts (the capital city of Addis Ababa and the second city of Dire Dawa). The 1995 Constitution assigns extensive powers to the newly-created states, which are divided sub-regionally into zones, districts (*woredas*), and *kebeles*. *Woredas* and *kebeles* are a product of the *Derg* period and in many ways still reflect socialist-style power structures and principles. The *woreda* is considered the fundamental

unit of local government and has an average population of 100,000.³ *Kebeles* are villages or urban communities with an average population of 5,000, and are the smallest recognized division of local government.⁴ *Kebeles* do not have the same constitutional formality as states and other sub-regions, but have parallel administrative and judicial structures, and in practice serve as the primary level of governmental contact for most Ethiopian citizens.⁵ *Kebeles* were initially designed to control the population in a system of centralized rule. To shift from a centralized regime to a decentralized federal system utilizing the same governing structures presents some real challenges. In many ways, the government arguably remains a de facto one-party State, where the EPRDF has spawned local "ethnic" variants, which act as relays for the central power. The challenges of devolving power are particularly acute in light of the institutional limitations and severe shortage of qualified personnel to assume the newly created responsibilities and positions.

The 1995 Constitution is, in part, based on a Western model that incorporates a bicameral parliamentary system and, for the first time in the country's history, declares the independence of the Ethiopian judiciary. At the same time, the Constitution maintains a number of socialist-style principles, such as maintaining state ownership of property, a holdover from the *Derg* period. As a result, subsistence farmers do not own their land, shopkeepers are leasers only, and foreign companies are unable to own land, which creates barriers for establishing an industrial premise.

The Constitution also contains several unique and controversial provisions that establish a system known as ethnic federalism. Ethnic federalism provides for decentralization and self-government based on ethnicity and "an unconditional right to self-determination, including the right to secession."⁶ These constitutional rights inure to every "nation, nationality, or people," defined as "a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory."⁷

The system of ethnic federalism has generated substantial controversy. The formal geographic boundaries of state and regional subdivisions established by the new government do not correspond to

the numerous ethnic divisions.⁸ Further, the differences between states and regions are vast.⁹ In these circumstances, the aim of the ethnic federalism was to recognize and accommodate the concerns and distinct needs of the various ethnic, religious, and tribal groupings and, in doing so, it was intended to increase the likelihood of maintaining unity of the nation as a whole.¹⁰ At the same time, it argued that the system recognizes and possibly encourages political division — up to and including secession — along ethnic and tribal boundaries, which could act as a destabilizing force on national cohesion. For example, there have been numerous accusations that the Tigrynia-dominated Federal government has favored investments in Tigray in order for it to be able to break away at a later stage. It is predicted that this experimental approach has the potential to either unify or disintegrate the country. Besides ethnic rights, the Constitution enumerates various fundamental and democratic individual rights and freedoms, including rights of equality, privacy, expression, association, religion, and due process.

During the pre-war period, Ethiopia was governed almost entirely by a complex set of traditional, customary and religious laws. Arguably, Ethiopia has a long history of legal frameworks, the most famous of which is the "Book of Kings"— the *Fetha negast*. Religious and customary laws remain prevalent throughout the country.

In the 1950s and 1960s, Emperor Haile Selassie founded a university with a law faculty and initiated the drafting of a core group of modern legal codes, including criminal, civil, procedural, commercial, and maritime codes. The university structure and legal codes were based on European models. The Emperor hired a Franco-Swiss team of specialists of comparative law, which crafted a complete set of codes up to the latest standards of the late fifties. While these codes were arguably of an extremely high standard,¹¹ they were not matched with adequate capacity building or training at the local level. Further, following the development of these codes, procedural provisions were subsequently imported wholesale from England, India and the US, with little regard to the coherence of the system as a whole.

During the *Derg* regime (1974-1991), the basic codes were largely ignored. All land was nationalized and when legislation was imposed it was done so without due process. The Transitional Government (1991-1994) undertook significant legal revisions to

replace the socialist-era laws and re-establish a functioning legal system. While many of the imperial codes from the 1960s have been revived, reforms are underway to ensure that such laws are consistent with the 1995 Constitution. Law reform is also being undertaken to implement the many new rights and requirements delineated in the new Constitution and to create an environment more conducive to investment and development.

The transition to a federal republic and decentralization that began in 1995 added further layers and dimensions to an already diverse and complex legal system. This transition has also greatly multiplied the demands placed on both government infrastructure and the legal system. Of the three branches of government, the judicial branch has the least history and experience of independence,¹² and requires significant strengthening to obtain true independence, equality, and self-sufficiency.

Key Institutions in the Legal and Judicial Sector

Executive Branch

Federal

The President of Ethiopia is the Head of State and is elected by a two-thirds majority vote of a joint session of parliament. Among his duties, the president is responsible for officially proclaiming laws and international agreements approved by the House of Peoples' Representatives in accordance with the Constitution.¹³ The Prime Minister is the Chief Executive, and is elected from among members of the majority party of the House of Peoples' Representatives.¹⁴ The power of government is granted to the majority party in the House of Peoples' Representatives, and the highest executive powers of the federal government are vested in the Prime Minister and Council of Ministers, who are responsible to that House.¹⁵ Among the Prime Minister's duties, he is responsible for ensuring the implementation of laws adopted by the House of Peoples' Representatives, and for selecting and submitting nominations to that same House for President and Vice-President of the Federal Supreme Court.¹⁶ The Council of Ministers has the power to propose certain draft laws to the House of Peoples' Representatives, and is likewise charged with ensuring the implementation of laws adopted by that House, and more generally to ensure the observance of law and order.¹⁷ The EPRDF has been the ruling national party since its overthrow of the *Derg* in 1991, and likewise holds majority status in all regions.¹⁸

Within the Federal Executive branch, there are multiple Ministries and other agencies that have a direct impact on the functioning of the legal and judicial system. For instance, the Federal Police Commission is responsible for the investigation of federal crimes. The Federal Prisons Administration has the duty to enforce and execute federal court judgments. Both entities are subordinate to the Ministry of Federal Affairs.

The federal Ministry of Capacity Building (MCB) was established in 2001 for the purpose of supervising, coordinating, guiding, and monitoring the implementation of national capacity building programs and initiatives. The MCB has assumed the leading role in planning and coordinating Ethiopia's proposed Justice System Reform Program (JSRP).

The relationships and duties of the Ministry of Education, Ministry of Justice (MOJ), and MCB with respect to legal education are unclear and may be redundant or overlap in some respects.

Ministry of Justice

The mandate of the MOJ is to act as a chief advisor to the federal government on matters of law, prosecute federal crimes, study the causes of crime and their prevention, initiate or participate in proceedings where the rights and interests of the public and the federal government so require, issue and oversee licenses of lawyers/advocates practicing before federal courts, and provide legal education for the goal of raising public awareness.¹⁹ Under the current system, the Minister of Justice also acts as the Attorney General.

State

The nine Ethiopian member states are commonly referred to as regions, or regional states. The states are governed by elected representatives, and power is devolved to zonal, district (*woreda*), and *kebele* levels. As mentioned previously, the states differ vastly in terms of capacity, tradition and cultural cohesion, and do not correspond to the different ethnic, linguistic and religious divisions.

Each state has a President (Chief Administrator, or Regional Administrator) as its chief executive officer. Regional and District Administrators govern their respective state subdivisions. State

Justice Bureaus have functions and responsibilities akin to those of the federal MOJ. State Police and State Prison Administrations are responsible for the investigation of state crimes and enforcing judgments of state courts.

Capacity Building Bureaus have been created at the state level as counterparts to the federal MCB and to support state capacity-building efforts.

Municipal Districts

Ethiopia has designated two semi-autonomous municipal districts (administrative cities) in addition to the nine states. These two districts are Addis Ababa, the capital, and Dire Dawa, Ethiopia's second largest city.

Addis Ababa, the capital city, has a constitutional right to self-government²¹ and operates pursuant to a City Charter.²² The City Council is the supreme authority and, during the transitional period, is exercising a combination of legislative and executive functions. The Bureau of Justice and Legal Affairs acts as chief advisor to the City Council and exercises oversight and coordination responsibilities between the city's Prosecution Office, Police, and Penitentiary Administration.

The power-structure in Addis Ababa is quite unique. It has a high concentration of administrative and economic power in the hands of the Amharas — the former elite during both the Imperial and *Derg* periods— and a Tigrynia dominated Government, while being located in the middle of the Oromo region. Traditional power struggles lead to obvious tensions. In many ways, the creation of entities such as the municipal courts, which are focal points for judicial excellence and competition, is an important consideration against this political background.

Dire Dawa, Ethiopia's second largest city, currently functions with an interim form of governance combining state and municipal duties, and is directly accountable to the Prime Minister. City administration is centralized in an administrative council. While a municipal charter is under development, tensions between different ethnic and religious groups and political instability have slowed this process. Currently the city is subject to Federal law and the federal court system.

Legislative Branch

Federal

Although the 1995 Constitution established two representative bodies for the federal government following a parliamentary model, the Ethiopian Parliament is not bicameral in a traditional sense. While the House of Peoples' Representatives has fairly traditional legislative and oversight functions, the House of Federation has a unique constitutional role to safeguard and ensure the interests of the country's many nations and nationalities.

The 1995 Constitution "is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes [the] Constitution shall be of no effect."²³ Powers and functions of the federal government are enumerated in the Constitution but may be delegated to the states "when necessary."²⁴

The House of Peoples' Representatives is popularly elected and exercises federal legislative and oversight functions to define the powers of government and control revenue sources.

The House of Peoples' Representatives is the highest authority of the federal government and can legislate on all matters of federal jurisdiction.²⁵ In addition to other duties, it also approves the appointment of federal judges. The majority party in this House forms and leads the executive.²⁶

The House of Federation is elected by state governments (State Councils) through a system of proportional representation, and has unique quasi-judicial duties to interpret the constitution, decide constitutional issues, protect the rights of the nations, nationalities, and peoples of Ethiopia, decide issues of secession and self-determination, and direct federal intervention if any State "endangers the constitutional order."²⁷ The House of Federation has some power to determine the use and apportionment of joint revenue, but otherwise has no legislative authority.

The Council of Constitutional Inquiry is organized by the House of Federation and has eleven members: the President and Vice-President of the Federal Supreme Court, six legal experts recommended by the House of Peoples' Representatives, and three sitting members of the House of Peoples' Representatives.²⁸ The Council of Constitutional Inquiry investigates issues of constitutional

interpretation and acts as an advisory body to the House of Federation, which has the ultimate authority to interpret and resolve constitutional questions.²⁹ The Council of Constitutional Inquiry conducts the preliminary investigation of all such matters presented. If it determines that no constitutional interpretation is required, it will remand the case to the courts; if the Council decides that constitutional interpretation is necessary, it investigates and submits recommendations to the House of Federation, which makes the final decision.

State

The 1995 Constitution sets forth the powers and functions of the states.³⁰ States have the power, *inter alia*, to enact and execute state constitutions and other laws, to protect and defend the Federal Constitution, and to establish a democratic order based on the rule of law. All powers not expressly granted to the federal government, or concurrently to the federal and state governments, are reserved for the states.

State Councils represent the highest level of state authority, and may legislate on all matters falling under state jurisdiction.³¹ Most states have only a single parliamentary house that both enacts laws *and* decides state constitutional issues. In at least three states, however, second legislative houses have been established to decide state constitutional issues, similar to the role of the federal House of Federation. Where they exist, these separate constitutional decision-making parliamentary bodies are known at the state level as the House of Nationalities.

Municipal Districts

In addition to other enumerated duties, the Addis Ababa City Council drafts and enacts legislation concerning municipal affairs and jurisdiction, establishes judicial bodies, and defines their powers and functions in accordance with the City Charter.³²

Pending development and passage of the anticipated municipal charter, Dire Dawa does not have legislative authority. The federal legislature currently enacts laws governing Dire Dawa.

Judicial Branch

In accordance with the key areas of focus outlined above, this assessment concentrated primarily on issues concerning the qualifications, training, and selection of judges, judicial independence and accountability at state and federal levels, and, to a much lesser extent, certain issues regarding basic court functions and administration. These categories are highly intertwined, and many of the findings necessarily overlap. To the extent possible, they have been separated or cross-referenced.

In general, the judicial branch in Ethiopia suffers from dismal conditions of service, staff shortages, a lack of adequate training, debilitating infrastructure and logistical problems.

Federal Courts

The 1995 Constitution declares the independence of the judicial branch and articulates the structure and powers of the courts.³³ The federal courts were established by Proclamation 25/1996, and consist of the Federal Supreme Court, the Federal High Courts, and the Federal First Instance Courts. These courts have original and appellate jurisdiction over cases arising under federal law, and in other specified instances. The vast majority of federal court judges are located in Addis Ababa, with a small group in Dire Dawa. The federal courts are generally seen as central government courts. They are staffed by people from the more privileged sections of the community living in Addis Ababa and are largely alien to the rest of the country.

The Federal Supreme Court includes a cassation bench with the power to review and overturn decisions issued by lower federal courts and State Supreme Courts containing fundamental errors of law. At the same time, the division between Federal and State law is relatively unresolved and, in practice, state courts often resist what they perceive as encroachment on their territory. The more powerful states have created their own cassation benches that tend to have little or no ties to the federal court structure. Further, judicial decisions in general do not create precedent and, in theory, are not binding on lower courts. However, in practice, superior courts tend to insist, de facto, on the binding nature of their precedents, often in the guise of

challenging the competence of the lower courts. This means that both federal and state superior courts are also reluctant to create filters limiting the appeals process.³⁴

Each court has a civil, criminal, and labor division with a presiding judge and two other judges in each division. The Federal Supreme Court has thirteen members and sits in Addis Ababa. The Federal High Courts and First Instance Courts sit in Addis Ababa and Dire Dawa- the federal high court currently has about 35 members, while the federal first instance court has about 59 sitting members. In addition, Federal High Courts have been established in five states due to the inherent weakness and critical incapacity of those particular state judicial systems.³⁵ The establishment of these federally run states is arguably, in part, a way of maintaining control and stability within less stable regions. Federal courts at any level may hold circuit hearings at any place within the state or "area designated for its jurisdiction" if deemed "necessary for the efficient rendering of justice."³⁶

Federal courts have jurisdiction over cases arising under the Constitution, federal laws, international treaties, and particular parties and places identified in federal law.³⁷ Federal jurisdiction also includes major criminal matters and specific types of civil disputes. Federal courts apply federal laws, international treaties, and relevant state laws unless they are in conflict with federal or international laws. Issues of constitutional interpretation cannot be decided by the courts, and must be referred to the Council of Constitutional Inquiry.³⁸

State Courts

The Constitution directs the creation of three levels of state courts: the State Supreme Court (which also incorporates a cassation bench to review fundamental errors of state law), High Courts (or the Zonal Courts), and First Instance Courts (or the *Woreda* Courts).³⁹ State Supreme Courts sit in the capital cities and have final judicial authority over matters of state law and jurisdiction; they can also exercise the jurisdiction of the Federal High Court if none exists in that state.⁴⁰ Similarly, State High Courts sit in the zonal regions and can assert the jurisdiction of Federal First Instance Courts in addition to state jurisdiction.⁴¹ Arguably, while the federal courts are attempting to maintain control over the state courts, the state courts are trying to claim as much federal jurisdiction as possible.

