

THE CASE OF CHINESE CONSTITUTIONAL POLITY WITH CHINESE CHARACTERISTICS: CAN CHINA AND ERITREA DIALOGUE?

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This paper subsumes the mysticism of Chinese law by distinguishing it from other bodies of law, while also rendering it transcendental in the contemporary universal legal context. It is also an attempt to romanticize Chinese constitutional law, as a fertile ground that can be used to re-thread the fabric of Eritrean constitutional order. The root of this research is nourished by an extravagance of ideas and desires, which if applied can make the ubiquity and plasticity of the rule of law flow across what is perceived to be “unyielding” borders. Eritrea has just turned twenty-five and despite a tangled post-independence period, the country has been successful in articulating and advancing the vision of the pre-independence generation. Today, Eritrea envisages rejuvenating its governance with a new constitution that not only talks to post-independence Eritreans, but also triggers sustainable development with substantive emphasis on the rule of law. Eritrean endeavours can easily open up to the seductive appeal of the rich conceptual enigma of Chinese constitutional polity, China being one of the countries with the oldest legal traditions in the world. It is axiomatic that Chinese constitution-centred governance, which is well adorned with Chinese characteristics, is pre-eminent, for it has influenced China since 1949 to aptly rise as the world's second largest economy. This paper illustrates that Eritrean constitutional polity can be examined through a Chinese lens, to be calibrated in such a way as to exhibit Eritrean characteristics, and still govern by the rule of law.

Keywords: PRC; China; Eritrea; constitutional polity; constitutional governance; rule of law; developing countries.

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1. China and Eritrea: Introduction to Geographical and Legal Contexts

The People's Republic of China (PRC, China) and Eritrea are two countries on different continents but with innumerable shared values and aspirations in contemporary times. Both are united and multi-ethnic states, with China having the longest unitary history in the world,¹ while Eritrea stands out as one of the youngest unitary states in the world. The two countries are peopled and fussily wedded to a copious history of rich and ubiquitous non-state legal contexts, which not only have shored up civilization in their local enclaves, but also in some circumstances have been used to resist paternalistic encroachment of a universal state law paradigm. In recent times, the PRC and Eritrea have been bound up with the primary currents of doggedness against philistine international pressure to accept democracy and human rights based on universal precedents rather than on local realities.² But despite huge odds against them, the two countries have gone to great lengths to aver bold and imaginative home-grown governance propriety, in order to vindicate their definitive independence and self-determination.

China is one of the ancient civilizations of the world, with over 4,000 years of recorded history; the country stretches 5,250 kilometres from east to west and 3,400 kilometres from north to south in eastern Asia.³ The long history of China is characterized by rich legal traditions that date back to the written legal codes in ancient and pre-

¹ Qianfan Zhang, *The Constitution of China: A Contextual Analysis* 85–87 (Oxford; Portland, OR: Hart Publishing, 2012). China is one of the oldest countries in the world: it became unified during the Qin dynasty (221–206 BCE).

² Berhane Woldu, *Eritrea Constitutional Governance*, Shabait, 13 June 2014 (Aug. 23, 2017), available at <http://www.shabait.com/categoryblog/17262-eritrea-constitutional-governance>.

³ Chusei Suzuki et al., *China*, Encyclopaedia Britannica, 12 August 2016 (Aug. 23, 2017), available at <https://global.britannica.com/place/China>.

imperial China, and which have been pivotal in governing the country with a high sense of order.⁴ In addition, China has been a pragmatic society in many respects, for having a veneer of Confucian communitarian ideals, and which underscore governance by ethics as opposed to absolute reliance on legalism.⁵ Consequently, the PRC has been modelled as the quintessence of the rule of law with Chinese characteristics, and a transcendental socio-political stability that in recent times has appealed to extraordinary producer confidence, capital inflows and stimulated economic growth. It is against this backdrop that the PRC has emerged in the recent past to become the world's largest trading power, and with the second largest economy in the world.⁶ The placement of the country at the pinnacle of the global economy has also facilitated projection of a new triumphalism in the post-Cold War era, one that is able to peddle political, cultural and economic influence, with its concomitant profusion of strategic leadership. It is therefore unmistakable that the phenomenal rise of the PRC can aptly be attributed to a constitutional polity that the PRC has thread-weaved over recent decades, to resonate effectively with Chinese circumstances.

With an area covering 125,000 square kilometres, Eritrea is located north of the Equator in eastern Africa and within the Horn of Africa.⁷ After attaining independence in 1991, Eritrea matured tremendously well and today is a prime example of how the building process of a nation can be achieved by exclusively looking inwards, while at the same time building a formidable bulwark against external dependence. Recent commendable achievements in the United Nations Millennium Development Goals (MDGs), which have seen Eritrea realize six out of eight goals, attest to the country's success and belief in self-reliance despite limited resources.⁸ After twenty-five years of independence, Eritreans have explicitly and implicitly amplified their interest in reconsidering a constitution that is expected to be in vogue with the current new visions and realities, while at the same time adding more muscle to the 1997 independence Constitution.⁹

⁴ Karla W. Simon, *Civil Society in China: The Legal Framework from Ancient Times to the "New Reform Era"* 19–23 (Oxford: Oxford University Press, 2011).

⁵ *Id.*

⁶ International Monetary Fund (IMF), Report for Selected Countries and Subjects (2016) (Aug. 23, 2017), available at http://www.imf.org/external/pubs/ft/weo/2016/01/weodata/weorept.aspx?sy=2010&ey=2016&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=41&pr1.y=4&c=924&s=NGDP_RPCH%2CNGDPD%2CNGDPDPC%2CPPPGDP%2CPPPPC%2CPPPSH&grp=0&a=.

⁷ United Nations, The State of Eritrea: Innovations Driving Health MDGs in Eritrea, Health Millennium Development Goals Report (2014), at 61 (Aug. 23, 2017), available at <http://www.undp.org/content/dam/eritrea/docs/MDGs/Eritrea%20Health%20MDGs%20Report%202014.pdf>.

⁸ Sophia Tesfamariam, *Joshua Hammer of the New York Times – Another Fake News on Eritrea*, TesfaNews, 22 February 2017 (Aug. 23, 2017), available at <https://www.tesfanews.net/joshua-hammer-new-york-times-another-eritrea-fake-news/>.

⁹ Merga Y. Bula, *Eritrea Building Its Own Political System*, TesfaNews, 13 September 2016 (Aug. 23, 2017), available at <https://www.tesfanews.net/eritrea-is-building-its-own-type-of-political-system/>.

How the success of Chinese socialist constitutional polity can resonate with Eritrean future constitutional endeavours is the concern of this paper. The paper illuminates Eritrea with some of the key constitutional features and achievements that explain the unique nature of PRC constitutional governance today.

2. One Size Fits All: The Case of Chinese Constitutional History

The constitutional history of China offers a rare and extra-ordinary insight not only on how to develop an Eritrean constitutional polity with Eritrean characteristics, but also on how Eritrea should not construct a normative constitution orientation in modern times. It is also a history of the rule of law contesting for space amid political turbulence, but with rich experiences that join together the primacy of “de-responsibilizing” universal law as the lead law. But what are the ingredients that inject quality into the panoply of the constitutional history of the PRC? A close inspection of Chinese constitutional history brings into view the fact that, although the Chinese legal system is one of the most ancient in the world, the dawning of constitutional governance can be traced back to the late 19th century. It is around this period in time that the Qing dynasty (1644–1911) promulgated the first written monarchical constitution to ensure its own survival.¹⁰ Unfortunately, the monarchical constitution lasted for only three years; thereafter, the National Party took over leadership in 1912 and enacted a new constitution that was largely understood as being more robust and inclusive.¹¹ For the first time in China the new constitution affirmed the sovereignty of the Republic of China as belonging to all citizens; incorporated popular participation through elections; embraced the doctrine of separation of powers; and guaranteed democratic freedom.¹² But a more ostentatiously lofty constitutional realization materialized at the inception of 1948, when the Chinese Communist Party took over leadership and adopted the famous Common Program.¹³ This was basically an interim constitution and an action plan that formalized the establishment of the People’s Republic of China.¹⁴ Therefore, the Common Program can be described as unifying, and the genesis of consolidating, the people’s power in China.¹⁵ A turning point came in 1954 when a constitution with

