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**THE CRITICAL ANALYSIS OF THE JUDICIAL ENFORCEABILITY OF SOCIO  
ECONOMIC RIGHTS IN ETHIOPIA**

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## **Introduction**

This research report deals with the judicial enforcement of socio economic rights in Ethiopia. The focal point of the study is Ethiopia because I am familiar with the legal system of the country. The judiciary of Ethiopia cannot enforce the socio economic rights effectively due to various impediments. The key terms of the study are socio economic rights and the performance of the Ethiopian judiciary towards socio economic rights in Ethiopia.

This research report consists of four Chapters. Chapter one explores the nexus between law and development *vis a vis* socio economic rights in general as constituted under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Chapter two deals with the status of socio economic rights in Ethiopian legal system in general manner, especially in the 1995 Constitution. It analyses the socio economic rights that contained under the Constitution of the Federal Democratic Republic of Ethiopia, 1995 (FDRE).

Chapter three is about the assessment of basic and selected socio economic rights which are articulated under the 1995 FDRE Constitution. This chapter extensively deals with the right to food, the right to housing, the right to education, and land rights.

Chapter four, which is the last one, will elaborate the judicial enforcement of socio economic rights in Ethiopia. Here, the judicial system of Ethiopia will assess. The challenges of the judicial enforceability of socio economic rights in Ethiopia forms part of this chapter as well. Moreover, chapter four highlights the doable recommendation that can mitigate the constraints that barr the judiciary from the enforcement of socio economic rights.

## Chapter one

### Law, development and socio economic rights

#### Introduction

Today, a brightest and farsighted promulgation and application of the law is a key for socio economic development of a nation. Law and legal machineries are, in the first place, meant to bring justice to the society, which means that they protect the rights of the poor and the underdeveloped society. The rise and crises of giant economic nations and transnational corporations are associated with the law under which they operate. In certain countries the law works to domesticate poverty and need while leaving class and racial structures in place.<sup>1</sup> Law can serve as a tool for advancement of the economic, social and political patterns of a country. On the other hand, the law can also be an obstacle for the socio economic development of a nation. Apartheid regime laws, for instance, had served as a tool for segregation between the socio economic development of the black majority and white minorities, which ultimately resulted in slow development of socio economic development of the black majority.

Law and development is a recent field of study that deals with how the law is used as a tool for socio economic development. Socio economic rights are one of the bundles of the law and development subject matter. Traditionally, law was seen as a system that resolve disputes arise between individuals or group of individuals or private or public body; nevertheless, law can be a variable for transforming a society to the next higher level of development phase, since development is a continual process. These days, it is firmly believed that socio economic rights have a great impact on socio economic development of a country. The right to education, for instance, has an impact on the progressive advancement of a society in literacy or the right to housing will have an impact on reducing homelessness or the land right will likely be raise as a defence for an illegal eviction, which may result the farmer as landless. If socio economic rights which are envisaged

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<sup>1</sup> J Dugard, *Civil Action and Legal Mobilisation: The Phiri water Meters Case* Palgrave (2008) 87.

in the national legislations as justiciable<sup>2</sup>, they will have the influx on socio economic policy of a state. This means that it is crucial to make socio economic rights justiciable in order to enforce them in a court of law. Justiciability of socio economic rights is the first step to take when implementing these rights in a court of law.

## **1 Law and development**

Development can be defined as a comprehensive process of change towards the improvement of the quality life of the people. On the other hand, law is a system that regulates human conduct. The word law embraces legislations (e.g. the Constitution), legal machineries or institutions (for example courts, judges, and public prosecutors).

The law and development theory deals with the application of the law, for the purpose of bringing socio economic development. It addresses the convergence point between international economic, environmental and social law (including human rights law), towards development of both for the benefit of present and future generations.

Law and development study assesses the convergence point of law and economics. The way of bringing socio-economic development, the attainment of democratic governance and promotion of human rights via using the law as a tool will be dealt with.<sup>3</sup> Law seeks to address underdevelopment in the following ways:

It can serve as a redistributive tool to combat inequality or it can give special entitlements or privileges for vulnerable groups as in, for example when the law creates a system of affirmative action to rural women for land tenure which enables them to have equal household decision making power with men.<sup>4</sup>

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<sup>2</sup>Justiciability refers to the ability of courts to entertain a certain case.

<sup>3</sup>YS Lee, YO Kim, and HS Mun 'Economic Development of North Korea: International Trade Based Development Policy and Legal Reform' (2010) 3 *The L & Development R* 5, 8.

<sup>4</sup>L Williams, KJ Ackerman & R Paul *Law and Poverty: the legal system and poverty reduction* Hague (2003) 45.