Under the *Derg* regime, the Ethiopian judicial system was unitary and the country was divided into 14 areas in which the High Courts would sit. Decentralization has created many more districts (*woredas*), as well as the many levels of state and lower courts.

Although not referenced in the Constitution, some states have established Social Courts (a/k/a *Kebele* Courts) that handle small claims and minor disputes.⁴² These Social Courts are created and recognized under state law, are part of the official judicial system, and operate at the *kebele* level. In some situations state law stipulates that cases must be brought first to the Social Courts, although appeals can be made to the First Instance (*Woreda*) Courts. Non-professional judges who are either elected or nominated within the local community generally staff *kebele* courts. Social Courts are the source of legal redress for the vast majority of Ethiopians.

Municipal District Courts

The Addis Ababa City Charter creates two levels of City Courts exercising municipal jurisdiction— First Instance and Appellate Courts.⁴³ There is no Supreme Court in the municipal system, although a cassation bench is included within the Appellate Court. Cassation review of Appellate Court decisions can be brought before the Federal Supreme Court, which also decides jurisdictional conflicts between the city and federal courts.

The Court system in Addis Ababa reflects a similar division between Federal and State courts. In general, the municipal courts are staffed by new young lawyers from outside the more traditional circles that populate the federal court system. This new group of lawyers is arguable very active and innovative, and have developed a number of practical approaches to specific issues facing the municipality.

The Addis Ababa City Charter allows the operation of *Kebele* Social Courts (more than 200 *kebeles* exist in Addis Ababa) to hear petty criminal offenses and civil disputes up to 5,000 birr (approximately USD\$580). Considering that the average city employee earns 300 Birr a month, these courts service the vast majority of the community. Social Court decisions can be appealed to the First Instance Courts.

The City Charter also confers judicial powers on the following entities: the Labor Relations Board, the Civil Service Tribunal,

the Tax Appeals Commission, and the Urban Land Clearance Matters Appeals Commission.

Dire Dawa does not yet have a formal municipal court system independent of the federal courts. Social Courts operate at the *kebele* level, but their legal authority is unclear and no appellate courts currently exist.

Other Courts

The Constitution of Ethiopia permits the adjudication of disputes relating to personal and family matters in accordance with religious or customary laws, but only with the consent of all parties.⁴⁴ Theoretically, traditional law and the formal legal system, operate in tandem, rather than in conflict. Official recognition can be granted to both religious and customary courts.⁴⁵ At the same time, traditional systems currently have no jurisdictional or legal relationship with the official system, and there appears to be many areas in which the two legal systems significantly conflict. Furthermore, customary justice differs based on the locality and local traditions, and is not codified. There are no formal links between the traditional formal systems and no designated appellate route for traditional courts into the formal legal system unless a constitutional argument can be asserted to obtain access to either a federal or state cassation bench, or the House of Peoples' Representatives. For these reasons, arguably the real judicial world for the immense part of the population is outside the "formal" system.

To date, *Sharia Courts*, applying Islamic laws, are the only *religious courts* that have been officially established in states, districts, and municipal districts. Sharia Courts apply only Islamic laws and have their own appellate system. They are, however, required to follow the procedural rules of ordinary courts and receive their budgets from the Federal Judicial Administration Commission. Parties must voluntarily submit to the jurisdiction of these courts, or the dispute should be redirected to ordinary justice.⁴⁶

Customary/Traditional Courts are not yet widely established by law, despite their constitutional recognition.⁴⁷ Unlike social courts, customary courts are only recognized, not created, by law. The authority of these courts stems from tradition and local customs. These courts have evolved from traditional arbitration committees or

elder councils, which do not have legal authority, but carry moral force and still operate widely as primary decision-makers in rural areas throughout Ethiopia. It appears that people often submit disputes to these courts when they do not have adequate evidence to support a case before an official court.⁴⁸

While it is clear that a pluralist legal system exists in Ethiopia, current reform efforts appear to have little understanding of or engagement with the traditional systems in current reform efforts. Customary and traditional courts rulings may conflict with the provisions and rights provided under the current constitution, particularly with regards to women and children. At the same time, the continuing widespread use of traditional systems suggests that they may contain features that appeal to users. Strengthening traditional courts, while holding them accountable to constitutional principles, could alleviate the current burden of the formal system on the state. While further diagnostic work is clearly necessary, it is clear that for many people traditional systems are speedier, cheaper, and both physically and culturally closer to them than the formal courts.

Reforming the legal and judicial sector presents the added complication of dealing with a 'two-tiered' or 'pluralist' system- made up of the formal legal system and the varied traditional legal system. While these systems currently function almost completely separately, and there is little agreement on how or if such different systems should or could work together, it is clear that this issue should be considered carefully. An analysis of this issue is clearly beyond the scope of this paper, however, it became apparent in undertaking the assessment that it is an area in which further in-depth research is certainly required. As indicated above, the realm of traditional justice is the *real judicial world* for most Ethiopians, and currently allows for a level of access that does not exist in the formal system. It is crucial that any reform agenda engage with local level legal systems- in order to make informed policy choices and enable the design of sustainable reforms that improve access to justice at all levels of the community.

Recommendations

Given that a majority of Ethiopians reportedly do not use the formal court system, there is a clear need for research and consultation on traditional justice systems and on their relationships to the formal legal system. When considering reforms to traditional systems, knowledge should also be drawn from lessons learned from reforms of customary systems in other countries.

It is recommended that in-depth research of traditional systems be undertaken in conjunction with more practical efforts to create links between traditional systems and the formal system. The extent to which traditional justice can be incorporated or harmonized with more formal dispute resolution mechanisms or systems is another important area for future exploration and dialogue.

Judicial Administration Commissions

Judicial Administration Commissions have been established by legislation at all levels of government— federal, state, and municipal district. In general, these commissions have extensive powers and duties to recommend candidates to fill judicial positions, issue and enforce disciplinary and ethical standards, investigate disciplinary complaints, and decide issues concerning the transfer, salary, allowance, promotion, suspension, medical benefits, assignment, and termination of judges.⁴⁹ At the federal level, the Commission has nine members, designated by law stipulating their judicial and parliamentary positions, the six most senior judges from all three courts, along with three members from the House of Peoples' Representatives.⁵⁰ At other governmental levels, Commission membership is comprised of a comparable designated mix of judicial and legislative representatives.

Judicial Branch

Judges

Prior to the overthrow of the *Derg* in 1991 and the enactment of the 1995 Constitution, judicial training reportedly took the form of practical mentorship with older experienced judges sitting on three-person benches. Many of the judges and legally trained personnel during this period came from a single tribe. While there is some apparent nostalgia for the caliber of judges from this era, the judiciary of this time was also seen as an integral part of an oppressive regime. During the overthrow of the *Derg*, members of the legal profession and the judiciary were targeted for retribution. Most all the sitting or experienced judges from this time were killed or fled.

The new levels of decentralized federal/state judicial systems introduced in the 1995 Constitution created numerous new courts as well as enormous staffing demands. The remaining pool of legally-trained personnel was utterly insufficient to meet those demands. Consequently, professional qualifications were relaxed to meet immediate needs and to bring younger judges into the new system who were unconnected with the prior regime. It was also expected that these new judges would be more broadminded, open, and receptive to change and innovation. As a result, many judicial positions have been filled with people who have had minimal, if any, legal training and experience. At the same time, opening up legal training to different sections of the community has certainly increased the diversity of the profession.⁵¹ In turn, this has led to a certain amount of rivalry between the different parts of the legal system.

Although the national government has devolved power through decentralization to the states, little has been done to develop ties, allegiance, or professionalism within the judiciaries. There are currently no professional judicial associations. There is a clear divide and rivalry between the federal judiciary and state court judges that hampers the development of such ties. It was reported that on the one hand federal courts act as if they are superior to other courts, while at the same time state courts actively resist federal interference. For example, the Oromo Supreme court lies just across the street from the Federal supreme court in Addis Ababa, but there is virtually no ties or contact between the two institutions.

Moreover, there have been a number of complaints that the judicial system is severely hampered by inadequately trained and inexperienced judges. Further, less than optimal work conditions make it hard to retain those legal professionals with more training and experience. Judges' salaries can barely support even the most modest of lifestyles- a newly hired judge's salary in the Federal courts was 800 Birr (some US\$ 100) a month. Under these circumstances, graduates will serve as judges for two to three years, in effect using the courts as a training ground for the private sector. One result of the poor conditions of service has been an acute shortage of judges. These shortages are felt most in the regions. In turn, the deplorable conditions of service and lack of training are seen to contribute to the lack of prestige and authority judges command in the eyes of the general public.

Complaints were also made about the lack of clear and consistent standards and procedures used to make judicial appointments and employment decisions, the lack of transparency and openness in the proceedings of the various Judicial Administration Commissions that determine judicial selection and terms of employment, arbitrariness and lack of quality and predictability in decision-making, and the lack of professionalism in general. These problems were reported to worsen progressively and dramatically as the courts descend into their lower levels.

There is currently no judicial career path in Ethiopia. A law degree is not required to become a judge at any level— even to sit on the Federal Supreme Court. A federal judge can be any Ethiopian who "is loyal to the Constitution; has legal training or acquired adequate legal skill through experience; has a good reputation for his

diligence, sense of justice and good conduct; consents to assuming judgeship; and is not under 25 years of age."⁵² Federal judges are more likely to be lawyers or have legal training, but are often young and recent law graduates with little to no practical experience.⁵³ The dearth of legally-trained judges at the state level is much more severe and was reported to drastically affect the quality of appointments and judicial decisions; state judges, especially at the district level, customarily have at most a three to six-month legal training course. This situation is arguably improving due to the establishment of the Ethiopian Civil Service College, which has begun training people from every region in the country, regardless of ethnicity or income. Clearly, non-lawyers are less likely to know or apply the law correctly, or understand core principles of legal and judicial ethics, separation of powers, and other legal tenets.⁵⁴

There is a shortage of training available to judges. A number of training facilities and law courses have developed and are offering a range of practical training developing professionals. Some limited training has also been offered to sitting judges through the Federal Supreme Court and donor programs. In 1997 the United States Agency for International Development (USAID) undertook a number of judicial training activities and, thereafter, compiled and distributed copies of laws to judges. Criticisms of these earlier efforts was that the training took a top down approach that was largely formulaic and impractical. A Judicial Training Institute has recently been created by Parliament under the Federal Supreme Court, as part of a project with the French Embassy, however, as yet the institute is not operational and the course offerings have not been defined.⁵⁵

Under the Constitution, the President and Vice-President of the Federal Supreme Court are appointed by the House of Peoples' Representatives upon the recommendation of the Prime Minister; other federal judges are appointed by the House of Peoples' Representatives from a list of candidates selected by the Federal Judicial Administration Commission.⁵⁶ To date, the Prime Minister has accepted all of the Commission's recommendations. The state systems mirror the federal process. The President and Vice-President of the State Supreme Court are recommended by the Chief Executive Officer and appointed by the State Council; all other state judges are appointed by the State Council based upon recommendations made by the State Judicial Administration Commission.⁵⁷

Social Court judges at the *kebele* level have no legal training. Their decisions can be appealed to State First Instance Courts, and many such appeals are filed. Processing of these appeals imposes considerable cost and additional burden on the system and parties, who often have to leave their farming and agricultural activities for days at a time to access the nearest First Instance Court to hear the appeal.

The Constitution prohibits the removal of judges before retirement age⁵⁸ except for violation of disciplinary rules, gross incompetence or inefficiency, or illness that prevents the judge from carrying out his responsibilities.⁵⁹ Such determinations are made by the State and Federal Judicial Administration Commissions, which likewise decide issues of appointment, promotions, disciplinary complaints, and other conditions of employment. To date, four federal judges have been removed because of ethical violations, and the Federal Judicial Administration Commission has issued warnings to three other judges. There are no published criteria or clear rules describing the standards and procedures applied, or how these decisions are made. No route for appeal exists.

The Judicial Administration Commission is chaired by the president of the Federal Supreme Court, and is made up of the vice president and most senior judges of the Federal Supreme Court, the president of the federal high and first instance courts and 3 members of the legislature. Commission proceedings in general were reported to lack transparency and accountability, creating the potential for arbitrary decision-making, favoritism, and politicization of the process. Judicial vacancies are not advertised, and it is unclear how the pool of candidates is selected and evaluated. No examinations or substantive performance evaluations are conducted, and judges informed us that they do not know how or on what basis promotion decisions are made, and that they are therefore unable to challenge these decisions. Complaints were voiced that appointment and promotion decisions have appeared at times not to be based entirely on merit. Again, these decisions are not open to scrutiny or challenge by the judges affected. Similarly, no procedures are in place for the Commission to hear and decide disciplinary complaints under the ethical code of conduct, and participation by the judges under investigation has reportedly been discouraged. Many judges and lawyers

interviewed strongly objected to the lack of process and openness of the Commission, and complained that it encourages political favoritism and discourages the retention of good judges on the bench. The lack of standards and transparency in the Commissions' decision-making was cited as one reason for very high rates of judicial turnover, especially at the Federal First Instance level.

Recommendations

Without a credible and competent judicial bench to apply and administer laws, the establishment of the rule of law will remain unattainable. This is a critical and core problem underlying the entire legal and judicial system. The resolution of other problems in the legal and judicial sector will require serious improvements in this area.

The deplorable conditions of service within the judicial branch need to be tackled if any effective reform of the sector is to occur.

Judges need to be better-qualified through legal education, training, and experience. Judicial training programs should incorporate theory and practical applications.

The framework and procedures for judicial appointment and retention should be re-evaluated and restructured. Judicial positions should be advertised publicly and efforts should be made to attract a wider selection pool of more mature, experienced, and higher caliber candidates. Judicial Administration Commissions should have clear standards, procedures, and rules for decision-making with regard to judicial selection, promotion, discipline, termination, and other conditions of employment; their proceedings and operation should be more open, transparent, and accountable. Appointments and promotion decisions should be based on merit and clear criteria, as well as performance evaluations. Judicial professionalism and networking should be promoted and facilitated through association building.