¹⁰ Lin Feng, *Constitutional Law of China* 1–19 (Hong Kong: Sweet & Maxwell Asia, 2002).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ In Chinese, the word “people” is pronounced *Ren Min*, “citizen” is *Gong Min*. The former refers to those who support the Communist Party while the latter means those who are Chinese by nationality.

exogenous attachments was promulgated. Besides adopting the current People's Congress System, the 1954 Constitution made the PRC a socialist state; thus stitching the country to the socialist world order under the stewardship of the Soviet Union.¹⁶ It was therefore crucial in making Chinese constitutionalism a "goody two shoes," for it watered down cultural conservatism at home, and elevated political correctness in the international realm. In 1975, another constitution was adopted to preserve the achievements of the Cultural Revolution (1966–1977), but which was widely perceived as less progressive, leading to the enactment of the 1976 Constitution to return to the status quo.¹⁷ Lastly there is the current 1982 Constitution, a sufficiently tenable document that has seen only four amendments, and whose objective seems to be conscientization.¹⁸ It has been crucial in reconciling two concepts that had universally been considered antithetical, the private sector and the socialist public economy, therefore reflecting China's transition from a socialist economy to a socialist market economy.¹⁹ In a nutshell, PRC constitutional history can unequivocally be understood as channelling a constitutional consciousness streaming rule of law, and carrying Chinese characteristics.

It is clear that the above account amounts to a massive and influential exercise in molding the rule of law in China. But how can we transform it so as to act as a "transmission belt" for transferring abstract but familiar concepts into the Eritrean legal context? Eritrea, like China, is an ancient civilization, whose foundations of the rule of law are entwined with the Axumite Empire (1st to 9th centuries); the Beja kingdoms (8th to 13th centuries); the Bahre Negash kingdoms (14th to 18th centuries); Italian colonization (1881–1941); British Administration (1941–1952); and the Ethiopian Crown (1952–1991).²⁰ Nonetheless, the first Eritrean constitution was realized in 1952, through Resolution 390(V)A of the UN General Assembly, and which was crucial in federating Eritrea to the sovereignty of the Ethiopian Crown.²¹ The constitution was successful in configuring the separation of powers between the Eritrean Federation and the Ethiopian Federal Government, on the one hand, and, on the other hand, between those of the legislative assembly, the judiciary and the executive in the Eritrean Federation.²²

¹⁶ See Feng 2002, at 1–19.

¹⁷ *Id.*

¹⁸ Constitution of the People's Republic of China, People's Daily Online (Aug. 23, 2017), available at <http://en.people.cn/constitution/constitution.html>.

¹⁹ *Id.*

²⁰ Shabait Administrator, *Eritrea at a Glance III*, Shabait, 30 October 2009 (Aug. 23, 2017), available at <http://www.shabait.com/about-eritrea/eritrea-at-a-glance/342-eritrea-at-a-glance-part-iii>.

²¹ Simon M. Weldehaimanot, *Constitution Making in Eritrea in Constitutionalism and Democratic Governance in Africa: Contemporary Perspectives from Sub-Saharan Africa* 89–114 (M.K. Mbondenyei & T. Ojienda (eds.), Pretoria: Pretoria University Law Press, 2013).

²² *Id.*

Apparently, the UN and British Administration idea of an Eritrean Federation came about as a compromise that bound Eritreans to the law while also abandoning them to it. Eritreans actually yearned for independence and not a federation, while Ethiopians were still convinced that the historical ties between Ethiopians and Eritreans were too strong to warrant disentanglement of the two nationalities.²³ As such, it took Ethiopians less than ten years to annul the 1952 Constitution and subsequently transform Eritrea into a province.²⁴ As a result, in 1961²⁵ Eritreans started to revolt; this led to a bitter and protracted liberation struggle that lasted until 1991.²⁶ After attaining independence that same year, Eritrea embarked on a nationwide consultative process, which led to the enactment of the second constitution, the 1997 Constitution.²⁷ It is a written constitution, relatively short and well unified to the rule of law. It mandates a good sense of separation of governmental powers, promotes a representative parliamentary system, has substantial checks and balances that give it a democratic outlook; it safeguards the exercise of fundamental rights and it is less rigid in nature, since the procedure for amendment is not complicated.²⁸ The 1997 Eritrean Constitution can at best be described as progressive and legitimizing, for it embraces a substantive conceptualization of Eritrean national identity, egalitarianism and participatory governance. Unfortunately, the ramifications of the 1998–2000 Eritrea-Ethiopia border war have impoverished Eritrean rule of law tremendously over the years by constraining the nuts and bolts of the functional implementation of the 1997 Constitution.²⁹ That said, Eritreans can now angle the envisaged new constitution and future constitutional developments to depict an instrumentalist approach that aptly characterizes PRC constitutional history, and so that it can serve as an advertisement of Eritrean rule of law intervention. Chinese constitutional history satisfies the instrumentalist attribution when one considers that, from the Qing dynasty monarchical Constitution to the 1976 Constitution, constitutional polity in China was angled to propagate political postulates, while the 1982 Constitution is seen as making a drastic departure to heralded economic progressivism.³⁰ Therefore, Eritrean constitutional polity can be thematized to pursue a political struggle that will renounce any form of hegemonic and imperialistic adventurism, universalize traditional practices of peacetime in

²³ Weldehaimanot 2013, 89–114.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Constitution of Eritrea (1997) (Aug. 23, 2017), available at <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004654.pdf>.

²⁹ See Bula, *supra* note 9.

³⁰ See Feng 2002, at 1–19.

Eritrea-Ethiopia relations, and continue to preserve and reshape the values acquired during the liberation struggle. In addition, the envisaged Eritrean constitutional governance can satisfy Chinese constitutional history, if it can foster the translation of tautological Eritrean economic policy choices of self-sufficiency into legal interventions that will galvanize all the relevant resources and actors in the country. That much is a germane way of promoting the desired level of economic self-reliance, and with substantive Eritrean features. Unlike China, Eritrea is far smaller demographically, but with a profoundly united purpose. Therefore, adoption of a parallel instrumentalist approach which is cognizant of political and economic possibilities would be the most plausible option for Eritrea now.

3. Prodding the Eritrean Legal System to Deal with Virtue and Vice

The tangible strides that the PRC has made in the development of a legal system that speaks to Chinese circumstances are there for Eritrea to fully appreciate. After decades of legal development, China was proud to declare the establishment of a “socialist legal system with Chinese characteristics” in January 2011.³¹ The Chinese legal framework is an enigma of legal norms that facilitates the management of the enormous diversity that exists in the PRC, as well as ensuring that the central government enjoys supreme authority over all the people.³² At the top of the hierarchy is the 1982 Constitution, the fundamental law of the state. A unique characteristic of the Chinese constitution is that it can only be enforced and interpreted by the standing committee of the national legislature, the National People’s Congress Special Committee (NPCSC).³³ This provision is a dedicated measure to enhance legislative efficiency by way of strengthening the consistency of the constitution with a large body of peripheral legislation in the country. Second in the hierarchy of legal norms are the national statutes, enacted by the national legislature, the National People’s Congress and its standing committee the NPCSC.³⁴ Both complement each other in legislative functions, and with a consensus that stimulates legislative synergy, while minimizing discordance in legislative processes. It can also be argued that the existence of legislative dichotomy also ensures effective and timely management of national diversity, as well as any complex circumstances that may unfold in day-to-day life, through the legislative process. After the constitution and the central laws there are the administrative regulations which are binding countrywide just like the national statutes, and they are enacted by the State Council, the administrative