In addition, social security legislation serves to help disabled, senior citizens and infants in order to avoid social burden and dependency. Furthermore, the law can serve the disadvantaged sections of the society (for instance the poor) through *probono publico* service or it can also create legal aid systems to help the vulnerable section of the society.

The law and development concept emerged in early 1960's when legal reforms were taking place in developing countries with the help of international non-profit organizations.<sup>5</sup> The then scholars commenced to argue that legal reform and the reform of its machineries will lead to socio-economic development. In fact, the law and development scholar circle become collapsed after ten years<sup>6</sup>, until it resurrected with the rise of the Asian Tigers in East Asia, where both their emergence as the world powerful economy and their collapse dictated the scholars to rethink the role of the law in socio-economic development. More specifically, the secret behind the economic development of China is associated with the promulgation of pro-development laws and their meaningful implementation.<sup>7</sup>

A legal frame work which is unswerving, strong, open and meaningfully enforceable is an indispensable substance for the socio-economic development of a nation.<sup>8</sup> In this regard, a functional judicial system which can interpret regional, and universal human rights tools *vis a vis* the judgment given by foreign courts can promote the ethos of law as a tool for socio-economic development since they have the opportunity to interpret

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<sup>5</sup>K Davis & Michael T 'The Relationship Between Law and Development: Optimists vs. Skeptics' (2008) 56 *America J of Comparative L* 861,895.

The notable non-profit organizations in this sphere are United States Agency for International Development (USAID) and the Ford Foundation.

<sup>6</sup>T David & G Mark 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States' (1974) *Wisconsin LR* 9, 21.

<sup>7</sup>T David & S Alvaro *The New Law and Economic Development: A Critical Appraisal* United Kingdom Cambridge University (2006) 51.

<sup>8</sup>Proceeding of a Conference on 'Sustaining the Rule of Law to Promote Socio Economic Development in the Eastern and Southern African Region' Kasane Botswana, 7-8 August. (2009).



socio-economic rights, which are enshrined in the local Constitution each country.<sup>9</sup> In fact, judicial independence and judicial accountability are mandatory. Furthermore, judicial reform is a secondary requisite for efficient and expeditious service. The court is the corner stone for shaping the law to be fit for the unplug field of society and economy.

Sociologists observe the law as a changing system for a given society. The assessment of the law and its impact on the functional society system (such as the family, economic, political, and civil society) creates pressure on these groups, whom in turn are compelled to change the existing structure in order to adapt the dynamic of the system.<sup>10</sup> If the indicated systems embraces under a sufficient, effective and friendly legal system, it will makes a country a better place to live.

The law is a tool which regulates the new dynamics of the systems of the society, especially the social and economic system, which must go in line with the novel structures, which includes the political system at all levels. Thus, the rule of law is a condition for increasing the adaptive flexibility of social structures in local populations.

The application of the law for socio-economic development requires the deep understanding of what is going in the global legal system. Law is not a static system rather it is a dynamic which change through time when the socio-economic systems change. This is called adaptability.<sup>11</sup> For instance, the application of the law for the socio economic development of a country needs to address how traditional or customary land and water right will be reformed to the new tenure property system.<sup>12</sup>

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<sup>9</sup>Ibid.

<sup>10</sup>KA Ziegert K 'Law in Asia: The Key Role of Law as a Productive Force for Development' (2009) 2 *The L and Development R* 5, 7.

<sup>11</sup>Ibid 9.

<sup>12</sup> Human Right Approach to Development <<http://www.equalinrights.org/human-rights-based-development-hrbd>>(accessed 10 May 2011).

## **2 Socio economic rights and socio economic development**

Socio-economic rights and development are intertwining concepts. Both of them deal with basic service delivery, and they need resources for implementation. Both of them are concerned with the improvement of the individual's life and the attainment of quality or standard life. Socio economic rights will supplement development activities since these rights empower vulnerable individuals and groups (such as orphans, the poor, refugees, rural women, prisoners) to litigate against a default government for the fulfilment of socio economic development. Development should be in line with regarding socio economic rights; for example extensive farming practices should consider other peoples' right to housing. Even developmental policies of the government must be for socio economic rights or they must facilitate accessibility of the right both to a large number and to a wider range of people.<sup>13</sup>

## **3 Socio economic rights**

### **(a) What are socio economic rights?**

The economic, social and cultural rights are known as positive rights, which imply that positive action of the government is mandatory. This means that political will of the government for the realisation of these rights is necessitated. These rights require allocation of resources and provision of goods and service for citizens. Yet, the lack of resource is in most case used as pretext for the non-observance of these rights by states. Nevertheless, the state has the duty to take steps for the realisation of the rights.<sup>14</sup>

Karel Vasak is credited for introducing division of bill of rights in three generations. Accordingly economic, social, and cultural rights categorised under second generation rights, whereas civil and political rights referred as first generation rights.<sup>15</sup> This division by itself has an impact on the

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<sup>13</sup>S Khoza The Link Between Development, and Social and Economic Rights: Are Socio-Economic Rights Developmental Rights? (2002) 12.