Judicial Independence and Accountability

The 1995 Constitution unequivocally declares the independence of the Ethiopian judicial branch.⁶⁰ In and of itself, however, the declaration of independence does not equate to the creation of independence if institutions and systems are unable or unwilling to shoulder the burdens and share the power.

There are a number of historical and traditional contingencies that make it difficult to develop a culture of checks and balances envisaged in the constitution in Ethiopia. A long history of centralized governmental authority and a judiciary subjugated to the executive branch has fostered a weak judicial branch with reduced capacity to exercise genuine independence, as well as a reticence of other branches to treat the judiciary as either truly independent or co-equal. Ethnic and State conflicts also serve to undermine the commitment to decentralization and federalism. Support for judicial independence is seen by some as a plot to support political factionalism. These problems are even more exaggerated at the state level, where executive and judicial functions have historically been fused and capacity to implement reforms is severely limited.

Various practical and structural impediments to judicial independence remain to be addressed and overcome. The primary issues can be analyzed in the context of four main categories: constitutional decision-making authority in the parliament instead of the judiciary, the composition of the Judicial Administration Commissions, independence issues at the federal judicial level, and independence issues at the state judicial level.

Constitutional Decision-Making Authority

As described previously, the power to interpret the constitution and resolve constitutional disputes rests in the House of Federation, with the advice and assistance of the Council of Constitutional Inquiry. Although the Constitutional Assembly debated the creation of a Constitutional Court, it ultimately decided that this authority should reside in the House of Federation, which is comprised of at least one representative of each nation, and one additional representative per every million membership.⁶¹ In Ethiopia, national and group rights carry a significant constitutional dimension, and

we were informed that the constitution was intended to be both a legal and political document accommodating the many nations and peoples comprising the country.

Only if a constitutional decision is indispensable to case resolution will the matter progress to the House. If the case can be resolved without interpreting the Constitution, then it must. These rules apply to all federal courts, but similar approaches have been taken by the states, as well. The court decides initially whether to certify the question to the House, then the Constitutional Council screens the case to determine whether resolution of the constitutional issue is indeed necessary. The litigation is stayed pending that determination. Most of the cases presented to date have been dismissed and remanded to the courts by the Constitutional Council after concluding that resolution of the constitutional issue was not essential. Such dismissal can be appealed to the House of Federation, but that has never yet been done.

If the Constitutional Council decides that the constitutional question requires interpretation, it submits the dispute, along with its recommended resolution, to the Legal Affairs Committee of the House of Federation. Prior to the official submission, however, the House has a cadre of lawyers in *ad hoc* and standing committees following the outcome and advising all key actors in order to build consensus and facilitate a smooth resolution. The recent development of these committees staffed with capable lawyers and other professionals was reported to have markedly improved the informational flow to the House and ultimate consensus and acceptance of decisions issued. The House has the ultimate power to decide the constitutional issue and can disregard the recommendation of the Constitutional Council. Since the enactment of the 1995 Constitution, however, only three cases have actually proceeded to the House for decision, and in each of those cases the House has adopted the Council's recommended resolution.

The role of the House of Federation in determining constitutional questions, and lack of judicial authority to do so, raises issues regarding judicial independence. These issues have been debated significantly. Clearly there have been serious concerns about the effect of the arrangement on the separation of powers and on the development of the Judicial Branch as an empowered and respected

branch of government. On the other hand, a number of fairly convincing justifications are advanced in support of this approach. In general, it is argued that the Courts do not have the capacity or credibility to decide such fundamental and sensitive questions of national importance. The Ethiopian judiciary has been historically weak and continues to lack public trust and respect. It is believed that if they were made responsible for deciding divisive constitutional issues, their decisions would be unlikely to receive public support and could potentially further disunite a nation already struggling to maintain cohesion. The collective membership of the House represents the nation as a whole and is supposed to establish a sense of Ethiopian identity and common interests notwithstanding historical conflicts and highly factionalized and decentralized populations. As such, it has a degree of public confidence not yet achieved by the judicial branch. These arguments are supported by the general response to the decisions that have been made by the House of Federation to date; although the cases have been very politically divisive and hotly contested, the decisions issued by the House have all been well-received and accepted.

Although the constitutional authority of the House may be unsettling from a jurisprudential perspective, it appears that the process serves its purpose for now, and that there are many more pressing and urgent needs requiring attention in the legal and judicial sector. Only three cases have required constitutional interpretation to date, and thus it appears that constitutional arguments are not being raised with a frequency that would create judicial bottlenecks below and constitute a real hindrance to case resolution. Moreover, the judicial branch generally seems to have accepted this course, and its overall lack of capacity and institutional credibility to handle constitutional disputes does present real concerns. The issue will predictably arise in the future as the courts gain strength and constitutional arguments gather momentum and force, but the team concluded that significant problems are unlikely to appear in the near future.

Composition of the Judicial Administration Commissions

As previously described, the membership of Judicial Administration Commissions at both federal and state levels includes several representatives from the legislative branch, although judges

are in the majority. These entities exercise a great deal of power over the judiciary, and objections have been raised to the inclusion of legislative members as violating the separation of powers and threatening independence. Currently, one of the House members sitting on the Federal Commission is also a government minister. The presence of the executive on this Commission was argued to have a chilling effect on its ability to act independently; judges technically have a majority, but may not effectively influence or exercise majority power because of their unequal political presence. The extent to which this creates a real problem appears to depend largely on the individuals involved, and will probably lessen as the composition of Commissions change and the judicial branch gains strength and confidence. The team concluded that more serious issues appear to be presented by the lack of criteria, transparency, and accountability in the conduct of Commission proceedings and decisions.

Independence Issues at the Federal Level

General concerns were raised alleging political motivation and control of judicial appointments; these concerns could be addressed by the improvement and clarification of the selection criteria, and by increasing transparency and accountability in the Commission proceedings and decisions. Although the legal framework mandates judicial independence, the executive nonetheless is perceived by some as having substantial influence on certain aspects of federal judicial operations. For example, the Ministry of Finance administers the budget, which is supposed to be the exclusive role of the judiciary under the 1995 Constitution. This division of power has had real consequences; in 2002, the Ministry of Finance rejected a salary increase for judges that had already been negotiated. Additionally, the judiciary does not administer its own staff or determine qualifications, function, and recruitment of support staff; these functions are controlled by the Civil Service Commission.

Internal (or vertical) independence is arguably a problem at the federal level, although it was not widely reported. In the past, telephone calls have allegedly been placed from higher-level judges or Commission members to First Instance judges questioning decisions and perhaps trying to influence case outcomes. In at least some instances, the First Instance judges were able to hold their ground

without repercussions. In most cases, however, the government has no real substantive interest in the outcome and this has not presented a significant problem. In cases where one of the parties is a state enterprise engaging in commercial activities, obtaining and enforcing a judgment against the State has reportedly been problematic. It was reported that where government interests are at stake, direct interference has been noted; influence of the executive is otherwise much less apparent.

Independence Issues at the State Level

Complaints were more widespread of interference with judicial independence and operations at the state level, although some improvements are reportedly being made. External (or horizontal) independence issues, involving executive interference, were the major complaints heard. The concept of state governments and separation of executive and judicial branches is very new and the executive allegedly tends to be less receptive and more authoritarian in the regional states. The executive has a long history of concentrated power encompassing the courts. We were informed that in some areas the basis for separation of powers is not yet fully appreciated or understood. Accountability is not institutionalized, and officials still have a tendency to operate autonomously.

There are reports that Regional Administrators have more blatantly interfered with the administration of justice at this level by such inappropriate actions as writing letters firing judges, dictating their decisions, deciding or reducing salaries. There were reports of problems obtaining enforcement of judicial orders—such as decisions to release prisoners that have been countermanded by the executive. In one case, a judicial decision so angered the executive that he ordered the imprisonment of five judges in retaliation. Reportedly, judges have been rotated or transferred to undesirable posts if they issue unpopular decisions. For example, during the course of a single judicial administration project in the regions of Beneshangul/Gumuz, the State Supreme Court President was changed four times at the direction of the executive.

Moreover, there are clear tensions between the state government and the judiciary. In many cases this has severely undermined judicial independence. Various reports were made of the executive

trying to rule with an "iron fist". It was, however, reported that the situation has begun to improve and that government officials are becoming more persuaded that the justice sector is as important as other sectors to reducing poverty. Judges are reportedly growing to appreciate and respect their entitlement to independence, and are beginning to more forcefully resist attempts to exert undue influence.

The only recourse state judges have to contest arbitrary actions is to lodge complaints with their State Judicial Administration Commissions, which are generally perceived as weak and ineffective in protecting the judiciary's rights and interests. The decentralization of power has caused oversight problems, particularly at the district (*woreda*) level, where violations are more remote and more difficult to correct. District Administrators and District Councils were claimed to have interfered substantially with judicial independence by manipulating budgetary allocations, such as denying salaries in retaliation for particular decisions, limiting resources, and refusing facilities and transportation costs. This type of retaliation is reportedly not uncommon. These Councils have the power to appoint, transfer, and fire judges. State Councils also control the budgets of state courts, and interviews revealed considerable confusion and lack of clarity or consistency in who and how judicial budgets are administered at the local level. The judiciary complained of constantly having to solicit funds from the executive, which inhibits its ability to build strength and independence. The courts collect various fees in the course of their operation, but these fees are not applied to the operation of the courts, and go directly to the Treasury. This troublesome and dependent relationship between the judicial branch and the State Councils presents serious independence issues.

Recommendations

Procedures and standards should be in place governing the operation of Judicial Administration Commissions at both state and federal levels. This is extremely important given the overall inconsistency applying and enforcing the law between the Federal, regional, and district levels of the judiciary.

Management capacity of the judicial branch should be enhanced. Subsequently, control over budgetary allocations and judicial salaries across all levels of the judiciary should be reviewed and revised to avoid manipulation and external interference.

At the state level, the independence of the judiciary from the executive branch should be reinforced and strengthened; systems should be evaluated and restructured to provide effective avenues for judicial recourse in the event of executive interference, prevent retaliation, and assure enforcement of their decisions by the appropriate authorities.

Court Administration

Due to the complexity and multiple layers of Ethiopia's judicial system, as well as the unavailability of statistical information except at the highest levels, reliable and detailed information concerning court administration is difficult to compile. Even the total number of courts and judges at different levels is difficult to ascertain. There are reportedly anywhere between 750 to 2,000 courts throughout the official system;⁶² these totals do not include Social Courts, or any of the courts operating outside the formal system. Similarly, the estimates for the total number of judges ranged from 1,450 to 4,000.

Judges have general administration and management authority over their courts, with the significant exceptions of personnel and budgetary matters described in the preceding section. The courts prepare and submit their own budget proposals, but are not entitled to a budget based on objective criteria (such as number of cases handled, or percentage of state or federal budgets). Judicial salaries are negotiated through the various Judicial Administration Commissions, and in theory may not be altered or reduced. (See discussion above)

Judges do not have court clerks or equivalent administrative personnel or facilities to expedite the drafting or preparation of decisions and other records. The team observed judges spending significant time in open court writing out case decisions by hand, many parts of which are standard (e.g., type of case, names of parties, and headings). Courts in rural areas generally record cases and judgments with the assistance of scribes. Scribes are purely independent professions who, in a largely illiterate society, perform a valuable service.

In terms of infrastructure, several of the facilities and courtrooms visited were essentially adequate and suited for their operation, although certainly far from international standards. Others, however, were entirely inappropriate and unequipped to handle even the most rudimentary demands of a judicial system. At the state district levels in particular, the lack of infrastructure was sometimes glaringly poor. Many courts, especially at lower levels, are housed in buildings neither designed nor appropriate for use as courtrooms, and which lack facilities to conduct hearings and process case files. One District Court has three judges and staff located in two rooms with no courtroom or space available to conduct hearings unless one of the offices is vacated. If an office can be vacated, hearings must proceed one-by-one, even though there are three judges; if neither office can be vacated, the cases are adjourned until a later date when space can be found for the hearing. Some courts do not have electricity, running water, a bathroom, copies of laws, or basic supplies or equipment. Often there is a single telephone through which calls can be received, but not made. The filing area is in darkness even in the light of day. Obviously, all records are kept manually. At times, the parties must provide their own paper and pens to file court documents because supplies are so limited. The court does not have facilities to provide copies of decisions the parties wish to appeal.

The situation is not as dire in all courthouses, but where they are, these types of serious deficiencies and lack of infrastructure are not just inconvenient, but also impede access to justice. When cases have to be adjourned and rescheduled due to space limitations, parties often have to take days off to walk back and forth from their rural communities. Merchants and farmers thus lose otherwise productive time traveling back and forth to court.

It is important to note that improvements in this area are currently being undertaken with the assistance of the Canadian International Development Agency's (CIDA). CIDA commenced a Court Administration Reform Program (CARP) in 1997 with a study followed by a pilot program in the Federal Supreme Court to improve court efficiency and operations. This program is now in its second phase of implementation (1999-2004), with programs being replicated in all federal courts and in two regional states. While the project has experienced some success in various court administration and management practices in the Federal Supreme Court, there is clearly still a lot to be done.

Recommendations

Basic facilities must exist to provide justice. Adequate judicial operation cannot be expected without remedying some of the basic problems.

Judiciaries require basic facilities and infrastructure to permit them to operate. Reform strategies should take into account the effects of this basic lack of equipment and resources.

The lack of legal information is a pressing problem in Ethiopia. At a basic level, there should be an effort to unify case filings through the adoption of standard language—be it paper based, or by other means—that would allow for the indexing of cases and compilation of data on types of cases entering the system. This could ultimately improve the overall jurisprudence in the courts and the overall transparency of judicial operations and decisions at all levels.

Legal Education, Training, and Licensing

The first law faculty was established in 1963 in what is now Addis Ababa University (AAU). AAU has been the primary source of legal education in Ethiopia, and offers law degrees (L.L.B.) that require a five-year course of study (after high school and passing an exit exam), and law diplomas requiring four years of part-time evening studies; a lower-level degree (L.L.M.) has recently begun and will graduate students in two to three years. AAU has 17 law professors, several of whom are currently on leave or sabbatical, and a student body of approximately 600. AAU graduates approximately 100 students annually with law degrees or diplomas. There are no specialized curricula within any of the degree offerings. AAU has awarded approximately 1200 L.L.B.s and 2000 law diplomas in its 40 years of existence.