³¹ See Zhang 2012.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

organ of the state.³⁵ The State Council may legislate on areas reserved for the national legislature or its standing committee, but with authorization from either of them.³⁶ The State Council therefore is not a bit player in the Chinese legal system, but a critical role player that promotes the reach of the rule of law countrywide, and harmonizes national regulations with the legislative process. The top lower level of the Chinese legal system is characterized by local regulations enacted by the provincial Local People's Congresses (LPCs), municipalities and autonomous districts, and also by departmental rules enacted by ministries and commissions.³⁷ At the lowest level, there is an enormous body of orders, decisions, notices and instructions of general applicability made by a variety of government units, which touch upon the everyday practical life of all the citizens more than national legislation, or even the constitution.³⁸ Consequently, the lower level of the Chinese legal system is crucial not only in promoting rule of law consciousness, but also widespread acceptance of the rule of law in the country. By early 2011, China had 236 effective national laws, over 690 sets of administrative regulations, 8,600 sets of local regulations, and many more rules and norms in the lower rank.³⁹

In comparison to China, the modern Eritrean legal system is still at the embryonic stage, but in transition to address contemporary challenges and aspirations. Nevertheless, Eritrean customs and traditional justice systems are ancient and function side by side with the state legal system, as a way of reconciling local social contexts with the rule of law.⁴⁰ At the bottom of the Eritrean legal system are the customary laws, the *Hegi Endaba* (laws of forefathers), that were written and codified in the 15th century.⁴¹ The customary laws have jurisdiction in a wide range of suits and function in over 400 community courts nationwide, thus guaranteeing access to justice to those Eritreans who are not likely able to afford it otherwise.⁴² Above the *Hegi Endaba* there are the national statutes that encapsulate penal codes, the Sharia law and the civil codes, and which adjudicate in regional courts, the high court and the Court (Bench) of Final Appeal, as a way of promoting formal and substantive equality in Eritrean society.⁴³ At the apex there is the 1997 Eritrean Constitution, enacted to assert Eritrean identity and also conflate

³⁵ See Zhang 2012.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Mela Ghebremedhin, *Combining Traditional Customs and Rule of Law: The Strengths of Eritrean Community Courts*, TesfaNews, 6 January 2016 (Aug. 23, 2017), available at <http://www.tesfanews.net/custom-modern-law-eritrean-community-courts/>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

the composite constituents of Eritrean society.⁴⁴ It can therefore be concluded that, in addition to spreading the rule of law, the Eritrean legal system can be said to be successful in advancing widespread access to justice, orderly participation of citizens in building the nation, equal representation of women and peaceful dispute resolution.⁴⁵ With the inspiration of the Chinese legal context, Eritrean constitutional polity can in future breed a hierarchy of legal norms with Eritrean characteristics, through further subordination and eventual balancing of state law with the Eritrean customary law paradigm. By re-articulating the legal system that way, non-state law would have the capacity to buttress the oppressive proclivities of the state law paradigm, while also enabling new paths to access justice and dispute resolution in the country.⁴⁶ Such a development also requires constitutional facilitation through linkage laws, to ensure consistency between state law and customary law.⁴⁷ Otherwise the legal system may morph in such a way as to increase unpredictability of the law and may also subject the citizens to conflicting duties.⁴⁸ An Eritrean constitutional polity that enhances further codification and restatement of more aspects of non-state law will be counted as being prolific, for it will provide governance in Eritrea with more space for gaining legitimacy, and especially in times of a legal vacuum. A typological legal development of that nature would be material, such as in the last sixteen years or so, during which implementation of the Eritrean constitution has been stymied by destabilization overtures emanating from the Horn of Africa region and beyond.⁴⁹ It has also come to light that the Eritrean legal system cannot mature quickly, since the current legal profession that frames issues for determination under customary law is bound by relatively lenient competency requirements.⁵⁰ To realize an Eritrean legal system with Eritrean characteristics, a competent legal profession that understands the underlying purpose of customary law needs to be honed so that it can in future stimulate its incremental and organic growth. In the long run, Eritrea would be able to precipitate a constitutional polity that is sufficient enough to produce a diverse set of more stable social enclaves and settlements. The idea is to infuse a constitutional polity that rides on a capacitated legal system, in order to elevate the predictability of law and rule of law consciousness.

⁴⁴ See *Eritrea at a Glance III*, *supra* note 20.

⁴⁵ *Id.*

⁴⁶ Laura Grenfell, *Promoting the Rule of Law in Post-Conflict States* 61–63 (Cambridge: Cambridge University Press, 2013).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Nunu Kidane, *Isaias Afwerki*, *New Internationalist*, 2 March 2004 (Aug. 23, 2017), available at <https://newint.org/columns/worldbeaters/2004/03/01/isaias-afwerki/>.

⁵⁰ *Id.* Even though the legal profession in customary courts is dominated by elders with substantial knowledge of state law and non-state law, any mature person of sound mind, no criminal record and who has fulfilled all national duties is eligible to be a community court judge in Eritrea.

4. No Entry without Strategy: Insights from Chinese State Ideology

The concept of constitutional polity can be thematized to act as the mouthpiece for sanctioning rational and critical political ideas of the common good, and which can also serve as a way of undoing the monopolization and actualization of such concepts by the political vanguard of the country. The PRC is a contemporary prototype that fulfils such abstract thinking, in that the country has shaped a constitutional polity that not only sanctions a pre-eminent and domesticated official state ideology, but also “suffocates” over-involved political citizenry. To effectively perform functions of statehood and promote pluralistic “tolerance,” the Chinese have institutionalized Marxism-Leninism and Zedong-Deng Xiaoping Thought, as a unique fundamental principle in the Chinese constitution, and which also serves as the official state ideology that governs the country.⁵¹ The development of the present Chinese state ideology was precipitated by the fall of the Qing dynasty in 1911, which by extension was the end of the Confucian moral order and the inception of what was perceived to be more quintessential to China, the Marxist political order.⁵² But it is only after the 1949 revolution when the Communists came to power that Marxism-Leninism became the political theory of the state, an undertaking which was in vogue with other like-minded socialist governments in the world.⁵³ By embracing this ideological stance there also arose a realization that the country needed to be insulated from being amenable to imperialistic overtures and subsequent domination. It is from this perspective that the Chinese political leader Mao Zedong advanced Marxism-Leninism ideology, to proselytize it, so that a Chinese model could be countenanced.⁵⁴ The culmination was the Marxism-Leninism-Mao Zedong Thought which propelled agricultural development and subjugated urban development; social revolution by the peasant class and not by the urban class was advocated; and with human nature and not the economy as the major driving force in social development.⁵⁵ In addition, Mao Zedong Thought fostered the need for continuous revolution so as to precipitate social change, and so that a classless socialist society would culminate.⁵⁶ It is noteworthy that Marxism-Leninism-Mao Zedong Thought never remained static. The PRC under Deng Xiaoping toyed with social and economic reforms in the late 1970s that were crucial in isolating the revolutionary capacities of mass movements

⁵¹ See Feng 2002, at 1–19.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ James Batchelor, *Maoism and Classical Marxism*, CLIO (2009) (Aug. 23, 2017), available at <http://cliojournal.wikispaces.com/Maoism+and+Classical+Marxism>.

⁵⁶ *Id.*

from Mao's understanding of economic and political governance.⁵⁷ The culmination was the Marxism-Leninism and Mao Zedong-Deng Xiaoping Thought, which is the guiding principle of the ruling party, and whose fundamental goal is to establish the social system of communism.⁵⁸

Since attaining independence twenty-five years ago, Eritreans are by and large perceived to have been thread-weaving their own political ideology,⁵⁹ so that it could serve as political glue that will bind national integration and self-determination. But what brings China and Eritrea together is the fact that they have experienced similar situations, and of disenchantment, thus both have focused on instantiating political ideals that are ascriptive of local realities and aspirations. It is noteworthy that during the Eritrean liberation struggle, the Eritrean People's Liberation Front (EPLF) was inspired by Marxist ideology, but after independence there was a deviation towards more moderate pragmatism.⁶⁰ Eritrea therefore never adopted any of the universal political ideologies, remained intransigent on this matter and showed a radical aversion to imperialism. As such, a solid Eritrean political ideology would progress if prospective Eritrean constitutional governance would nudge and ameliorate some of the juxtaposed institutional and ideological threads, so that they could be well synchronized with the seminal thought of self-reliance. This includes the People's Front for Democracy and Justice (PFDJ) leadership always realizing a more self-conscious interventionist political leadership;⁶¹ a continuous and sustainable National Service Program (NSP) as a tool for self-determination and national self-perpetuation; a reconciled and sufficiently well-linked Eritrean Diaspora with the motherland, as a constituent for building self-reliance and national viability; spawning a rich and non-trivial Eritrean civil society to atomize foreign aid and substitute government provisioning in social intervention; and nurturing a thriving co-existence between a dominant public sector and a private sector to balance market forces with social welfare. By developing a solid and unique official state ideology, Eritrea will be less amenable to wavering between universal political theories, and more likely to be a paragon of alternative political leadership in a world that is becoming more politically uni-polar by the day. The goal is to realize a constitutional polity that will reflect a unique Eritrean leadership and at the same time steer Eritrea to full economic sovereignty and real political independence.