<sup>14</sup>G Vaibhav 'Children's Human Rights in Underdeveloped Country: A Study in Ethiopian Perspective' (2009) 3 *African Jof Political Science & Int Relations* 142,155.

<sup>15</sup> Group rights (such as the right to self-determination, the right of indigenous peoples) are categorised under third generation rights.

neglecting of social, economic and cultural rights and or considering these rights as inferior rights to civil and political rights. In the worst perception socio economic rights consider as state programmes or policy not as independent rights.<sup>16</sup>This shows that the perception of states towards socio economic rights is different.

It has been advocate that socio economic rights as ‘security oriented’<sup>17</sup> rights due to the nature of these rights that is they are about the wellbeing and the survival of human being, as a newspaper quoted *‘If your life is struggling to survive...voting is not a priority...’*.<sup>18</sup>Moreover, human rights are equal, indivisible, and interdependent thus the underestimate of socio economics rights is unacceptable in any way.

#### **(b) Brief historical background of socio economic rights**

There was disagreement between the two cold war blocs (the socialist and capitalism ideology proponents on the adoption of a human right document on economic and social rights. The disagreement lies since socio economic rights are superior to civil and political rights in terms of an appropriate value hierarchy, because socio economic rights are about basic necessity of human beings. For instance, what is the use of the right to free speech to those who are starving and illiterate? This means that socio economic rights should come first to satisfy the basic needs of human beings.

On the other hand, the then capitalist states stipulate that since socio economic rights undermines the enjoyment of individual freedom and distorts the functioning of free markets by justifying large scale state intervention in the economy.<sup>19</sup> This is because socio economic rights oblige the state to provide adequate resources for their realization through available means.

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<sup>16</sup>R Tsegaye ‘Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia’ (2009) 3 *Mizan LR* 289,305.

<sup>17</sup>Action Professionals’ Association for Peoples (APAP) Baseline Survey Report on APAP’S Intervention in Areas of Human Rights (2001) 21.

<sup>18</sup>‘Debate over Socio Economic Rights’ *The Guardian*, 25 April 2000.

<sup>19</sup>JS Henry & AN Philip *International Human Rights in Context: Law, Politics and Morals* 2<sup>nd</sup> ed Oxford University Press (2007) 241.

Finally,ICESCR was adopted in the second world Conference on Human Rights in Vienna, 1966. It came into force in 1978. ICESCR has been signed and ratified by 160 states as of July 2011. In addition, six countries signed the convention but not ratified yet.

ICESCR has originated from different sources such as various religious traditions that preach to care for those in need and those who cannot look after themselves. Philosophical analysis and political theory of different authors such as Thomas Paine, Karl Marx, Immanuel Kant and Johan Rawls are other sources of ICESCR. Political programmes of the ninetieth century, which include Fabian Socialists in Britain, Social insurance schemes which were introduced by Chancellor Bismarck in Germany and the New Deal promoters in the United States can be cited as some of the sources from which ICESCR originates.

The Constitutions of Mexico (1917), Soviet Union and Weimar Republic (which is embodying the ‘wholfahrtsstaat’ concept) have been credited as focal points of ICESCR. Most importantly, the establishment of the International Labour Organization (ILO) in 1919 by treaty of Versailles is closely connected with ICESCR. ILO was established to implement objectives such as abolition of the injustice and hardship workers suffered and to guarantee fair and humane conditions of labour.<sup>20</sup> ILO adopted international minimum standard in relation to employment condition.<sup>21</sup>

ICESCR is a primary document for contained Socio economic rights, yet socio economic right provisions are also contained in:

- ✚ The Universal Declaration on Human Rights,
- ✚ The United Nations Convention on the Rights of the Child,

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<sup>20</sup>Ibid 242.

<sup>21</sup> The minimum standards of employment condition includes freedom of association; the right to organize trade unions, forced labour, minimum working age and house of work, weekly rest, sickness protection, accident insurance, invalidity and old age insurance and freedom from discrimination in employment.