The Ethiopian Civil Service College was established in 1995 to increase public training in an effort to confront the shortage of skilled personnel available to staff regional governments. The College included a law faculty, which, because of the urgency of staffing needs, began as a two-year degree program and later was extended to four years. The College was the first ever higher education institution actively engaged in training people from every region in the country, and therefore counterbalancing ethnic bias and separatism. It implemented an objective selection process irrespective of

income. It provided people, often the first ever in their region with access to higher education. Trainees are required to return to their region after graduation to serve in their new capacity. The program's aim is to enable each region to build up its own capacity, while at the same time resisting centrifugal forces of division so dangerous for the country.

To date, approximately 600 lawyers have graduated from the College. The College also offers legal diploma and certificate programs in as few as six months. The College is in the process of phasing out its law degree program, and in the near future will offer only short-term legal certificate programs.

In recent years, five regional law faculties have been established outside the capital in a program directed by the Ministry of Education. The quality of these law faculties and programs is questionable, and they are currently undergoing assessment. In addition, there are four private law schools in the country. Two of these schools have embarked on offering degree programs this year. Resources and facilities of all law faculties, including libraries, are variable, but generally quite limited.

Law school graduates are required to pass a bar examination to become licensed to practice. The requirement is waived if the new law graduate provides five years of public service to the government, in such positions as judge, prosecutor, or professor.

AAU and the Ethiopian Civil Service College have been the main providers of legal training in Ethiopia. Since law degree training was first offered in 1963, an average of 40 to 60 lawyers have graduated per year from AAU and a total of 150 have graduated from the ECSC since 1997. During this period the national population has doubled to over 65 million. In total, about 2,000 law degrees, and about 2,400 diplomas have been awarded. In order to service even the basic requirements of the current system, the country requires in excess of 8,000 lawyers. Currently there are about 3,130 students enrolled in the law faculties of AAU, Debu University, Mekelle University, Jimma University, Alamaya University, Bahir Dar University and Civil Service College and about 810 students are currently enrolled in the Private College law schools of the country. More than 90 percent of the students of private college law schools are diploma program students.

Recommendations

The shortage of trained lawyers is severe and the current law schools and facilities are inadequate to meet both current and foreseeable needs. Law faculties and other legal training programs must be improved and expanded to satisfy professional training needs, but this must be planned and carried out in a manner that will increase both the quality and the quantity of offerings. Merely certifying schools and granting law degrees or certificates to poorly-trained students would not address the needs, and instead would worsen the overall situation in the long run by infusing incompetent graduates into the system, who might predictably seek judicial or other public-sector positions to avoid taking the bar exam. One possible option is to create legal clinics within law schools to provide practical experience to prepare law students to actually practice law and equip them with needed skills prior to graduation.

It is of some concern that the Ethiopian Civil Service College is phasing out its law degree. The experience of the ECSC should have been studied in order to draw-out lessons in supporting programs that encompass ethnic and regional diversity.

The serious deficiency in legal education, namely its availability, quality, and facilities has widespread negative implications for access to justice. Law libraries should be improved to offer better and more comprehensive and professional collections. Consideration could be given to the creation of a national repository library following a comprehensive study of needs and presentation of viable options.

Availability of Laws and Regulations

The publication and dissemination of laws and legal reference materials are extraordinarily limited. A single state enterprise - the Berhanenna Selam Printing Press - publishes legislation (known as "proclamations") in a newspaper-like format known as the *Negarit Gazeta*, in both Amharic and English, chronologically by date of issuance. Only the basic codes (family, commercial, civil, criminal, etc.) and Constitution are collected in a consolidated format. Other than those fundamental laws, revisions do not accompany or incorporate the original law being modified; the person searching must know the publication date to locate the laws. Compilations of the *Negarit Gazeta* are published annually in chronological order, without index, annotations, or updates. Copies of the *Negarit Gazeta* can only be obtained at the publisher's offices, which provides very limited service and hours of operation. Computer compilations and electronic access to laws are not available.

Judges at lower judicial levels complained that they do not have copies of laws or updates, particularly at the district levels. Courts must sometimes adjourn proceedings in order to locate copies of pertinent laws or revisions. Laws in force are not readily available to judges, lawyers, or the public, and draft laws are not published. In 2001, the U.S. Agency for International Development (USAID) compiled, copied, and distributed copies of various laws to several

hundred district court judges, but the program was neither comprehensive nor ongoing, and would require updating and expansion. A number of other aid organizations have also supported some small-scale initiatives. For example, with French cooperation, the first three legal books to be printed locally in 20 years were produced.

The Head of the Addis Ababa Justice Bureau explained that the legal system does not have necessary information to allow the newly-decentralized system to function effectively. Some laws have been enacted and published, but others have not. Practices are not uniform, and neither citizens nor public officials have copies or even knowledge of all the new laws. Laws and regulations are often inconsistent or contradictory, and efforts to revise and update legislation are not being undertaken in a consolidated manner. These underlying issues clearly have an effect on the dissemination of relevant information.

Recommendations

Identifying and addressing necessary legal revisions and shortcomings in legislation requires a reliable compilation of existing laws. Laws should be widely available and distributed at all levels, at a minimum to all judges responsible for their application and enforcement, and lawyers.

Current efforts to revise and update laws and regulations need to be effectively planned and implemented to ensure consistency.

Efforts should be made to index the *Negarit Gazeta*. Laws must be compiled and annotated so that current and complete information is available to the public. Laws published at the state and municipal levels should be compiled and collected separately. This is particularly important because of the potential for inconsistencies between the federal, state, and municipal laws.

Legal Profession/Bar Associations

The number of legal professionals in Ethiopia is difficult to ascertain with precision as there is no centralized recording system. The AAU Law Faculty Dean estimates that there are only 1500 lawyers in the country,⁶⁴ and that the country requires in excess of 8,000 to fill its needs under the current system.⁶⁵ Further, there are virtually no lawyers outside Addis Ababa and there is nearly no market for them. Lawyers work primarily as sole practitioners in private practice, or for the government in the public sector. There is no legal culture or framework for law firms or even partnerships, although this is in the process of being changed.

The Ethiopian Bar Association is a voluntary membership organization. It estimates that there are between 800-900 licensed degreed attorneys in this country of over 65 million people. Currently, 434 of those attorneys are Bar Association members. The Bar Association participates in legal aid programs (described in the following section), short-term legal education, law reform, and legal research. The Bar Association currently appears to be a relatively weak organization. It is closely monitored by the government and is seen by many as far from politically independent.

The Ethiopian Women Lawyers Association (EWLA) is another voluntary membership organization. Despite its voluntary nature, EWLA has a record of substantial and influential activism.

The EWLA has 80 full members who are all female lawyers, and approximately 300 associates including both women and men from other professions. Its main office is in Addis Ababa, and it has six branch offices and more than 60 standing committees, comprised mainly of volunteers, in different states. The EWLA works to provide legal aid for women, research and advice on law reform, and public education.

Legal representation is not required for parties in a dispute to appear before courts, and people most commonly appear *pro se*. Lawyers are subject to formal disciplinary proceedings by Judicial Administration Commissions. Contingency fees are permitted, but limited by law to a relatively low percentage of the recovery. The law does not provide for extraordinary damages.

Recommendations

The interest and ability of professional associations to become more active in reform should be explored. These associations should be strengthened and supported to participate and actively promote and advocate changes to the legal and judicial systems and institutions, especially with regard to policies and practices concerning the selection, discipline, promotion, and other terms of employment of judges, and laws and practices pertaining to women's rights.

Access to Justice

Access to justice for Ethiopians is one of the rights delineated in the 1995 Constitution. "Everyone 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."⁶⁶ Equality and equal protection under the law is also guaranteed, and discrimination is prohibited "on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status."⁶⁷ Information and opinions obtained in the course of field interviews indicated quite clearly that converting these rights into reality and providing mechanisms for meaningful enforcement will require confronting and overcoming a multitude of practical and legal challenges. The information and consensus of opinions expressed in those interviews are summarized below.

Practical impediments

The practical reality of Ethiopian life, especially in rural areas, is the critical context for analyzing the issue of access to justice. The public is undereducated, pastoralist, nomadic, or seminomadic, with 85 percent of the population working in the agrarian sector. As such, Ethiopia has a primarily rural population, with few urban centers. The difficulties in reaching people, and for people to reach the judicial system, cannot be underestimated.

Physical distance and costs also present enormous barriers to accessing justice. Courts now exist in most districts (*woredas*), but these are still far from where much of the rural population lives, and a person may have to leave his or her fields and walk for several days to reach the closest court. Courts have little significance to the rural population. Very few courts have the resources or ability to operate on circuits, and therefore cannot effectively move closer to the populations they serve. When determined people make the long journey on foot to the court, they often simply show up at the courthouse steps on their own with no idea how to present or defend their claims. Attitudes in the courts towards assistance to the public can be poor. Language barriers can often be a problem, and interpreters may not be available. Accommodation of needs for handicapped access is minimal. Although relatively low, filing fees may be prohibitively high for many people (although petitions can be filed for fee waivers). The claimant may in some instances be asked to provide his or her own paper and pen to file a complaint. Once the complaint is filed, delays and adjournments often follow because of backlogs, inefficiency, lack of personnel, lack of materials, space limitations, and other inadequate judicial infrastructure and inefficiency. Repeated journeys back and forth to the court for days at a time often become necessary, imposing additional significant economic and physical hardships on anyone attempting to access the official system. Judges who have little or no formal legal training, or even copies of laws, are less likely to apply correct legal standards with consistency, which leads to arbitrariness, unfairness, unpredictable results, and undermines credibility and confidence in the official judicial system.

Many of the above problems are more severe in rural areas, but plague the administration of justice at all levels. In general, wealthier classes have more access to modern courts in urban centers, and traditional local dispute resolution mechanisms are relied upon more often in rural areas. Traditional methods may result in decisions that conflict with official laws, basic human rights tenets, or the Constitution.⁶⁸ Traditional methods play a great and continuing role in Ethiopian dispute resolution, but must also be integrated with modern concepts. This integration poses significant challenges. The problem of access to justice will not be solved simply by building more courts; both the quantity and quality of justice available must be increased.

Legal Information

Access to justice is seriously undermined by the lack of awareness of, or knowledge about, the law or the formal legal system. As discussed above, even member of the legal profession have difficulties accessing relevant laws, regulations and information. There is little evidence of dissemination of information to the general community about their rights and responsibilities under the formal legal system. Large segments of the population are completely unaware of the existence or the nature of laws, legal rights, the official legal system, or courts, and there are few effective methods to create and build awareness, or provide legal services or advice. Literacy rates are low and media coverage is poor, which hinders education and informational campaigns. Even where awareness exists, the public has little confidence in the courts.

Public Defender and Legal Aid Services

Indigent criminal defendants have a constitutional right to legal representation at the state's expense.⁶⁹ In practice, this guarantee has not been fulfilled because of limited resources and public awareness. The situation differs between federal and state venues. Where representation is provided, it is mainly by non-lawyers, or public defenders with only a few months of legal training. Public defender and legal aid services for the poor are very limited and generally quite weak.

The Federal Public Defender's (PD) office was created in 1995 under the Federal Supreme Court. The office provides legal services to criminal defendants, as obligated in the Constitution, and primarily defends cases involving genocide,⁷⁰ juvenile delinquents, corruption, treason, and other serious criminal allegations. The Addis Ababa office employs thirteen public defenders with seven support staff. The High Court has six criminal benches in the High Court and two PD's are assigned per bench. The President of the High Court determines whether a criminal defendant requires a PD, and then issues a request. The defendant is normally in custody at that time, and eligibility for PD services is determined through prison officials. This procedure raises issues of timeliness of representation and compliance with Constitutional timeframes for processing criminal

accusations. The PD office represents juveniles in Federal First Instance courts as well, which have 10–11 benches. Addis Ababa has two federal PD offices, and regional offices are contemplated but are not yet implemented in states where federal courts have been established.

State and local courts do not ordinarily incorporate PD offices. Such services are sometimes, however, offered through private attorneys on contract with the courts. These attorneys may be licensed and reportedly provide adequate, even good, representation. Availability of this service is seriously limited, however, especially at the more rural district levels where lawyers are unavailable, and criminal defendants are largely unaware that lawyers even exist, or that they have a right to counsel at the State's expense.⁷¹

Limited legal aid assistance in civil matters is provided at federal and state levels through joint partnerships between an NGO (Action Professionals' Associates for the People), the Bar Association, and the AAU Alumni Association. Addis Ababa has two small legal aid offices. The Bar Association's participation in this legal aid program provides a means for its members to satisfy professional obligations to provide 50 hours of annual *pro bono* legal services. In 2002, the Bar Association provided individual consultations to approximately 750 legal aid clients and represented 53 clients in cases brought to court. The program has existed officially for three years, and is currently undergoing evaluation. In addition, certain lawyers provide limited legal aid services on a volunteer basis in the states. The development of law school clinical legal aid programs at a national level is being explored. A few law students currently provide volunteer services through the legal aid offices in Addis Ababa. These are positive efforts and beginnings, but operate on a very small scale.

Human Rights Commission/Ombudsman

The Constitution requires the government to establish a Human Rights Commission and an Office of the Ombudsman.⁷² Proclamations were enacted in 2000 to provide for the establishment of these institutions.⁷³ Pursuant to these proclamations, the Human Rights Commission is intended to safeguard and enforce fundamental citizen rights and freedoms within a relatively narrow jurisdictional

framework; the Office of the Ombudsman is designed to prevent and remedy arbitrary or unjust administrative actions of the executive vis-à-vis its citizens, and to provide an easily accessible means to the public to assure that basic rights are not violated by the executive without an avenue for complaint, investigation and redress. In theory, both of these institutions could create important inlets for citizen access to justice and oversight of governmental activities. Although legislative authorization and parliamentary selection committees have been in place since 2000 and 2001, the selection and appointment processes have been stalled by political and bureaucratic proceedings. At the end of 2003, neither entity is staffed or operational.

Civil Society

Civil society in Ethiopia is embryonic, has had problematic and sometimes acrimonious relationships with the government, and has played a very small role in the development of the legal and judicial sector to date. It is clear, however, that Ethiopians do tend to seek the assistance of courts and other types of tribunals or systems to resolve disputes. Grassroots legal consciousness and civil society participation is at an early stage, but could be encouraged and expanded to create awareness, demand for legal services, confidence in the developing rule of law, and pressure for change.