⁵⁷ Richard Wertz, *Maoism*, Exploring Chinese History (ECH), 25 May 1998 (Aug. 23, 2017), available at <http://www.ibiblio.org/chinesehistory/contents/02cul/c04s07.html>.

⁵⁸ See Feng 2002, at 1–19.

⁵⁹ See Bula, *supra* note 9.

⁶⁰ See Kidane, *supra* note 49.

⁶¹ The People's Front for Democracy and Justice (PFDJ) party is the new modernized outlook of the Eritrean People's Liberation Front (EPLF) party. EPLF is perceived to have realized its objective, which was the emancipation of Eritrea from colonial rule. PFDJ is therefore expected to facilitate realization of post-independence dreams.

5. Temptations of an Economic Base with Eritrean Characteristics

The PRC is an illustrious case study of how a promising state like Eritrea can play catch-up with the world's leading economies by riding on a deliberate strategic economic model. The economic propriety of China can be attributed to the bold and imaginative socialist character of the economy, which has a strong proclivity to motivate extraordinary freshness of ideas and competitiveness. Socialism is one of the hallmarks of PRC constitutional polity, and it serves as a key guiding principle as well as the economic base of the country.⁶² This aspiration is affirmed by Art. 1(2) of the 1982 Constitution of China, which provides that, "The socialist system is the basic system of the People's Republic of China."⁶³ When one examines the Chinese constitutional governance from 1954 to 1978, it is discernible that it was characterized by a socialist economy that was not firing on all cylinders, as state ownership was the only principal means of production.⁶⁴ What catapulted the PRC to become the economic giant that it is today, were the novel exploits of Deng Xiaoping's reforms after 1978, which freed socialism to allow for private ownership to co-exist and supplement state ownership.⁶⁵ Deng Xiaoping revitalized agriculture by contracting farmland to farmers in a way that linked output to remuneration; state-owned enterprises' decision-making powers were broadened; large-scale manufacturing units were realized; and constraints on foreign investment were limited.⁶⁶ To give the reforms more legal substance, a socialist market economy model was adopted in 1993 and legitimized through the 1999 constitutional amendments, thus formal equalization of private ownership with state ownership was realized.⁶⁷ Consequently, the PRC has over the years been able to realize attenuated poverty levels, robust industrialization, world-class infrastructure and to reach and match the world's largest economies.⁶⁸ Hence, Chinese socialism is unique in the world in the sense that it has been invigorated with the market economy model, to give China a socialist market economic base.⁶⁹

⁶² See Feng 2002, at 34.

⁶³ Constitution of the People's Republic of China, Art. 1, cl. 2.

⁶⁴ See Feng 2002, at 34.

⁶⁵ *Id.*

⁶⁶ Zeng Peiyan, *The Establishment of Socialist Market Economy*, 4(3) *Qiushi Journal* (2012) (Aug. 23, 2017), available at http://english.qstheory.cn/magazine/201203/201210/t20121008_185077.htm.

⁶⁷ Constitution of the People's Republic of China, Amendment 16 (repealed 1999). It stated that a non-state owned economy is an important constituent of socialist market economy.

⁶⁸ Amitendu Palit, *Revisiting Deng and the Socialist Market Economy*, *China Daily*, 20 August 2014 (Aug. 23, 2017), available at http://www.chinadaily.com.cn/opinion/2014-08/20/content_18451034.htm.

⁶⁹ Constitution of the People's Republic of China, Amendment 3 (repealed 1993).

Eritrea's formative and current economy mirrors that of China between 1954 and 1978, when one considers that some key components of the Eritrean economy have largely been inefficient and faced with unique difficulties. But unlike many countries in Africa which came to independence with substantive giveaways and throwaways from the colonial economy, Eritrea came to independence with almost no nascent economy and the little that existed was centrally planned and linked to Ethiopia.⁷⁰ Independent Eritrea started boldly by dismantling the remnant central planning structures of the Ethiopian colonial economy and migrating towards a market-based economic system.⁷¹ Apparently, due to strong state interventions to shield the economy from the diversionary effects of international embargoes, sanctions and aggression from neighbouring countries,⁷² Eritrea is perceived to be close to socialism.⁷³ What is certain is that Eritrea's aspirations have been pointing towards constructing a competitive market economy base, riding on vitalized sectors such as agriculture, finance, mining and tourism while also being characterized by export-oriented industries.⁷⁴ For now, suffice it to say that Eritreans yearn for a market economy model with Eritrean features, and one that has the capacity to achieve home-grown sustainable economic growth characterized by social equity and self-reliance.⁷⁵ When one moves beyond the notional perspective of the Eritrean economy and explores why Eritrea had exemplary achievements in realizing the Millennium Development Goals between 2000 and 2015,⁷⁶ one realizes that the country has been working extraordinarily well to build a robust social welfare component of the economy. In that respect, there is considerable parity between the PRC and Eritrea, since China's constitutional polity promoted a socialist economic base by asserting a social welfare component of the economy between 1954 and 1978, and the

⁷⁰ Berhane Woldu, *Market-Capitalism: What is in Store for Eritrea?*, Shabait, 19 September 2014 (Aug. 23, 2017), available at <http://www.shabait.com/categoryblog/17873-market-capitalism-whats-in-store-for-eritrea>.

⁷¹ International Monetary Fund (IMF), *Eritrea-Recent Economic Developments*, IMF Staff Country Report No. 96/66 (August 1996) (Aug. 23, 2017), available at <https://www.imf.org/external/pubs/ft/scr/1996/cr9666.pdf>.

⁷² See Woldu, *supra* note 70.

⁷³ Thomas Mountain, *Eritrea: 25 Years of Struggle Building Socialism*, TesfaNews, 11 May 2016 (Aug. 23, 2017), available at <http://www.tesfanews.net/eritrea-25-years-struggle-building-socialism/>.

⁷⁴ See *Eritrea-Recent Economic Developments*, *supra* note 71, at 2.

⁷⁵ See *The State of Eritrea*, *supra* note 7, at 16.

⁷⁶ Kesete Ghebrehiwot, *Lesson from Eritrea: Meeting MDGs as Soon as Possible*, Shabait, 1 November 2013 (Aug. 23, 2017), available at <http://www.shabait.com/articles/nation-building/15104-lesson-from-eritrea-meeting-mdgs-as-soon-as-possible>. In trying to fulfil the Millennium Development Goals (MDGs), Eritrea achieved 87% access to education by children; 99% maternal healthcare to Eritrean mothers; the drastic reduction of child mortality through 99% vaccination; among the lowest HIV infection rates in Africa; and the complete eradication of mortality due to malaria. See *Millennium Development Goals: The Eritrean Version*, Shabait, 12 November 2009 (Aug. 23, 2017), available at <http://www.shabait.com/articles/nation-building/440-millennium-development-goals-the-eritrean-version>.

market economy component after 1978.⁷⁷ This is a negation of Western economics which lays emphasis on building the market economy first, and the social welfare component afterwards.⁷⁸ Eritrea therefore can use future constitutional governance as a springboard to build an economic base with one of the most successful social welfare systems in Africa, if the country can capitalize on atomizing some of its prevailing weaknesses (inadequacies) that hindered effective materialization of all the Millennium Development Goals, while also propping up its strengths.⁷⁹

After 1978, the materialization of the Chinese socialist economic model was characterized by experimental reforms that were pivotal in instantiating the market economy component, an endeavour that saw the development of the law lag behind the development of the society.⁸⁰ In the same vein, prospective Eritrean constitutional governance must be cognizant that Eritreans might need to experiment with certain policies and regulations in order to realize a market economy model with Eritrean characteristics. Such undertakings would need actual reforms preceding legislation development, and therefore benign constitutional violation must be envisaged in the new constitution so as to provide the necessary flexibility.⁸¹ Once the aspired-to Eritrean market economy model is established, then more emphasis can be placed on legal development than on experimental reforms. The market economy component can also be brought up to speed if Eritrea can paddle of out of the malodorous creek of adverse regional politics, while also working out a few issues in international relations that pertain to the rule of law and human rights. PRC constitutional governance, therefore, provides comforting support as to how Eritrea can build a competitive economic base that is less vulnerable to adverse shocks, and also one that has the capacity to strengthen the business and investment climate.