Gender

Women in Ethiopia have historically been the poorest, weakest, most vulnerable and marginalized members of society. Laws and customs have traditionally discriminated against women. In 1995, however, the new Constitution declared that women shall have equal rights with men.⁷⁴ Specifically, it states that women have equal rights with respect to employment, property use and ownership, inheritance, and the formulation of national development policies. Laws, customs, and practices that discriminate against women are prohibited. Moreover, the Constitution grants the right of affirmative action to remedy past discrimination and inequalities, and to enable women to participate equally in political, economic, and social life in both public and private spheres. Various laws have been revised, or are undergoing revisions in order to reflect the constitutional guarantee of

equality. Recently, four regional proclamations were enacted that guarantee land tenure to households in general, and to women only if they become the heads of households. Although, some progress is clearly being made, implementation mechanisms and structures to protect and enforce the rights of women have not yet fulfilled the constitutional mandate.

Discrimination against women is pervasive and has its most severe effects in rural areas, where the great majority of the population resides. Women's awareness of rights and their ability to seek enforcement are extremely low. Overall educational levels are lower than men, and women have traditionally been accustomed to servitude and discouraged from asserting individual rights. Women have effectively had less access to justice because of geographic distance, family and work obligations, ineffective enforcement mechanisms and practices, social pressures and attitudes discouraging assertion of rights, and greater poverty levels. Domestic violence has also been a serious problem. A key program of the EWLA has been to provide legal aid through *pro bono* consultations and other services to women, primarily in family cases, through their national and regional branch offices. (See discussion on Legal Aid above) Additionally, the EWLA has contributed to law revisions and public education and awareness activities, and acts as an advocacy group to pressure change. The consensus from interviews was that changing the laws alone, however, will not lead to equality; long-standing culture and attitudes reinforcing women's inequality must also change.

A revised federal *Family Code* was passed three years ago with little opposition from parliamentary leadership. The new Code modifies or eliminates many prior discriminatory provisions concerning powers and obligations within marriage, divorce and property division, and maintenance and custody. The implementation of the new Code has reportedly presented certain problems. Key enforcement actors, *e.g.* judges, police, advocates, prosecutors, have not been fully aware or supportive of the new law and in many instances have continued applying the former practices without consequence. Parallel codes at state levels have encountered similar compliance and enforcement problems, although improvements were reported.

A concurrent issue for women is the application of Islamic law through *Sharia Courts* to personal and family disputes. By some interpretations, Islamic laws do not afford women equal rights as

defined by the Constitution. In order for religious courts to adjudicate personal and family matters, the Constitution requires both parties to voluntarily submit to their jurisdiction. Absent that consent, a court within the official system should hear the matter. In practice, however, considerable social and family pressures are reportedly exerted to coerce women to accept the jurisdiction of the Sharia Courts. Thus, the voluntariness of their submission may be questionable.⁷⁵

Passage of a revised Criminal Code increasing protection of women's legal rights is expected in the near future. The revised Code bans widespread customary practices of female genital mutilation,⁷⁶ increases the penalties for so-called "marriage by abduction" (girls as young as seven are abducted, abused, and forced into marriage), amends the provisions regarding sexual outrage and rape (to eliminate prior virginity as a determining factor), and increases punishment for early marriage (although the legal age is now 18, in practice it has been as young as nine- to ten-year old girls). The Women's Affairs Committee of the House of Peoples' Representatives has conducted and planned a number of regional workshops in connection with the new Code, and hopes that implementation and enforcement will progress smoothly.

Other legal codes are also under review for possible revisions, and attention is being directed to discriminatory provisions. Legal reforms must also be accompanied by reliable enforcement, which often requires attitudinal or behavioral changes. Standing and advisory committees exist within the parliament and the executive to oversee national practices and legislation and promote women's equality and access to services.

Another highly significant issue is women's unequal access to land and its contribution to poverty. The EWLA has recently conducted a study (as yet unpublished) identifying problems encountered by women in obtaining equal land distribution and rights required under the Constitution, including the following findings. Most women in rural areas are farmers. Land registries traditionally list the husband/male as proprietors.⁷⁷ Upon divorce or the husband's death, the land remains in the possession of the husband or his family, and the wife is evicted from the property, often with the children. Regional efforts to amend land certifications to name both parties jointly, as required by the Constitution, have had varying success and

are progressing slowly. If women do not have access to land use or inheritance rights, they fall into poverty, prostitution, trafficking, and other such means to support themselves and/or their children. The EWLA concludes that women's marginalization and lack of secure access to land are critical obstacles to development because: (a) if women were able to control the land they farm and use the produce for economic gain, aggression would decrease and personal security would increase, and (b) women's access to land would contribute to the reduction of poverty and increase food security.⁷⁸

Recommendations

The quantity and quality of access to justice should be expanded and improved throughout the country, and should include public awareness programs, increased civil society involvement, better quality and widespread public defender and legal aid services, improvement of court capacity and facilities to timely resolve cases and avoid unnecessary adjournments or delays, increased availability and dissemination of laws and legislation, staffing and operation of the Human Rights Commission and Office of the Ombudsman, and protection of the rights of marginalized populations.

Particular attention should be devoted to protecting and promoting the constitutional guarantees of equal rights for women in all spheres, including personal security, family matters, and property rights. Promotion and protection of women's rights must include legal reforms accompanied by effective enforcement and implementation. Laws and practices at state and local levels should be reviewed and revised to reflect and enforce constitutional guarantees, especially with respect to property rights. The operations of Sharia Courts should be monitored to assure voluntary consent of the parties to jurisdiction, and to ensure that rulings do not conflict with federal procedures or constitutional requirements.

The Bar Association could play an enhanced role in overall promotion of access to justice in the country. Further dialogue between the Government and the Bar is needed to highlight common points of interest, as well as areas for the Bar's involvement.

Commercial Justice

Under the administration of the *Derg*, the existence and operation of private companies and market transactions in general were prohibited and the older codes and practices relating to commercial transactions fell into disuse. The current era has ushered in a market-based economy, and a flurry of laws and legal reforms have been enacted to attract foreign investment. Legal reforms alone, however, will not address or resolve the critical underlying problems of poorly-functioning courts and the lack of judicial credibility, reliability, and predictability in the application and enforcement of laws. Even if the law is perfectly sound, businessmen and investors cannot anticipate with any degree of reasonable certainty how it will be applied because of the weakness of the underlying legal and judicial system. Case disposition is hampered by frequent and often lengthy procedural delays and court backlogs. The consensus from our interviews was that, although many of the laws governing commercial transactions unquestionably require revision and modernization, far more serious problems arise from inadequate, unreliable, and unpredictable implementation and enforcement mechanisms. "Prudent macroeconomic policy without a strong institutional framework, comprehensive banking reform, sound corporate governance structure and a strong legal and judicial system is meaningless."⁷⁹ Many of the fundamental systemic issues and challenges have already been covered or touched upon in previous sections of this assessment.

Commercial litigation is largely subject to federal jurisdiction. Federal courts have jurisdiction, *inter alia*, over the following types of civil suits: cases in which a federal government entity is a party, the parties reside in different states, a foreign national is a party, negotiable instruments are at issue, and any matters relating to business organizations registered or formed under the jurisdiction of federal government entities.⁸⁰ State courts act as federal courts and apply federal laws in those states where federal courts are not present. The ability of state and sub-regional authorities to adequately interpret and apply commercial and other transactional laws was noted in interviews as a foreseeable problem that will accompany the expansion of economic growth and development in the regions. Concerns regarding executive interference with judicial independence, corruption, and capacity were reported more frequently at the state and sub-regional levels. Adjudication of commercial disputes and enforcement of judgments, particularly against state enterprises engaging in commerce, could thus be especially problematic.

Given the subject matter, a discussion and analysis of general issues regarding commercial law and enforcement or settlement mechanisms are explored below. Considerable analysis and dialogue by the private sector is recommended to complete this picture.

The Commercial Code

The Commercial Code was enacted in 1960. The Commercial Code has been under revision for several years. For a time, parallel Commercial Code revisions were being undertaken by the MOJ and the Justice and Legal System Research Institute because of lack of coordination and collaboration. The French Development Agency is now heavily involved in the Commercial Code drafting and revision, although a date for a final unified revision and enactment cannot be predicted. Nevertheless, a new Commercial Code by itself will not solve the problems of contract enforcement in Ethiopia. Again, the consensus was that the law itself is not nearly as bad as the practice.

Business practices to a great extent are informal. They are largely local in flavor and therefore do not reflect international standards. A number of pieces of legislation have been passed by the Federal government in this area- such as a competition law and an

urban land lease law. The aim of these new laws is to increase transparency, particularly to enhance private sector development and attract international investment and ensure competition.

While these advances have been made, the business community of the private sector remains largely unregulated. Although the subject of a proposed revision, the current Commercial Code does not recognize the existence or operation of *de facto* companies. Businesses operate pursuant to traditional methods in which business records are not regularly maintained. This can create more transparent relationships with increased interactions with unknown parties. Without appropriate record-keeping, business revenue cannot be evaluated to formulate a tax basis, and businesses cannot borrow from formal institutions and instead must borrow informally or privately at higher rates. As a consequence, many such businesses are unable to finance their own economic growth, which ultimately depresses investment.

Auditing laws and practices were reported to be inadequate. The appointment of legal auditors is only required for publicly-held companies. Auditors in general lack training and professionalism, their powers are limited, they can be fired without cause, and they face numerous obstacles in obtaining access to information. There are no early warning triggers to signal the emergence of problems arising within companies. The interests of shareholders, companies, and third parties are not sufficiently protected by existing laws or practices. The French Embassy is assisting with the drafting of accounting provisions to be incorporated within the revised Commercial Code, a separate Accounting Code, and finally a planned comprehensive annotated compilation of accounting law and practice.

Laws and procedures governing *banking transactions* and operations were reported to impede, rather than facilitate, negotiations. Even small matters, such as opening accounts, are problematic. Procedures and practices are archaic and require modernization.

Bankruptcy provisions within the Commercial Code are inefficient. Furthermore, there are not enough people trained and available to fill the roles required by law. Individuals and institutions with potential interests in this area are largely unaware of the bankruptcy laws, which are consequently underutilized.

Disputes over *negotiable instruments* are currently being handled by a recently-created specialized Federal bench in Addis Adaba with a single assigned judge. That judge conducts summary proceedings and has implemented guidelines and timetables for rapid decision-making (in as little as one to two months) and enforcement. The creation of this bench has greatly improved the efficiency of handling these cases, and was highly praised as a positive development.

The desirability and need for *specialized commercial benches* was frequently raised. Specialized commercial benches existed in the past, but were disbanded under the *Derg* regime. The consensus of people interviewed was that re-establishing specialized commercial benches would greatly facilitate speedy, reliable, and predictable resolution of commercial cases by experienced and knowledgeable judges dedicated entirely to resolving commercial disputes. Nonetheless, many commercial cases could currently be expedited for hearing under fast-track provisions in the Civil Procedure Code, which include summary procedures, accelerated procedures, and arbitration.⁸¹ These provisions for differentiated and expedited case flow management alternatives fell into disuse under the *Derg*, and have been ignored in practice for many years. Judges and lawyers are unaccustomed to the expedited hearing provisions, and normally follow traditional practices and procedures by routing commercial cases through the ordinary civil process, which can be hampered by lengthy delays. Awareness and revival of these alternative procedures has been growing recently, and we were informed that applications for fast-track case consideration are increasing and being encouraged within the judiciary. Nonetheless, institutional limitations and high judicial turnover rates, especially in the Federal First Instance Courts, were reported to create additional problems and contribute to delay, even if the case is on a fast track.

Enforcement of judgments is difficult and inefficient. Specific performance is not an option. Execution requires a second separate litigation ("application for execution") to seek enforcement after judgment is entered in the original substantive lawsuit.⁸² The judgment in the first lawsuit is presumptively valid, but validity of the case is rebuttable. This adds another level of litigation and uncertainty to the enforcement of decisions, even in small matters such as collections, which significantly impedes, delays, and adds costs to

execution of judgments. We were told that the execution phase sometimes requires more time and effort than obtaining the initial judgment.

The Investment Code

This Code has been amended and revised more than any other law, and is largely considered by local actors to be fairly adequate, although international perceptions diverge. Foreign investors are no longer obligated to have local partners (although they usually do so for business reasons), and are no longer required to limit themselves to minority shareholder status. The minimum foreign investment requirement is USD\$100,000 for a foreign investor without a local partner, or USD\$60,000 minimum capital for a foreign investor investing jointly with a local partner.⁸³ Ethiopia is a party to the treaty establishing the Multilateral Investment Guarantee Agency, which protects foreign investors, guarantees certain losses, and provides security. Investors are legally protected against the expropriation and nationalization of assets under the Investment Code.⁸⁴ Foreign businesses customarily protect their interests further through specific management agreements enforceable separately under contract laws. The Ethiopian Investment Commission was reported to take care of most transactions and requirements in a single place with relative efficiency, *i.e.*, business licensing matters and registration of investors and official documents, in accordance with the Code's provision for "one-stop shop service."⁸⁵ A consensus of opinion was expressed, however, that institutions need strengthening in order to attract investment and open markets.

Arbitration

We were informed that foreign investors normally insist upon International Chamber of Commerce (ICC) rules and arbitration provisions in all contracts, even those covering large public works. As a result, sizeable foreign investors do not seek to resolve disputes before Ethiopian or any other courts, but rather before the ICC in a European venue. This process usually ends up favoring foreigners, and costing the Ethiopian parties substantial time and money to obtain local representation and present their case. Enforcement of

foreign arbitration awards can occasionally present problems. If voluntary compliance is made, no enforcement action is necessary and problems are avoided. If the arbitration award is entered outside the country pursuant to the application of foreign law and the losing party refuses compliance, however, the prevailing party will have to seek execution of the foreign arbitral award in Ethiopia under the Civil Procedure Code.⁸⁶ Under that Article, foreign awards can only be executed in Ethiopia if the other country has reciprocity, the parties agreed to arbitration and had equal rights in appointing the arbitrators, the award is enforceable on conditions laid down in Ethiopian laws, and "the award does not relate to matters which under the provisions of Ethiopian laws could not be submitted to arbitration or is not contrary to public order or morals."⁸⁷ Reportedly, the reciprocity requirement in particular has created problems in litigation, and that this article should be reviewed, revised, and modernized.

The Chamber of Commerce is in the process of creating an arbitration program and, toward that end, has been recruiting lawyers to serve on arbitration panels. The Chamber has widely advertised and promoted this new program, which began in January 2002. The general consensus, however, was that it is not well-staffed and does not hold promise as a serious alternative dispute resolution mechanism. The majority of Ethiopian businessmen do not belong to the Chamber; to advance, the Chamber would have to develop significant membership, reputation, and acceptance, which is not considered likely. Regardless, this program would only apply to local investors and would not compete jurisdictionally with the authority of the courts. We were told that only five cases have been submitted to the Chamber's arbitration program to date, and none have yet been resolved.

Notwithstanding, there are a supposed substantial number of cases routinely processed and resolved through other formal and informal arbitration mechanisms within and throughout the legal and business community to keep costs down and streamline proceedings. Arbitration agreements are common and can be carried out informally with concurrence of the parties, or by application to the court under the fast-track special procedures of the Civil Procedure Code.⁸⁸ Moreover, international organizations with diplomatic immunities, thereby exempting them from local court jurisdiction, routinely permit

the inclusion of arbitration provisions in contracts. Execution of local arbitration awards is identical to other civil judgments and requires subsequent separate litigation, but does not otherwise present unusual or extraordinary enforcement issues. Meaningful arbitration mechanisms do indeed appear to exist and are being utilized effectively under a variety of circumstances to resolve disputes.

Recommendations

The increasing openness by the Ethiopia's private sector to foreign investors will dictate the need for more objective rules and transparent conflict resolution, be it through formal or informal systems. The implementation of laws and improvements to the overall judicial system and institutions are critical and primary needs, and hinder commercial transactions more than the inadequacy of laws.

The creation of specialized commercial benches beyond the current (single) bench in Addis Adaba could improve and expedite proceedings, as well as promote predictability and reliability. The Commercial Code should be revised to include adequate accounting law and auditing practices and provisions. Bankruptcy and banking provisions should be modernized. Judgment enforcement mechanisms in the Civil Procedure code should be streamlined and consolidated within a single lawsuit, and enforcement of foreign arbitral awards should be revised and modernized. Business practices should be reviewed and modified as appropriate to meet international standards. Application of commercial laws at state and sub-regional levels is likely to present additional potential problems that should be anticipated and accommodated.

Initiatives in Justice Systems Reform

The new federal system and transition to decentralization of authority has greatly multiplied and intensified the country's needs for capable legal and judicial institutions, systems, and personnel at all levels of government. Moreover, the new democratic constitutional framework requires significant modifications to existing laws and practices to put into effect constitutional rights and requirements. The practical difficulties of implementation have created concern and drawn attention to the need for system-wide reforms and assistance. The GOE has already begun reform efforts, and the international community has supported a variety of programs as well. Since the new Constitution was enacted, the course of justice reform activities and proposals has become rather complicated and somewhat fragmented. Efforts are currently underway to evaluate needs and consolidate and integrate justice reform plans and proposals. A chronology of salient reform programs, proposals, and their interrelationships is necessary to provide a context for analysis.

Enactment of the Constitution in 1995 was followed by proclamations defining the powers and duties of executive entities, and establishing the federal courts.⁸⁹ A Civil Service Reform Program was begun in 1996 to strengthen public sector systems and service, including elements of the judiciary. Projects addressed solely to judicial strengthening started in 1997: for example, as previously

mentioned, the USAID began judicial training activities and the Canadian International Development Agency's CARP also commenced, providing a substantial US\$38.0 million to various sector reforms. Miscellaneous training programs for lower level judges have also been provided by the Federal Supreme Court and various other entities or institutions.

Also in 1997, the Ethiopian Justice and Legal System Research Institute was established to conduct research and make recommendations for modernizing and conforming Ethiopian laws to the 1995 Constitution. Most of the major codes had been drafted in the 1950s and 1960s under the imperial government, and required revision. The Institute was meant to provide a forum for the executive, legislative, and judicial branches to work together to reform legislation and modernize the justice sector, and at its inception was intended to be the primary actor researching, reforming, and modernizing the laws. Ultimately, however, the Institute's efforts have suffered from a lack of trained personnel as well as a critical lack of coordination between key players in the system. Institutions are created rapidly and have proliferated in Ethiopia, sometimes with ambiguous or overlapping responsibilities. At times, justice reform and legislative modernization efforts have been duplicated throughout different institutions working separately and in isolation of one another, despite professed commitments to holistic approaches.⁹⁰ This lack of coordination also affects implementation; for example, forthcoming revisions to civil and criminal procedural codes may not have adequate mechanisms or institutions in place to implement the new procedural requirements. Major legal changes cannot be effective without having the necessary support structures in place.

National capacity building and justice systems reform (JSRP)

War between Ethiopia and Eritrea from 1998 to 2000 temporarily halted a range of efforts. However, over the 2001 to 2003 period, the Government undertook subsequent phases of an ambitious "state transformation" agenda as a part of its Poverty Reduction Strategy. Specifically, in 2001, the Government responded with the launch of a comprehensive *homegrown National Capacity Building Program* (NCBP) as a multi-sectoral, intergovernmental program response to the capacity building demands of rapid

transformation. The national capacity building framework envisages a capacity building system that: (i) ensures efficiency and sustainability; (ii) supports the comprehensive development of human resources, organizations, systems and processes as a means of achieving the country's development goals; (iii) affords flexible implementation modalities in order to accommodate the dynamics of institutional change. A super-ministry, the MCB, was established in 2001 to provide policy direction, coordination amongst other partner institutions (for example, the Ministries of Finance and Economic Development, Revenue, and Federal Affairs, as well as the Federal Supreme Court and various legislative bodies), as well as monitoring and oversight of capacity building efforts. The Ministry, along with its counterpart regional bureaus and *woreda* offices, is tasked with programming and financing fourteen capacity building subprograms that support the dual goals of state and structural transformation.

Six of these fourteen subprograms directly involve the public sector and comprise: (i) a *woreda* (district level) decentralization program that rapidly transferred delivery responsibilities with substantial fiscal and administrative authority to rural jurisdictions; (ii) municipal reform efforts designed to restructure and empower urban centers; (iii) reformulated civil service reforms focused increasingly on strengthening the public sector fiduciary framework and service delivery results on the ground; (iv) bold nation-wide initiatives to enhance connectivity and develop e-government applications such as the *woreda*- and school-net projects; (v) efforts to strengthen formal checks and balances and accountability mechanisms through reform of the justice system including the courts, law making and law enforcement institutions, and the legislative process; and (vi) an ongoing tax systems reform program that continues to align tax policy and administration at the federal and regional level with the demands of Ethiopia's evolving macro-fiscal policies.

In FY2002-03 and FY2003-04, the Government—through its MCB, Bureaus of Capacity Building, and other lead institutions—advanced the implementation of all six subprograms. Considerable domestic resources—ETB 108.4 million (US\$12.5 million) in FY2002-03 alone—were mobilized through the federal budget to carry out public sector capacity building activities. The need to further develop the public sector capacity building subprograms

(including the Justice Systems Reform Program) under a single consolidated, sector-wide approach (SWAP) was acknowledged by the Government in its dialogue with various multilateral and bilateral donor partners as early as 2002.⁹¹

Within this larger framework, in 2002, the MCB produced a Justice System Reform Program (JSRP) (Preliminary Program Profile) announcing its plans to take forward its ongoing efforts in justice systems reform. The JSRP proposal encompassed all actors and institutions involved in the justice sector at any stage: the House of Peoples' Representatives, the House of Federation, the State Councils, the federal and state courts, the MOJ and Regional Bureaux of Justice, federal and state police, federal and state penitentiary administrations, institutions of legal education and research, the Bar Association, lawyers and civic legal associations. In elaborating the JSRP, the Government confirmed its commitment "to making the country's judicial system independent and effective so that it guarantees the rights of citizens, and that it contributes to sustainable economic growth and poverty reduction based on empowerment, opportunity and security for all."⁹² The deficiencies in the current justice system are attributed mainly to "shortage of adequately trained personnel and the lack of essential equipment and facilities at both federal and regional levels."⁹³

With the exception of the federal and state courts, all of the targeted institutions are outside the judicial branch. The components outlined in the JSRP included *inter alia* strengthening of the Justice Systems Reform Program Office, judicial law revision and reform, court administration reform, law enforcement (including police, prosecutions, and prisons), strengthening of legislative organs, as well as legal education and training. A steering committee selected from the various entities above is charged with coordinating program implementation at the institutional level. International technical assistance and advice would be sought to develop program substance and detail within the above framework.

Even as these efforts to further develop comprehensive *Justice Systems Reform Program* proceeded, the Government continued to pursue reform efforts over the 2001-2003 period including a nation-wide baseline assessment of the full range of justice systems institutions, law revision and law reform activities; a second phase of

court administration reform including records and case management; the establishment of a judicial in-service training institution; and the roll-out of training for judges.

Also, the need for systematic assessment of constraints across the wide array of institutions in the "justice system" was widely acknowledged. Accordingly, with the support of the Center for International Legal Cooperation (the University of Leiden), the Government undertook a Baseline Study and Needs Assessment of the Ethiopian Justice Sector for the purpose of refining the design, sequence, and eventual evaluation of JSRP interventions. The draft report, circulated in May 2004, provides the primary consolidated assessment of the justice system in Ethiopia and covers a variety of subject areas including legal education, law enforcement, judiciary, law making and law revision, and information flow within and beyond the judiciary. It provides *inter alia* the basis for reviewing medium-term and annual plans for the roll-out of capacity building and institutional reform initiatives at the federal and regional levels, as elaborated over the June-September 2003 period.

Public Sector Capacity Building Program (PSCAP) and Justice Systems Reform

Starting in earnest in May 2003, the MCB announced its intention to rapidly scale up support for the six core public sector reform programs (including Justice Systems Reform Program) as subprograms under a consolidated five-year federal program called the *Public Sector Capacity Building Program* or PSCAP. The Government's vision, reflected in its program document for the PSCAP, was based on three pillars: (i) simultaneous, nation-wide implementation of six subprograms (including JSRP), sequenced in line with regional and local priorities, (ii) alignment of program support with Ethiopia's public financial management and intergovernmental system, and (iii) harmonization of the fiscal, fiduciary, and reporting requirements of various donors around a Sector-Wide Approach (SWAP).

In the months that followed, several bilateral donors, in close collaboration with IDA, have responded favorably with commitments to support the SWAP approach and the pooling of funds around a

single design solution including CIDA, SIDA, and EC along with anticipated support from DCI, DfID, KfW, and the Netherlands. Non-pooling donors that have committed to leverage support to the SWAP include AfDB, France, Germany, Italy, UNDP, and USAID. The bilateral perspective on the Program was conveyed to the Government through an issues note on harmonization, which was prepared by representatives of donor agencies that participated in the joint donor appraisal of the Government's program.

In May 2004, the World Bank approved a USD100 million credit, which would leverage bilateral resource dollar for dollar, in support for PSCAP. Overall, salient features of the SWAP which includes all elements of the JSRP include the following:

- Designation of PSCAP as a federal specific purpose transfer program, appropriated at the federal level and therefore not subject to offsets in regional subsidies;
- Incorporation of donor commitments under PSCAP (including for JSRP) within the Government's overall macroeconomic fiscal framework and therefore, the overall vertical division of revenues between federal and regional levels;
- Alignment of donor procedures with Government's rolling medium-term planning, annual budgeting, and monthly SOE-based disbursement procedures including the preparation of five year medium term consolidated PSCAP plans (with JSRP content) and annual implementation plans for federal and regional institutions;
- Explicit identification of rules of the game governing access, allocation, and execution including an established vertical division of resources between federal and regional levels, and a simple formula to horizontal division of time-bound drawing rights to PSCAP resources across regional states, followed by performance-based disbursements as well as mid- and end-year reallocation of a share of drawing rights to performers;
- Definition of a "minimum mandatory" level of capacity building activity across subprograms (including JSRP)—or the first in a sequence of capacity building and institutional reform initiatives—that all regions are required to complete;

- Development of "matrix management" structure, in which federal subprograms provide the prototypes, technical advice, quality assurance, and technical recommendations on approvals of plans, and regions set priorities resources and implementation activities based on a menu of subprogram activities through medium term and annual plans;
- Appropriate delegation for financial and procurement responsibilities to federal bodies in line with reform mandates including the delegation of such responsibilities to the Federal Supreme Court for planning of federal judicial reform activities.
- Regular bottom-up regional, and eventually *woreda* and municipal planning of capacity building activities including those related to JSRP within assigned medium-term and annualized resource envelopes;
- Pooling of donor resources (including significant commitments to JSRP) around a single design in line with SWAP guidelines.

Planning and implementation issues for Justice Systems Reform under PSCAP

Various aspects of the design of the consolidated PSCAP— noted above—have potentially far-reaching implications for the implementation and impact of the JSRP agenda. These are discussed further below:

Empowering the courts in priority setting and implementation. Based on the international experience with judicial reform, the delegation of financial management and procurement responsibilities for the strengthening of courts to the judiciary—a key feature for the Government's PSCAP design—is encouraging. The JSRP steering committee arrangements will continue to function under PSCAP and provided an institutional voice for the judiciary as well as parliamentary institutions in the management of the JSRP agenda. Government commitment to delegation of planning and implementation responsibilities to the courts will help address concerns that (i) judicial participation in designing the JSRP components of federal and regional PSCAP Action Plans was inadequate, (ii) the executive was heavily involved in directing the initial drafting PSCAP plans,

at times, in ways inconsistent with the expressed opinions of judicial actors. The subsequent iterations of these plans—elaborated within resource envelopes in May 2004—should be undertaken in a manner that empowers the judiciary and legislative organs where appropriate.

Ensuring coordination and exploiting synergies across program activities. Federal and regional technical teams for JSRP and PSCAP overall are intended to ensure coordination and supervision across components of JSRP (law reform and enforcement as well as subprograms of PSCAP (for example, judicial reform and tax reform). Given the coordination challenges associated with the subprogram, the multi-donor team highlighted the need for further review of these arrangements as program implementation proceeds.

Addressing the change management challenge in JSRP. PSCAP and its constituent programs represent a significant change management challenge across tiers of government and branches of government. While delegation of responsibilities for implementation of JSRP is critical to ensure effective implementation, this can only be done in regions if judicial and legislative organs have requisite capacity and commitment to undertake and exercise those responsibilities capably and professionally, or are provided adequate technical assistance and other ongoing support. The lack of skilled personnel capable of handling justice sector issues at the regional level has already arisen as a problem when the MCB attempted to replicate a case filing system throughout the regional states. In several Ethiopian states, state laws have not yet taken root and justice systems are neither credible nor workable. In addition, successful federal and state reforms will require building good relationships and collaboration in a highly factionalized and historically fragmented environment, i.e., many groups of people and regions operate pursuant to different and sometimes contradictory customs, practices, laws, courts, etc. This creates a delicate situation, which is compounded by the multiplicity of ethnic divisions. Failure to establish constructive and cooperative relationships at the federal/state levels, and between judicial and other branches at both levels, carries a risk of engendering resentment and further factionalism instead of ownership and cooperation. Given the above-mentioned challenges, the detailing of institutional arrangements including a matrix management structure with federal quality control over regional discretion is encouraging and should be fully leveraged in the roll out of various legal and institutional reforms related to JSRP.