6. Optimizing Democracy to Serve Eritreans

The notion of democracy as flamboyantly ordained with universal ostentations has left the concept smelling of something less acceptable than attar of roses in Chinese and Eritrean contexts. In recent times, the PRC has emerged as a case study of how democracy can be reshaped to be contiguous with local realities and to fit modern ends. Constitutional polity in China has been successful in transforming the polemic of democracy into an idea that pragmatically accommodates a wide variety of interests, through the key guiding principle of the “people’s democratic dictatorship.”¹⁸²

⁷⁷ See Feng 2002, at 34.

⁷⁸ *Id.*

⁷⁹ See The State of Eritrea, *supra* note 7.

⁸⁰ See Feng 2002, at 29–32.

⁸¹ *Id.*

⁸² *Id.*

The “people’s democratic dictatorship” is a facelift by Mao Zedong of what was Karl Marx’s concept of “proletariat dictatorship,” to embrace a more formidable front of masses, and which included the petty and national bourgeois, all patriotic elements, the classes of workers and the peasants.⁸³ Therefore, it can be argued that Chinese constitutional governance through the principle of “people’s democratic dictatorship” is eminently democratic, since it not only brings to unity all the political forces in the country, but also capacitates them to hold the ruling power in China.

In addition, China has accentuated socialist democracy through a republican form of government with Chinese characteristics known as the People’s Congress System. At the apex of the People’s Congress System there is the national legislature and its special standing committee, which together serve as the supreme emblems of democracy in the PRC. Both are configured to constantly preserve majority rule and showcase the common people’s power at the highest level in the country.⁸⁴ Moreover, the duality of the national legislature and its standing committee functions in the democratization processes to guarantee checks and balances in Chinese socialist political civilization. Below the national legislature there are localized legislatures known as the Local People’s Congresses (LPCs), and which represent the state power at lower levels.⁸⁵ They function in the provinces (including the autonomous regions of Hong Kong and Macao), cities, counties, municipal districts, towns and, at the bottom, townships. At the county level, the deputies elect each other up to the National People’s Congress level in a cascading manner, while those below the county level are directly elected by local constituents.⁸⁶ The LPCs’ powers include electoral and removal powers; policy-making powers; supervisory and corrective powers.⁸⁷ A unique characteristic of the Chinese congress system is that the scope of powers of the LPCs is not uniform, but tailored to fit the circumstances in each level of governance, therefore making them more capable of projecting majority rule at lower levels, as well as managing the dynamics and complexities of local governance in the PRC.⁸⁸ The congress system therefore can be said to be a success in incubating unitary centralism in China, without sacrificing legislative efficiency and democratic representation.

The idea of political democracy is an arresting theme in Eritrea, and one which has a proclivity to recur with the understanding that it can be used by others to orchestrate a state to lose “ground,” and it can also serve to self-propel a state to its destiny, if subjected to inherent societal control. Political democracy is well underlined by the PFDJ in the Eritrean National Charter, and it is one of the key national values among

⁸³ See Feng 2002, at 29–32.

⁸⁴ See Zhang 2012, at 58–94.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

others such as national harmony, economic development, social justice, regional and international co-operation.⁸⁹ To realize a democratic culture that would be in tandem with the principle of self-determination, immediate post-independence Eritrea decided to earnestly propel democracy, so that political development could concurrently be realized with the process of building the nation.⁹⁰ As such, EPLF political work made new configurations that were instrumental in precipitating unrivalled but consolidating bottom-up democratization institutions. The culmination was the placement of the Eritrean National Assembly as the topmost organ of exercising democratic governance, and which is also an emblem of pluralistic “tolerance” in a multi-ethnic nation. At the middle level there are the regional assemblies, followed by sub-zonal administration units. Both are led by elected representatives who currently have profound reach and control over the public realm, much more than the National Assembly representatives. Apparently, the aftermath of the 1998–2000 Eritrea-Ethiopia border war changed the national priorities of Eritrea, leading to the suspension of elections and political processes associated with the National Assembly (but not the regional assemblies and sub-zones), for the war precipitated conditions of perennial belligerency and an enormous drain on economic resources.⁹¹ Hence, the regional assemblies have emerged as formidable avenues of explicating and reinforcing the roles of the National Assembly at the lower levels, while the sub-zonal administrators serve to simplify and carry out the administrative work of the regional assemblies in their jurisdictions. At the edges of the ordinary democratization penumbra, Eritrean popular democratic organization is ossified by deliberate and active involvement of key Eritrean associations such as the National Union of Eritrean Women, the National Union of Eritrean Youth and Students, the National Confederation of Eritrean Workers and the Eritrean Diaspora, among others, so that mass participation would be broadened and deepened in performance of functions of statehood.⁹² Thus, democratization efforts in Eritrea can so far be said to have been resourceful in subsuming Eritrean sectarian sentiments, while at the same time raising a common nationalism.⁹³ That said, it is worth mentioning that President Isayas Afewerki of Eritrea has underlined the position of Eritrea on the democratization process, as one where, “There is a conflict between the way we (Eritreans) understand democracy and pluralism, and the way others understand them. We cannot depend on foreign ideas that are not in our interest.”⁹⁴ President Afewerki’s

⁸⁹ See *Eritrea at a Glance III*, *supra* note 20.

⁹⁰ Yishak Yared, *Assessment of EPLF’s in the Period between Its 1st and 2nd Congress (Part I)*, Shabait, 26 October 2012 (Aug. 23, 2017), available at <http://shabait.com/about-eritrea/history-a-culture/11403-assessment-of-eplfs-experience-in-the-period-between-its-1st-and-2nd-congress-part-i>.

⁹¹ UNHCR Eligibility Guidelines: Factual Findings or Recycled Defamation?, Shabait, 17 December 2015 (Aug. 23, 2017), available at <http://www.shabait.com/news/local-news/20954-unhcr-eligibility-guidelines-factual-findings-or-recycled-defamation>.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ President Afewerki Says No Political Opposition in Eritrea, Sudan Tribune, 11 May 2017 (Aug. 23, 2017), available at <http://www.sudantribune.com/spip.php?article21830>.

thoughts vigorously support democracy with Eritrean characteristics, thus ascribing to the Chinese approach to democracy which demystifies the concept by subjugating it via intellectualism and innovation.

To satisfy the Chinese experience in the democratization process, Eritrean constitutional polity should reconfigure leading democratic institutions to reinforce each in its own role, and so that they can also act as co-surveillants in democratic governance. As such, Eritrean constitutional governance can elevate democracy by empowering regional assemblies to limit the national legislature in its powers, so that the common people will always remain the wielders of political power, while any proclivities towards political centralism by the assemblies will always have the possibility of being weakened. It can also capacitate sub-zonal administration units to elevate democracy at the lower levels more than what regional assemblies do, so that there is a heightened construction of democracy beyond how it ordinarily characterizes itself in Eritrea. The new constitution can also legitimize key Eritrean associations in such a way as to have the prerogative of problematizing issues that the National Assembly, the regional assemblies and sub-zonal administration units may not question in the democratization process, and thereby facilitate the normative reach of the term in the country.

It is also evident that Eritrea created internal harmony through the elimination of narrow traditional leadership forms, in order to create new democratic mass formations that were seen as suppressing religious, ethnic and provincial sentiments.⁹⁵ Eritrea therefore differs from China which utilized existing traditional leadership formations to create autonomous regions that are empowered to function in light of the political, economic and cultural realities in their areas.⁹⁶ Regional autonomy is thus a vehicle of democratic governance in China that touches on nationalities (minority ethnic citizens), Special Autonomous Regions for administration of Hong Kong and Macao; and it is profoundly dynamic so that it can harness the reunification of Taiwan to the constitution of mainland China.⁹⁷ Bearing in mind that Eritrea has encountered an unprecedented and egregious exodus of its citizens, driven mainly by the effects of the 1998–2000 Eritrea-Ethiopia border war, and pull factors of political asylum in developed countries,⁹⁸ the country has a significant Diaspora that needs to be embraced beyond representation in the National Assembly.⁹⁹ As such, future constitutional polity in Eritrea can resonate with the Chinese experience, by profoundly exploring new autonomous political space to specifically represent and

⁹⁵ President Afewerki Says No Political Opposition in Eritrea, *supra* note 94.

⁹⁶ *Id.*

⁹⁷ See Zhang 2012, at 108–118.

⁹⁸ See Bula, *supra* note 9.

⁹⁹ Eritrea has experienced an unprecedented exodus of its citizens in recent times, driven mainly by destabilization forces in the Horn of Africa, and a pull factor from developed countries that tend to warmly welcome and offer political asylum to such Eritreans.

manage the returned Eritrean Diaspora. Such space can also function as a nostrum for purging foreign proclivities in order to integrate returnees with authentic Eritrean realities. A constitutional polity that would capture and turn around the Eritrean Diaspora would be critical in ensuring national loyalty, cultural tolerance as well as mitigation of cultural and development fissures that may threaten the unity of Eritrea in the future. The objective is to have an Eritrean revolutionary people's democracy that will rise far beyond its demonstrated returns.

7. Eritrea: Sitting Comfortably with the Notion of Human Rights

In the recent past, the backlash by a section of the international community against their conceptualization of human rights in a number of countries including China and Eritrea reached a crescendo that brought about the current polarized and partisan architecture of universal human rights values in the world. In the universal realm there is a propensity to underscore political and civil rights while deliberately being reticent on development and subsistence rights.¹⁰⁰ Clearly that is an assumption that is not only patronizing towards developing countries like the PRC and Eritrea, but also casts the developed world into turmoil with the developing countries, thus further exposing the frailties of the universal human rights architecture in contemporary times. In fact, both the PRC and Eritrea have contributed to the growth of human rights by enshrining them in their constitutions and statutes, thus giving them reliable legal protection and plausible justifications. There is no doubt that China's constitutional governance has been pivotal in modelling its legal framework, and in such a way as to codify, institutionalize and improve the safeguarding of human rights in the country. The primacy of human rights in China is well illustrated in the current constitution, which was amended so that chapter 2 on rights and obligations was brought forward from chapter 3, and also before the chapter on state organs.¹⁰¹ Such an amendment, among others, underlines the primacy of safeguarding human rights in China. Since the PRC is the largest developing country in the world,¹⁰² human rights development is premised on placing top priority on rights that improve people's subsistence and development, over all other rights.¹⁰³ Another outstanding feature of Chinese human rights architecture is that communitarian rights take precedence

¹⁰⁰ Osman Saleh, *Statement Delivered by the Foreign Minister of Eritrea on Human Rights Day 2016*, TesfaNews, 15 December 2016 (Aug. 23, 2017), available at <https://www.tesfanews.net/fm-osman-saleh-human-rights-day-2016-statement/>.

¹⁰¹ See Feng 2002, at 262.

¹⁰² PRC State Council White Paper, *China's Efforts and Achievements in Promoting the Rule of Law*, USC U.S.-China Institute, 28 February 2008 (Aug. 23, 2017), available at <http://www.china.usc.edu/prc-state-council-white-paper-%E2%80%9Cchina%E2%80%99s-efforts-and-achievements-promoting-rule-law%E2%80%9D-feb-28-2008>.

¹⁰³ See Feng 2002, at 262–263.

over individual rights.¹⁰⁴ This development can be attributed to the influence of Confucianism in all facets of life in China, where individual aspirations are made tepid by filial piety.¹⁰⁵ To ensure social harmony and stability of the country, the government of the PRC has adopted reasonable restraints and supervision over the enjoyment of human rights by all the citizens.¹⁰⁶ Such restraints have a legal basis and elevate national security, public order, public morals, public health and the reputation of others over human rights.¹⁰⁷ To contribute and even acquire fresh ideas and practices that safeguard human rights values, Chinese human rights architecture has been universalized by the PRC being a signatory state to over twenty-two international human rights conventions,¹⁰⁸ including the International Convention on Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the International Convention on Economic, Social and Cultural Rights.¹⁰⁹ It can therefore be concluded that the development of human rights in the PRC can to a large extent be attributed to deliberate shaping and pruning, in order to keep raising respect for human rights.

When one turns to Eritrea, it is helpful to remember that the country achieved independence after a long struggle for human rights, and has since then been conflating human rights values with efforts to build the nation, through such measures as poverty alleviation, equitable distribution of resources, sanctioning of equal rights, equal opportunities for all Eritreans, and so on.¹¹⁰ The Eritrean Constitution of 1997 was a significant landmark in safeguarding Eritrea's human rights values, since it established the general principles and the basis of human rights legislation. The heart of human rights in the Eritrean constitution is domiciled in chapter 3, which can be summarized as embracing political rights and freedoms; rights of equality; personal freedom rights; social, economic and cultural rights; spiritual and cultural freedom; personal dignity; and rights of certain other specific subjects.¹¹¹ From an international perspective, Eritrea is perceived as promoting and protecting human rights values through engagement with institutions and other countries, for example the Office of the High Commissioner for Human Rights, United Nations Office of Drug and Crime, the African Commission for Human and Peoples'

¹⁰⁴ See Feng 2002, at 262–263.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ See China's Efforts and Achievements in Promoting the Rule of Law, *supra* note 102.

¹⁰⁹ *Id.*

¹¹⁰ See Osman, *supra* note 100.

¹¹¹ See Constitution of Eritrea, chapter 3.

Rights, the European Union, European countries and South-South co-operation.¹¹² In the recent past, more tangible and consistent co-operation between Eritrea and key human rights bodies such as the UN's Office of the High Commissioner for Human Rights and the Universal Periodic Review (UPR) of UN General Assembly has been observed.¹¹³ Nonetheless, Eritrea continues to be perceived as still playing catch-up with universal human rights values, having not ratified key human rights instruments such as the Convention against Torture and its optional Protocol; the Convention on Rights of Persons with Disabilities and its optional Protocol; the Convention on the Rights of All Migrant Workers; the Rome Statute; the Convention on the Prevention and Punishment of the Crime of Genocide; the ILO Convention on Worst Forms of Child Labor; the second optional Protocol to the International Covenant on Civil and Political Rights; and the optional Protocol to the International Covenant on Economic, Social and Cultural Rights.¹¹⁴ To make matters worse, Eritreans perceive the current international human rights architecture as politicized, therefore constraining appreciation of universal human rights values in their country. This perception was confirmed last year when the UN's Commission of Inquiry on Eritrea (COIE) presented a scathing report on the human rights situation in Eritrea, and which was unanimously rejected by the UN Human Rights Council.¹¹⁵ Although COIE tried to address the inadequacy of the initial report by generating a remedial report,¹¹⁶ it was evident that there is a striking difference in the conceptualization of human rights between Eritrea and a section of the international community.

At present, all indicators show that development of human rights in Eritrea is skewed towards promoting subsistence and developmental rights, over all other rights. This is so when one considers recent pointers such as the country's exemplary performance in achieving Millennium Development Goals,¹¹⁷ and the recent evaluations by Global Economic Prospects, a World Bank flagship report, which described Eritrea's economic growth as having outpaced the global average in the recent past, and likely to outpace that of the global economy in the coming years.¹¹⁸ The way forward is for prospective

¹¹² Eritrea-UN Side Event on Mainstreaming Human Rights through Partnership, TesfaNews, 28 October 2016 (Aug. 23, 2017), available at <https://www.tesfanews.net/eritrea-upr-implementation-commitment-discussed-un/>.