Box 1. An approach to defining the minimum mandatory level of capacity building in JSRP or the first in a sequence of reform activities

Based on this assessment, a number of recommendations are suggested throughout the text. At the same time, in a country with such limitations on capacity, the widespread multi-layered reforms envisaged will not happen over night. In this regard, the definition of the minimum mandatory level of capacity building-or the first in a sequence of capacity building activities required of regions (and federal institutions)-as it applies to JSRP could be defined as follows:

- *Bulk training of personnel in the system, and those entering the system.* There is an urgent need for trained personnel in all areas and institutions of the legal and judicial sector. The severe shortage of legal training and legally-trained personnel cannot be remedied overnight, and a combination of short-term and long-term training approaches will be required to build the sizeable cadre of legal professionals needed to fill in the many layers of the new systems.
- *Meeting infrastructure requirements.* Basic facilities must exist to provide justice, let alone justice reform. Currently many courts do not have adequate infrastructure or facilities to allow them to operate effectively. Basic requirements need to be met before it is possible to implement higher-level reform efforts, which may otherwise be undermined by the lack of any real capacity.
- *Strengthen judicial independence.* Effective reform of the judicial branch also requires commitment, participation and ownership by the judiciary. Efforts should therefore be made to strengthen judicial independence, including the re-evaluation of financing and budgetary authority. Further, the role, standards, transparency, and accountability of the Judicial Administration Commissions in selection, promotion, evaluation, promotion, termination, and other conditions of judicial employment needs to be addressed.
- *Strengthen the demand side.* The demand side of reform needs to be seriously considered. Knowledge of the law and the formal legal system is clearly lacking. Access to justice must be expanded and improved throughout the country, and should include IEC efforts, civil society involvement, public defender and legal aid services, improvement of court capacity and facilities to resolve cases, and the increased availability and dissemination of laws and legal information. Attention should be devoted to protecting and promoting the constitutional rights of marginalized populations, in part, through the establishment of the Human Rights Commission and Office of the Ombudsman. In particular, the rights of women need to be prioritized, including personal security, family matters, and property rights.
- *Deepening assessment, particularly of traditional systems.* There is a need for much greater understanding of the varying systems, practices and capacities at the state and local levels. In order to design effective comprehensive reforms at the lower levels of the system, the needs and capacities of these areas need to be assessed. Further, a deeper understanding of traditional systems and their interaction with the formal legal system is essential.

Sequencing JSRP activities, defining a minimum mandatory level of capacity building. The preparation of five-year PSCAP Action Plans by all regions and federal institutions, and ongoing efforts to elaborate annual implementation plans within established resource envelopes bodes well for priority setting of capacity building activities including those for JSRP. However, most GOE representatives interviewed maintained that all elements of the proposed JSRP must necessarily be undertaken simultaneously and comprehensively at all levels and institutions because they are all integrated, and solitary changes will not create systemic benefits. The temptation to reform all institutions in all areas simultaneously should be tempered by realistic assessment of limitations and ability to manage sizeable complex programs. Sequencing and prioritizing reform requires in part a well established empirical base of evidence. The completed draft of the Baseline Study/Needs Assessment should inform the activities under five-year PSCAP Action Plans, and specifically those laid out in the first year procurement plan for regions and federal institutions. Equally important is the enforcement within the PSCAP system of a "minimum mandatory" level of capacity building activity (inclusive of JSRP activities) across regions; these constitute the first in a sequence of institutional strengthening and reform measures that all regions should complete before moving on more sophisticated efforts (Box 1). Definition of this minimum mandatory will be established as means of ensuring the "top down" element of JSRP across regions in a systematic manner.

Leveraging demonstration effects. Modest improvements that demonstrate tangible progress can create enormous advances in confidence, credibility, consensus-building, and political will to reform. Consideration should be given to beginning with realistic and complementary reform efforts in the first year of PSCAP implementation including the identification of "quick wins", and building progressively on demonstrated success. Active participation or input of civil society and professional organizations should be sought and encouraged from the earliest stages. Sharing and learning from previous experiences facilitates joint planning and helps to identify and sequence priorities. Networking of various categories of judicial personnel at various levels and from a variety of states would also facilitate replication of successful programs, and promote a sense of judicial community.

Developing capacity building responses to frontier issues.

The need for a clearer perspective and agenda on a wide range of "frontier" issues in Ethiopia justice were raised. These include the importance of access to justice in the program (including the role of legal aid), access to justice information (such as publication of law documents), the Government's approach to community policing and alternatives to imprisonment, as well as the need to focus on broad-based participation and promotion of demand-side issues. Several of these issues are on the Government's radar screen, however, they are still works-in-progress and await further detailing and assessment. Other issues such as the strengthening of the juvenile justice system and the strengthening of judicial administration commissions were also being considered for more intensive engagement in the program over the medium-term.

Looking Forward

The GOE has demonstrated considerable political will for justice reform and has devoted substantial attention and effort to the initial planning and formulation in a sector that faces enormous challenges. Adequate time must also be dedicated to filling in the plan and determining appropriate implementation strategies. Reform sequencing should be based upon a solid assessment of needs and identification of root problems underlying the failures of the justice system. Justice reform will require improvements to areas beyond capacity building and administrative or operational functions. The reform program should be designed with longer-term goals and broader analyses.

Reform must be coordinated between all relevant actors at both federal and state levels. Responsibility for specific activities should be clear so as to avoid duplication of effort or inconsistencies. Revised legal codes and procedures should be coordinated with institutional capacity to fulfill new requirements. Ownership and commitment to reform must be firmly developed at all levels of planning and implementation, especially within the judicial branch. Potential conflicts between the executive and judicial branch should be carefully considered and avoided or minimized, and reform should be planned and directed by appropriate institutions with sufficient expertise.

The many layers of Ethiopian law and society, and varying levels of development, require particular attention to tailoring reform efforts to state and local needs and abilities, rather than centralized delegation of responsibilities. Cooperative and collaborative relationships should be established between the relevant actors and institutions to construct meaningful reform and avoid resentment, power struggles, or factionalization. Different regions present highly diverse challenges and require careful consideration of local circumstances and assessment of needs. In regions that currently clearly have nearly no capacity or infrastructure, the program should be geared more towards the establishment of justice itself, rather than justice reform.

Conclusion

Ethiopia has undergone major political and social change since the overthrow of the *Derg* in 1991. The 1995 Constitution was a milestone that redesigned and restructured the country into a federal republic based on democratic principles, including extensive and progressive individual and group rights. The legal and judicial reform necessary to affect the rights and responsibilities enunciated under the new constitutional framework, as well as to modernize the country for economic growth and development, has already begun with the GOE as a driving force. This demonstration of political will and commitment is an important impetus and foundation for reform, but enormous challenges lay ahead. Achievement of a successful reform program will require ample time and consideration to be devoted to the assessment of needs and development of tailored and realistic implementation mechanisms, strategies, priorities, and objectives. The current reform outline appears comprehensive and perhaps overly ambitious in certain aspects, but only narrowly addresses or ignores other complex problems that will not likely be resolved simply by increasing capacity.⁹⁴

Developing the Rule of Law is clearly key to establishing a sustainable system of democracy. The rule of law promotes economic growth and reduces poverty by providing opportunity, empowerment, and security through laws and legal institutions. While defined in various ways, the rule of law prevails where:

- The government itself is bound by the law;
- Every person in society is treated equally under the law;
- The human dignity of each individual is recognized and protected by law; and
- Justice is accessible to all.

To accomplish these goals, the rule of law, as defined above, is said to be in effect when a society possesses meaningful and enforceable laws, enforceable contracts, basic security and access to Justice. These elements of a well-functioning legal and judicial system allow the state to regulate the economy and empower private individuals to contribute to economic development by confidently engaging in business, investments, and other transactions. This in turn fosters domestic and foreign investment, the creation of jobs, and the reduction of poverty.

With these goals in mind, the Assessment reviewed the current challenges in Ethiopia to effectively promote the rule of law through the JSRP activities under PSCAP. At this point it is also important to prioritize and sequence these reforms in a holistic and comprehensive manner using the established planning, budgeting, and implementation mechanisms under PSCAP. Prioritizing would require consideration of short, medium and longer-term activities and some of the issues to consider are the following:

I. Ensure planning and implementation of balanced set of activities

- Improved legal and judicial sector capacity;
- Combine law reform with improved enforcement—that is reforms in the courts as well as with legal education, lawmaking informed by international standards, and other aspects of legal reform; and
- Include both the supply side (the courts, lawyers, etc.) with the demand side of legal and judicial reform (access to justice, legal awareness and education for the public).

II. Advocate multi-tier approach

- Combined efforts are needed between top down and bottom up approaches through close coordination of the federal institutions (such as the JSRP Office in the MCB and the Federal Supreme Court) and regional and local JSRP bodies.
- High levels of support from the federal and regional champions of JSRP are necessary for program success regardless of whether a top down or a bottom up approach is used.

III. Assess realistically the potential for success and failure

- Assess and address program risks including long term nature of various elements of the justice systems reform in the context of PSCAP's overall risk mitigation and M&E strategies; and
- Incorporate the past lessons of experience in legal, judicial, and related reforms.

IV. Build on "quick wins" and effective dissemination of results to facilitate learning by doing and scaling up under PSCAP

- Utilize established successes, especially for model courts and case management systems, to demonstrate results both positive and negative.
- Ensure that information, education, and communication efforts under PSCAP are effectively transmitting results of JSRP activities and also soliciting feedback from clients such as the private sector, citizens groups, legal professionals and others on an ongoing basis.

V. The stakeholders would consider priorities that would most likely contribute to improved investment climate, enhanced accountability, rule of law and other development objectives under the SDPRP.

- Ensure that empirical analyses of the impact of legal, judicial, and other related reforms are part of the PSCAP Annual Review Missions, and that these analyses inform subsequent prioritization and planning of JSRP activities at the federal, regional, and local levels.
- Carry out analysis and consider results to identify which activities would have the most leveraging effect on the legal and judicial system.

Also as stated above, the analyses and the reform programs that follow them must give appropriate weight not only to the supply side of legal and justice system services but also to the demand for services (including civil society consultations and support for legal aid and civil rights groups, and access to justice).⁹⁸

The process of developing priorities will allow the GOE to further refine its planned reforms. The expectation is that this Assessment as part of a larger body of donor-assisted analytical work will encourage dialogue among the stakeholders in the Ethiopia as the justice system reform efforts begin to unfold. It will be important for the fruits of ongoing in-country dialogue make their way into tangible plans and results under PSCAP and associated initiatives.

ANNEX I: Recommendations

Other Courts	<p>Given that a majority of Ethiopians reportedly do not use the formal court system, there is a clear need for research and consultation on traditional justice systems and on their relationships to the formal legal system. When considering reforms to traditional systems, knowledge should also be drawn from lessons learned from reforms of customary systems in other countries.</p> <p>It is recommended that in-depth research of traditional systems be undertaken in conjunction with more practical efforts to create links between traditional systems and the formal system. The extent to which traditional justice can be incorporated or harmonized with more formal dispute resolution mechanisms or systems is another important area for future exploration and dialogue.</p>
Judges	<p>Without a credible and competent judicial bench to apply and administer laws, establishment of the rule of law will remain unattainable. This is a critical and core problem underlying the entire legal and judicial system. The resolution of other problems in the legal and judicial sector will require serious improvements in this area.</p>

	<p>The deplorable conditions of service within the judicial branch need to be tackled if any effective reform of the sector is to occur.</p> <p>Judges need to be better-qualified through legal education, training, and experience. Judicial training programs should incorporate theory and practical applications.</p> <p>The framework and procedures for judicial appointment and retention should be re-evaluated and restructured. Judicial positions should be advertised publicly and efforts should be made to attract a wider selection pool of more mature, experienced, and higher caliber candidates. Judicial Administration Commissions should have clear standards, procedures, and rules for decision-making with regard to judicial selection, promotion, discipline, termination, and other conditions of employment; their proceedings and operation should be more open, transparent, and accountable. Appointments and promotion decisions should be based on merit and clear criteria, as well as performance evaluations. Judicial professionalism and networking should be promoted and facilitated through association building.</p>
<p>Independence Issues at the State Level</p>	<p>Procedures and standards should be in place governing the operation of Judicial Administration Commissions at both state and federal levels. This is extremely important given the overall inconsistency applying and enforcing the law between the Federal, regional, and district levels of the judiciary.</p> <p>Management capacity of the judicial branch should to be enhanced. Subsequently, control over budgetary allocations and judicial salaries across all levels of the judiciary should be reviewed and revised to avoid manipulation and external interference.</p>

	<p>At the state level, the independence of the judiciary from the executive branch should be reinforced and strengthened; systems should be evaluated and restructured to provide effective avenues for judicial recourse in the event of executive interference, prevent retaliation, and assure enforcement of their decisions by the appropriate authorities.</p>
<p>Court Administration</p>	<p>Basic facilities must exist to provide justice. Adequate judicial operation cannot be expected without remedying some of the basic problems.</p> <p>Judiciaries require basic facilities and infrastructure to permit them to operate. Reform strategies should to take into account the effects of this basic lack of equipment and resources.</p> <p>The lack of legal information is a pressing problem in Ethiopia. At a basic level, there should be an effort to unify case filings through the adoption of standard language —be it paper based, or by other means—that would allow for the indexing of cases and compilation of data on types of cases entering the system. This could ultimately improve the overall jurisprudence in the courts and the overall transparency of judicial operations and decisions at all levels.</p>
<p>Legal Education, Training, and Licensing</p>	<p>The shortage of trained lawyers is severe and the current law schools and facilities are inadequate to meet both current and foreseeable needs. Law faculties and other legal training programs must be improved and expanded to satisfy professional training needs, but this must be planned and carried out in a manner that will increase both the quality and the quantity of offerings. Merely certifying schools and granting law degrees or certificates to poorly-trained students would not address the needs, and instead would worsen the overall situation in the long run by infusing incompetent graduates into the system, who</p>

	<p>might predictably seek judicial or other public-sector positions to avoid taking the bar exam. One possible option is to create legal clinics within law schools to provide practical experience to prepare law students to actually practice law and equip them with needed skills prior to graduation.</p> <p>It is of some concern that the Ethiopian Civil Service College is phasing out its law degree. The experience of the ECSC should have been studied in order to draw-out lessons in supporting programs the encompass ethic and regional diversity.</p> <p>The serious deficiency in legal education, namely its availability, quality, and facilities has wide-spread negative implications for access to justice.</p> <p>Law libraries should be improved to offer better and more comprehensive and professional collections. Consideration could be given to the creation of a national repository library following a comprehensive study of needs and presentation of viable options.</p>
<p>Availability of Laws and Regulations</p>	<p>Identifying and addressing necessary legal revisions and shortcomings in legislation requires a reliable compilation of existing laws. Laws should be widely available and distributed at all levels, at a minimum to all judges responsible for their application and enforcement, and lawyers.</p> <p>Current efforts to revise and update laws and regulations need to be effectively planned and implemented to ensure consistency.</p> <p>Efforts should be made to index the <i>Negarit Gazeta</i>. Laws must be compiled and annotated so that current and complete information is available to the public. Laws published at the state and municipal levels should be compiled and collected separately. This is particularly important because of the potential for inconsistencies between the federal, state, and municipal laws.</p>

<p>Legal Profession/ Bar Associations</p>	<p>The interest and ability of professional associations to become more active in reform should be explored. These associations should be strengthened and supported to participate and actively promote and advocate changes to the legal and judicial systems and institutions, especially with regard to policies and practices concerning the selection, discipline, promotion, and other terms of employment of judges, and laws and practices pertaining to women's rights.</p>
<p>Gender</p>	<p>The quantity and quality of access to justice should be expanded and improved throughout the country, and should include public awareness programs, increased civil society involvement, better quality and widespread public defender and legal aid services, improvement of court capacity and facilities to timely resolve cases and avoid unnecessary adjournments or delays, increased availability and dissemination of laws and legislation, staffing and operation of the Human Rights Commission and Office of the Ombudsman, and protection of the rights of marginalized populations.</p> <p>Particular attention should be devoted to protecting and promoting the constitutional guarantees of equal rights for women in all spheres, including personal security, family matters, and property rights.</p> <p>Promotion and protection of women's rights must include legal reforms accompanied by effective enforcement and implementation. Laws and practices at state and local levels should be reviewed and revised to reflect and enforce constitutional guarantees, especially with respect to property rights. The operations of Sharia Courts should be monitored to assure voluntary consent of the parties to jurisdiction, and to ensure that rulings do not conflict with federal procedures or constitutional requirements.</p>

	<p>The Bar Association could play an enhanced role in overall promotion of access to justice in the country. Further dialogue between the Government and the Bar is needed to highlight common points of interest, as well as areas for the Bar's involvement.</p>
<p>Arbitration</p>	<p>The increasing openness by the Ethiopia's private sector to foreign investors will dictate the need for more objective rules and transparent conflict resolution, be it through formal or informal systems. The implementation of laws and improvements to the overall judicial system and institutions are critical and primary needs, and hinder commercial transactions more than inadequacy of laws.</p> <p>The creation of specialized commercial benches beyond the current (single) bench in Addis Adaba could improve and expedite proceedings, as well as promote predictability and reliability. The Commercial Code should be revised to include adequate accounting law and auditing practices and provisions. Bankruptcy and banking provisions should be modernized. Judgment enforcement mechanisms in the Civil Procedure code should be streamlined and consolidated within a single lawsuit, and enforcement of foreign arbitral awards should be revised and modernized. Business practices should be reviewed and modified as appropriate to meet international standards. Application of commercial laws at state and sub-regional levels is likely to present additional potential problems that should be anticipated and accommodated.</p>

Notes

¹ For example, many substantive laws stem from French civil codes, although court procedures reflect common law practices.

² Legal Vice Presidency, World Bank. *Legal and Judicial Sector Assessment Manual*, (2002), found at <http://www.worldbank.org/legal/publications/ljrmanualLowres.pdf>.

³ World Bank, *Ethiopia Woreda Study*, vol. I, 2001, p.19.

⁴ *Id.*

⁵ *Id.*

⁶ Article 39, *Constitution of the Federal Democratic Republic of Ethiopia*. Nigeria's federal constitution has similar provisions, but requires a secular form of government at only the national level, while allowing its member states to choose to be governed locally by religious laws, *e.g.*, Sharia law. By contrast, Ethiopia's framework of ethnic federalism is secular at both federal and state levels.

⁷ *Id.*

⁸ The population of just a single state — the Southern Nations, Nationalities, and Peoples' Region — encompasses 56 separate ethnic groupings, all with distinct languages.

⁹ It is almost impossible to compare the strong sense of belonging to a virtually independent entity in Tigray, the nostalgic imperial traditions of the Amhara region, the ebullient nationalism in Oromya, the strongly supervised Somali region and the assorted ethnic groups (several dozen) in the "State" of "Southern peoples' and nationalities."

¹⁰ Following bitter disputes, the former Ethiopian region of Eritrea declared its independence and seceded in 1993. Between 1998-2000, unresolved tensions between the two countries led to full-scale war, which had devastating effects on the populations and the economies of both countries. Border conflicts persist and, in 2003, have re-ignited tensions between the two countries.

¹¹ See remarks below, as to the absence of necessity of embarking in wide-ranging substantive reform.

¹² Under the prior unitary system, the judiciary was contained within the executive branch. The federal Supreme Court was separated from the Ministry of Justice in 1992.

¹³ Constitution of Ethiopia, *supra* note 6, at Art. 71.

¹⁴ *Id.* at Art. 73.

¹⁵ *Id.* at Art. 72-73.

¹⁶ *Id.* at Art. 74.

¹⁷ *Id.* at Art. 77.

¹⁸ Elections were held in 1995 (boycotted by the opposition) and 2000, and are scheduled for 2005.

¹⁹ Proclamation 4/1995 (as amended). The MOJ shares responsibility for the modernization and codification of laws with the Justice and Legal System Research Institute, established in 1997 under the office of the Prime Minister. (See discussion below).

²⁰ They are: Tigray, Afar, Amhara, Oromia, Somalia, Benshngul/Gumuz, Southern Nations, Nationalities and Peoples (SNNPR) Gambela, and Harari.

²¹ Constitution of Ethiopia, *supra* note 6, at Art. 49.

²² Most recently amended by Proclamation 311/2003.

²³ Constitution of Ethiopia, *supra* note 6, at Art. 9.

²⁴ *Id.* at Art. 50- 51.

²⁵ *Id.* at Art. 55.

²⁶ *Id.* at Art. 56.

²⁷ *Id.* at Art. 62.

²⁸ *Id.* at Art. 82.

²⁹ *Id.* at Art. 84.

³⁰ *Id.* at Art. 52.

³¹ *Id.* at Art. 50.

³² Proclamation 311/2003. See discussion above on political power struggles in Addis Ababa.

³³ Constitution of Ethiopia, *supra* note 6, at Chapter 9.

³⁴ It is interesting to note that the traditional Ethiopian justice system is attuned to multiple appeals. For example, during the Emperor's time cases went through as many as 13 separate processes of appeal.

³⁵ Under Article 78(2) of the Constitution, the House of Peoples' Representatives can establish federal courts anywhere in the country "it deems necessary." Accordingly, Federal High Courts have been placed in the following states: Afar, Benshgul/Gumuz, Gambela, Somali, and SNNPR.

³⁶ Proclamation 25/1996.

³⁷ Proclamation 25/1996, as amended.

³⁸ Constitution of Ethiopia, *supra* note 6, at Chapter 9.

³⁹ *Id.* at Art. 78.

⁴⁰ *Id.* at Art. 80.

⁴¹ Proclamation, *supra* note 36.

⁴² States that have established Social Courts include Amhara, Tigray, Oromia, and SNNPR.

⁴³ Proclamation 311/2003.

⁴⁴ Constitution of Ethiopia, *supra* note 6, at Art. 34.

⁴⁵ Constitution of Ethiopia, *supra* note 6, at Art. 78.

⁴⁶ Social pressures and the role of women in society raise serious questions concerning free will and voluntariness of submission to these courts.

⁴⁷ In at least one area (the Wolayta Zone in SNNPR), a law has been passed institutionalizing these traditional courts, and conferring summons/subpoena authority.

⁴⁸ Customary laws are not binding on courts within the official system.

⁴⁹ At the state and sub-regional levels, control over certain of these decisions – particularly those regarding judicial salary and budgetary matters – may be exercised by executive or legislative bodies. See discussion of Judicial Independence below.

⁵⁰ Proclamation 24/1996.

⁵¹ See discussion below about the establishment of the Ethiopian Civil Service College.

⁵² Proclamation 24/1996.

⁵³ Law school graduates can become licensed without having to pass a bar examination if they work in the public sector for the first five years after graduation, *e.g.*, as judges, prosecutors, professors. This encourages young graduates to enter the judiciary directly upon graduation. Judicial experience is used as a training ground and stepping stone into a more lucrative private practice later. Complaints were voiced often that this structure promotes the appointment of immature and inexperienced judges who lack credibility and render decisions of questionable quality and consistency. Although arguably more open to innovation and change, young graduates may also be more readily subjected to intimidation and manipulation by other government actors. In many other countries, the sequence is the opposite, *i.e.*, lawyers gain experience in private practice first, and then seek judicial positions.

⁵⁴ This problem takes on serious dimensions particularly in criminal matters; judges with little or no legal training can sentence criminal defendants to lengthy periods of incarceration (15-year sentences are allowed at the district level) and, at least in theory, have the authority to impose death penalty sentences at higher levels.

⁵⁵ After a great deal of negotiation, this project has apparently managed to overcome the judicial divisions and has the support of the Federal courts.

⁵⁶ Constitution of Ethiopia, *supra* note 6, at Art. 81.

⁵⁷ *Id.*

⁵⁸ Judges must retire at age 60.

⁵⁹ Constitution of Ethiopia, *supra* note 6, at Art. 79.

⁶⁰ *Id.* at Art. 78.

⁶¹ Currently, there are 129 members representing over 75 nations.

⁶² This figure includes all levels of federal, state, and Addis Ababa municipal courts, but does not include any of the state or municipal Social Courts.

⁶³ Amhara and Beneshangul/Gumuz.

⁶⁴ This approximate figure includes persons with law diplomas, in addition to law degree graduates.

⁶⁵ Interview with Law Faculty Dean, Addis Adaba University, 2003.

⁶⁶ Constitution of Ethiopia, *supra* note 6, at Art. 37.

⁶⁷ *Id.* at Art. 25.

⁶⁸ Social Courts were reported to have applied traditional practices inappropriately in some cases, such as imprisonment for debt (these courts have the power to impose up to one month of imprisonment), or the payment of "blood money" (*guma*) between families to resolve murder cases.

⁶⁹ Constitution of Ethiopia, *supra* note 6, at Art. 20.

⁷⁰ A special tribunal was established solely to try accusations of genocide against former *Derg* officials.

⁷¹ One of the District First Instance judges interviewed informed the assessment team that, in seven years on the bench, she had only handled one case in which a criminal defendant was represented by counsel.

⁷² Constitution of Ethiopia, *supra* note 6, at Art. 55.

⁷³ Proclamations 210/2000 and 211/2000.

⁷⁴ Constitution of Ethiopia, *supra* note 6, at Art. 35.

⁷⁵ One example involved a divorce and custody case brought before a Sharia Court. The wife did not wish to consent to that court's jurisdiction, and declared that she was not a Muslim. Under Sharia law, a woman who renounces her religion is an unfit mother. The Sharia Court therefore decided that she was unfit and awarded custody of their children to the father. When she refused to relinquish custody, the court sentenced her to seven months in prison. In that case, the Federal Supreme Court stepped in and reversed the decision on federal constitutional grounds.

⁷⁶ A study conducted by the National Committee on Traditional Practices in Ethiopia in 1998 indicated that 72.7 percent of the female population had undergone some form of female genital mutilation (down from the 90 percent estimate in 1990).

⁷⁷ All land belongs to the government, but can be leased for cultivation and other purposes. The government has an explicit policy to provide equal land access for women, but it has rarely been enforced in rural communities.

⁷⁸ The Sub-Saharan Informer, November 7, 2003.

⁷⁹ Fortune (*Economic Commentary*), vol. 4, no. 182, Oct. 26, 2003.

⁸⁰ Proclamation 25/1996, as amended.

⁸¹ Civil Procedure Code, Book IV. "Special Procedures."

⁸² Civil Procedure Code, *supra* note 81, at Book VI "Execution of Decrees." It is interesting to note that this situation is a result of the inconsistencies created through the importation of laws noted above, namely the use of common law procedural rules which were inconsistent with the substantive civil codes.

⁸³ Proclamation 280/2002, as amended.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Civil Procedure Code, *supra* note 81, at Art. 461.

⁸⁷ *Id.*

⁸⁸ Civil Procedure Code, *supra* note 81, at Book IV "Special Procedures", Chapter 4 "Arbitration", Articles 315-319.

⁸⁹ Proclamation 4/1995, as amended [executive entities]; Proclamation 25/1996, as amended [federal courts].

⁹⁰ For example, due to lack of coordination and information-sharing, both the Institute and the Ministry of Justice worked simultaneously to produce separate conflicting versions of a draft revised Criminal Code.

⁹¹ Joint Government-IDA Communiqués on CAS Workshops, 2002.

⁹² National Capacity Building Plan 2003/04 - 2007/08 at 49, FDRE, MCB (April 2003).

⁹³ *Id.*

⁹⁴ These include, but are not limited to, judicial independence and access to justice. The absence of consideration of gender issues, and women or otherwise marginalized populations, is also noteworthy. Women constitute over half the population and are most affected by poverty and lack of education, legal rights, and protections. As noted previously, securing and enforcing women's rights to personal security and property has great potential to alleviate poverty dramatically. Although affirmative action is constitutionally-guaranteed and consideration of gender issues is required throughout the new federal system and institutions, such consideration tends to take the form of simple statistical notations or inclusion of women in training programs, rather than analyzing, confronting, and redressing deep-rooted ubiquitous discriminatory practices.

⁹⁵ See *Legal and Judicial Reform: Strategic Directions*, World Bank, January 2003.

⁹⁶ See *Id.*

⁹⁷ See *Id.* at 16-20, 55-58, for a discussion of these elements of a functioning rule of law system.

⁹⁸ Laws and rights are meaningless if they cannot be realized, enforced and enjoyed through actual access to justice.



THE WORLD BANK

1818 H Street, N.W

Washington, D.C. 20433

Tel: (202) 473-1000

Fax: (202) 522-3091

E-mail: ljr@worldbank.org

World Wide Web: <http://www.worldbank.org/ljr>