¹¹³ Ashish Kumar Sen, *What the UN Gets Wrong about Rights in Eritrea*, TesfaNews, 8 June 2016 (Aug. 23, 2017), available at <https://www.tesfanews.net/un-gets-wrong-rights-eritrea>.

¹¹⁴ Eritrea National Human Rights Report Reviewed at 18th Session of UPR, TesfaNews, 4 February 2014 (Aug. 23, 2017), available at <https://www.tesfanews.net/eritrea-national-human-rights-report-accessed-at-the-18th-session-of-upr/>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ See Tesfamariam, *supra* note 8.

¹¹⁸ Fikrejesus Amahazion, *Some Notes on Eritrea's Economy*, TesfaNews, 21 February 2017 (Aug. 23, 2017), available at <https://www.tesfanews.net/some-notes-on-eritrea-economy/>.

Eritrean constitutional governance to emulate the PRC by first undertaking to foster the ratification of key and relevant international human rights conventions and protocols. The idea is to facilitate the re-emergence of the country in its proper place in the human rights arena, while also insisting on human rights with Eritrean characteristics. As such, Eritrea will manifestly be seen as intensifying serious development of international human rights values in the global realm. Eritrean constitutional governance can also emulate the Chinese approach which advocates the issuing of white papers such as those of November 1991, December 1995 and April 1997, and which have been crucial in explicating the situation of human rights in the country to the global community.¹¹⁹ Eritrea can also satisfy universal human rights expectations if the country can embrace the weighty weaponry of human rights reports, to illustrate the country's commitment to implementation of international human rights conventions that have been signed. The PRC is an exemplar when it comes to issuing such reports, with good examples being the consolidated report of the third and fourth implementations of the Convention on the Rights of the Child and the first report on the implementation of the Convention on the Rights of Persons with Disabilities, among others.¹²⁰ Eritrean constitutional governance like that of the PRC would also need to appreciate the need for on-site inspections by international institutions, as a mechanism of finding legitimacy in the international human rights fora. For instance, between 2010 and 2012 the Chinese government welcomed on-site inspections by the Committee on the Elimination of Discrimination against Women and the Committee on Economic, Social and Cultural Rights to monitor how relevant conventions were being actualized.¹²¹ Last but not least, reviews by international bodies are another mechanism for finding congruency with international human rights values. Eritrea has recently been reviewed by the United Nations Human Rights Council's Universal Periodic Review, despite the outcome being seen as condescending towards the country.¹²² Eritrea is on the right track in appreciating international reviews, but must take a leaf out of the Chinese government's book and become engaged proactively and constructively with such reviews so as to ensure that they are objective.

From an internal perspective, Eritrean constitutional governance would be considered progressive in facilitating enunciation of human rights with Eritrean characteristics, if it could facilitate the establishment of dedicated public institutions to carry out comprehensive monitoring and reporting of human rights issues in the country.¹²³ Some of the entities that can be formed and entrusted

¹¹⁹ See Feng 2002, at 263.

¹²⁰ See China's Efforts and Achievements in Promoting the Rule of Law, *supra* note 102.

¹²¹ *Id.*

¹²² See Sen, *supra* note 113.

¹²³ Mustafa Abitoglu, *Role of Civil Society in the Protection of Human Rights in Cyprus*, HDIM.NGO/51/08, 30 September 2008 (Aug. 23, 2017), available at <http://www.osce.org/odihr/33732?download=true>.

with such roles include a parliamentary human rights commission, a human rights ombudsman or even a non-partisan civil society organization or network with the interest of Eritrea at heart.¹²⁴ The 2015 COIE report was a confirmation that situation reports by international bodies cannot effectively make comprehensive and systematic analysis of rule of law issues, given the limited time and resources they have in host countries. Eritrean institutions would therefore be capacitated to examine human rights contexts from local and international perspectives, while providing case studies, interview results and remedial action to germane authorities in the country.¹²⁵ Consequently, Eritrea would sit at the table with an elevated capacity to directly dialogue with international institutions and other stakeholders on human rights issues in the country. Dedicated Eritrean human rights institutions would not only expound human rights with an Eritrean narrative, but also grow and receive recognition internationally as legitimate sources of information on human rights in the world. Eritrean constitutional polity can be wholesome if it can balance various dichotomies that are inherent in human rights architecture such as entitlement of fundamental human rights with performance of duties by citizens; collective rights with individual rights; subsistence and developmental rights with civil and political rights; private rights with public rights, and so on. As such, checks and balances within the Eritrean human rights architecture will be realized, and human rights values will have a heightened possibility of being respected and guaranteed in all aspects of Eritrean life. Eritrean constitutional polity will be considered meritorious if it is successful in making fundamental human rights enforceable. It is a Herculean task which is more often than not hampered by the paucity of political will in many countries,¹²⁶ but which can easily be achieved in Eritrea now that the country is enjoying a good sense of soft authoritarianism. Hence, the upcoming constitution in Eritrea must explore mechanisms such as enactment of peripheral legislation to assiduously facilitate enforcement of fundamental human rights.¹²⁷

There are also indications that Eritrea is more enthusiastic about embodying human rights with Eritrean characteristics when one considers that the Foreign Minister of Eritrea Osman Saleh recently emphasized that the current human rights realizations in the country are “home grown pragmatic efforts driven by an independent political stance.”¹²⁸ As such, it would also require constitutional polity in Eritrea to conspicuously and constantly champion human rights values as appreciated by Eritreans, and as a hallmark of mature self-determination. Eritreans would also need to take a leaf

¹²⁴ Abitoglu, *supra* note 123.

¹²⁵ *Id.*

¹²⁶ See Feng 2002, at 282–283.

¹²⁷ *Id.*

¹²⁸ See Osman, *supra* note 100.

out of the Chinese book on constitutional governance, and mount a proactive engagement with the international community, to counterweight rhetorical hostility and contemptuous contemporary notions of human rights in their country. Even then, there are doubts about the feasibility of some of the universal human rights values in the Eritrean context. That calls for constitutional exposure of international legal values to proportional analysis, so that Eritreans can strike the right balance between national interests and protection of human rights. The greatest achievement for constitutional governance in Eritrea will emanate from ensuring uniform application of human rights in the state's legal system, while at the same time expanding their content and scope in order to conform with international and national conditions.

8. Angling Chinese Political Pluralism to Accord with the Eritrean Context

A ubiquitous Eritrean constitutional polity and one with Eritrean features can materialize if it can be angled to precipitate political pluralism that will unify all Eritreans now that the country has a significant number of its people in the Diaspora.¹²⁹ At this juncture, the disintegration of Eritrea would certainly be planned and purveyed from the Diaspora, where the locus and substance of political opposition is placed, and which apparently is also perceived as spurious and condescending to foreign interests.¹³⁰ The concept of political opposition is largely understood as politically progressive and a hallmark of good governance in the realm of the rule of law. But in Eritrea, it is an idea that is understood as having the potential of creating ethnic and sectarian fissures in the country.¹³¹ Eritrea has therefore foiled many attempts to import political pluralism, and the focus now is on building an Eritrean political system that ensures the participation of all the citizens.¹³² Eritrea can further frustrate the current pull, and push, of embracing political pluralism from the Diaspora and elsewhere by tilting prospective constitutional governance to satisfy the virtues of political pluralism and centralism, but with Eritrean characteristics.

The PRC practices political pluralism that is well entwined with political centralism to project the leadership of the Chinese Communist Party, with the co-operation of eight democratic political parties, non-party democrats and other relevant associations, and all function under the umbrella of the Chinese People's Political Consultative Conference (CPPCC).¹³³ Under CPPCC, all political and non-political parties

¹²⁹ Dawit O. Woldu & Irvin H. Bromall, *Eritrean Experience: Lesson for South Sudan*, Sudan Tribune, 10 September 2011 (Aug. 23, 2017), available at <http://www.sudantribune.com/spip.php?article40114>.

¹³⁰ See President Afewerki Says No Political Opposition in Eritrea, *supra* note 94.

¹³¹ *Id.*

¹³² *Id.*

¹³³ See Feng 2002, at 205–208.

are equal and the forum is instrumental in supervising national financial budgets; implementation of the constitution, statutes and regulations; implementation of national economic and social development plans; and performance of duties by government organs and their personnel.¹³⁴

Eritrean constitutional polity can resonate with the Chinese experience by taking advantage of the already established guided democracy under the dominant PFDJ party, to explore modalities for interpenetration and entanglement with all the opposition and peripheral political stakeholders, so that they can serve as satellite and complementary political entities. The goal is to submit the Eritrean political realm to a disciplined regime which can problematize national issues in an efficient and productive manner. Symmetry of that magnitude would also have the capacity to modernize politics in Eritrea, habituate more Eritreans into the public sphere, deactivate conduits of transferring external “rule of law” paradigms into Eritrea, while also increasing the prestige of governance in the country. Eritrean political pluralism that has co-operation as its nerve centre would preferably be characterized by illiberal democracy in the beginning, and then by imbibing Eritrean characteristics, the political model would be allowed to mature with liberal democratic features. Political correctness and progressivism of that nature would not only unify and equalize Eritreans, but also be crucial in changing many ill pre-conceived attitudes towards power in Eritrea. The ultimate outcome would be Eritrean constitutional governance that would pre-empt adversarial leadership while at the same time facilitate more pronounced citizen engagement.

Conclusion: Some Thoughts on Optimizing Constitutional Polity with Eritrean Characteristics

To sum up, there are two approaches that can facilitate the materialization of Eritrean constitutional governance with Eritrean characteristics, and with a profound sense of the rule of law: (1) Constitutionalism as an emblem of de-colonization and (2) Constitutionalism to shore up internationalism.

Constitutionalism in Eritrea can play a vital role in purging the legacies of colonialism to give the country an authentic legal order and one that is peculiar to Eritrea. There is no doubt that colonialism had a tremendous condescending effect on Eritreans, when one takes into account that their country was not only amenable to Western imperialism, but also to colonial rule from within Africa and by Ethiopians. To make matters worse, recurrent rhetoric hostility peppered with inflamed tensions between Eritrea and former colonial powers seems to surface from time to time, which may easily be construed as a contest for re-colonization. Such a thought is further suggested when one examines the longstanding contestations between Eritrea and Ethiopia, and what comes to the surface is an earnest search for resurgence by

¹³⁴ See Feng 2002, at 205–208.

Ethiopia, after its geopolitical locus was diminished by the rise of Eritrean autonomy in 1991, and which subsequently led to confinement of Ethiopia to being one of the largest landlocked countries in the world.¹³⁵ Again, by adopting the self-reliance policy, Eritrea may be seen in some echelons as declaring seclusion from the rest of the world. Consequently, Eritrea has in the recent past been on the receiving end of Western human rights mechanisms. Hence, it can be argued that the profound departure of Eritrea from the shackles of colonial order may explicate not only the constant external interference in and affinity towards Eritrea's domestic affairs, but also the yearning and budding confidence of former colonial priests and guardians to re-gain profound and prolific influence in the country. Therefore, a pertinent role of the envisaged new constitution lies in realizing a rule of law with Eritrean characteristics, and one that will repeatedly strike down colonial precedents, to effectively neutralize prevailing post-colonial tensions and postures. Some of the legal interventions that are material to such a realization include, but are not limited to, establishment of a truth commission to dissolve existing grudges; reparations to facilitate access to Eritrean occupied territories; annexation and equalization of community courts with state courts; equalization of training and development of legal professions under customary law with those under state law; codification of more dimensions of Eritrean indigenous law to stymie state-law centrism, and so on. The goal is to midwife a constitutional polity that will reproduce and echo authentic self-rule.

To crystallize authentic Eritrean constitutional governance, constitutionalism in Eritrea must accentuate internationalism as a way of framing dualism that is able to balance internal with external legitimacy. The need for this endeavour becomes clear when one elucidates the current Eritrean constitution, and what comes to light is a progressive constitution whose implementation has been gravely hampered by external and existential threats to the country.¹³⁶ The immediate effect of this disconnect is the realization of a diminished legitimization and unification of Eritrea to international contexts. As such, the country is projected in the international realm as a recluse state, devoid of the rule of law and the root of destabilization in the Horn of Africa.¹³⁷ Even then, the constitution seems profoundly unified to local circumstances through palpable state law pluralism and a guided democracy under the dominant PFDJ party.¹³⁸ Hence, the current Eritrean constitutional order is a case study of a legal order in need of delicate balancing and filtering of tensions. Eritrea therefore has the potential to move away from the current contestation for international space by negotiating for recognition through internationalism that is characterized by self-representation and justification.

¹³⁵ See *Eritrea at a Glance III*, *supra* note 20.

¹³⁶ *Id.*

¹³⁷ See Sen, *supra* note 113.

¹³⁸ See Ghebremedhin, *supra* note 40.

One of the determinative contents of self-representation and justification that constitutionalism in Eritrea can mobilize includes the active participation of the Eritrean people's army in international peacekeeping missions led by the United Nations or other international actors. It is helpful then at this point to mention that Eritrea has one of the largest armies in Africa and the largest in sub-Saharan Africa.¹³⁹ That said, the country is well capacitated not only to foster restoration of peace and security in the world, but also to be a lead actor in peace-building processes in the highly fragile region of the Horn of Africa, by bringing strategies that can be integrated to create sustainable peace. More importantly, Eritrea would have an opportunity to interact in a more cordial environment with relevant actors in international peace-building fora, such as the United Nations' organs and agencies, civil society organizations, international donors, etc., and most of which happen to be in combative mode with Eritrea. Eritrea would therefore appear without much difficulty as a substantive and performative stakeholder of international rule of law, and would be in an improved position to explicate the rule of law with an Eritrean narrative. Consequently, Eritrea would end up well-placed to jumpstart a graduated approach to gaining external legitimacy.

Constitutionalism can also be used to form and inject Eritrean internationalism into the strategic thinking of Eritrean foreign policy as an alternative mechanism of legitimizing Eritrea beyond its borders. Such a grandiose thought would require instrumentalization of Eritrean internationalism, to consistently tout and materialize the Eritrean self-reliance model as an elixir for sustainable development around the globe. This approach is informed by the fact that Eritrea stands out as a contemporary showcase of sustainable development through a self-reliance model, a posture that has not only made the country resilient to organized subversion and de-stabilization, but also one that has made the country stand upright on both feet despite international sanctions and embargoes. Eritrea can therefore export the self-reliance model through Eritrean internationalism, to change social realities around the world and especially in those enclaves being marginalized by the forces of globalization. Such an undertaking would not only create unyielding solidarity with people struggling for a better life in other countries, but also facilitate establishment of the rule of law among them, since they are the ones likely to have a problem with it. The strategic objective is for Eritrea to be able to assert and resonate the country's self-reliance policy with people elsewhere. Eritrean internationalism would therefore be seen as emphasizing an association between the rule of law and self-reliance abroad with the rule of law and self-reliance at home. By doing so, constitutionalism in Eritrea would be engaging in a massive and influential exercise that would steer it through the current penumbra of "international rule of law," to gain the country sufficient external legitimacy. Thinking along these lines may require the prefiguring of Eritrean national associations to carry through and

¹³⁹ See UNHCR Eligibility Guidelines, *supra* note 91.

explicate Eritrean internationalism, since they tend to have strong attachments in the Diaspora, besides being exceedingly involved in the administration of public affairs that foster the self-reliance policy in the country. The utilization of national associations would also need the formation of task forces, internal focal points and working groups, in order to expand and diversify them, so that they can morph into civil society organizations on the international stage. The deployment of Eritrean internationalism, therefore, would be a remarkable turnaround that would hasten the inception of deactivating partisan and coercive capacities of “international rule of law,” which is currently constraining the equilibrium between internal and external legitimacy in Eritrea. It would also be crucial in re-engineering the international environment, so that the rule of law can have the possibility of being naturalized to run in its standard “home” narrative. In the long run, a dualistic Eritrean constitutional polity would be realized to ensure that Eritrea remains “master of its own house,” and an active participant in a geopolitically dynamic world.

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