- ✚ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

There are three documents that back up the implementation of ICESCR at all levels whether it is in international, regional or local. These are:

- ✚ Limburg Principles on The Implementation of the ICESCR, 1987
- ✚ The Maastricht Guidelines build on the Limburg Principles, 1997
- ✚ The General Assembly Standard Rules on Disability

Socio economic rights hold minimum core requirements from the government. The 'minimum core content' is an approach for socio economic rights and it implies the obligation expected from the government at a least standard for the respect, fulfilment and protection of socio economic even in inauspicious conditions.

At global level, state parties to the ICESCR are in duty to submit report in five years interval to the Committee on Economic and Social Rights regarding the realisation of these rights. At national level, socio economic rights are justiciable in few countries. This is because, for many governments, traditional legal remedies, such as court actions for socio economic rights are either inappropriate or at best impracticable.<sup>22</sup>

Civic societies become active for the proponent of socio economic rights and they are credited for bringing a socio economic right case (for example allegation of violation of environmental right) to court of law, on behalf of the people whose socio economic rights are violated by governmental or state organs. In 2008, state parties to the ICESCR made an agreement via Optional Protocol for allowing individual complaints concerning to violation of socio economic rights. Most interestingly, the comprehensive nature of human rights and the importance of socio economic rights are often associated with the famous four freedoms speech of the former US President FD Roosevelt to the Congress:

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<sup>22</sup>Henry & Philip (note 19 above) 275.

*...a world founded upon four essential freedoms. The first is freedom of speech and expression....The second is freedom of every person to worship God in his own way....The third freedom is from want, which...means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants.... The fourth freedom is from fear, which translated into world terms means a world-wide reduction of armaments....*<sup>23</sup>

### **(C)Key challenges for the realisation of socio economic rights**

Socio economic rights are articulate in abstract and vague manner under international and domestic legislation, which can be referred as the first challenge for their definition and realization. Socio economic rights are not well defined in international and domestic literatures. There is also little attention render for these rights, when compared with civil and political rights. However, the General Comment, which is issued by the Committee on Economic, Social and Cultural Rights (CESCR) for specific socio economic rights is make an attempt to clarify the provision of ICESCR. Moreover, the findings of researches was done by human right activists and civic societies at large level cannot be gain saying for the clarification of socio economic rights. Once these rights are clear in terms of content and it will give leniency for the national judge for the enforcement of these rights. Even if the resources are inadequate the state is still has the obligation to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Besides, the state has the obligation of protecting the socio economic rights of vulnerable groups of the society even in the worst times (for example. if a state party experienced famine, war, earth quake). During famine, for instance, the state has the obligation to allocate foods that found in its ware house as the Union case<sup>24</sup> indicated.

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<sup>23</sup>Juta Speeches that changes the world (2008) 59.

<sup>24</sup>PUCL v Union of India and others (Writ Petition [Civil] No. 196 of 2001) 124.

The human rights literatures on socio economic rights repeatedly cite three obligations of the state; these obligations are the equally true for socio economic rights:

- ✚ **The obligation to respect-** implies that any organ of state must render esteem socio economic rights. This obligation directs the state on what should not be done. The state should be a model for respect of socio economic before promoting others to do so.
- ✚ **The obligation to protect-** referred about the positive obligation of the state from the infringement of socio economic rights. The state should uphold its shield to protect the violation of socio economic rights by one person against another person.
- ✚ **The obligation to fulfill-** dictates the government to provide visible achievements on socio economic rights. The duty to fulfill is about the provision of the required resources for the realisation of socio economic rights. The right to health, for instance, will require the state to provide medications, medical professionals and institutions.

The full realisation or attainment of socio economic rights cannot be achieved overnight rather these rights will be realised in progressive manner.<sup>25</sup> It will take time for delivering services for targeted people. However, the state is expected to use available resources and its full capacity for the realisation of socio economic rights and the state has to make continuous improvements, which implies that the state should ensure that there are no regressive developments. In generic sense, the state cannot use the clause ‘progressive realisation’ as an excuse for neglecting the implementation socio economic rights.

There is also assistance from the international community so as to help the realisation of socio economic rights. According to article 2(1) of ICESCR there must be ‘international assistance and co-operation’. This is true especially for developing nations, which in most cases are unable to fulfil their people socio economic rights. Development assistance and the role of

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<sup>25</sup>Article 2(1) of the ICESCR 1966.

national and transnational civic societies have played crucial role for the realisation of socio economic rights. Furthermore, the cause and effect of underdevelopment has an impact on all countries: Poverty, hunger, war, famine, tyranny are the results of underdevelopment which all the international community should fight against collectively. In this regard regional and international human right instruments are crucial, for instance the Banjul Charter can be an initiative for reducing the abject poverty of Africa.<sup>26</sup>

#### **(D) The justiciability of socio economic rights**

Justiciable refers to rights that can be brought to and enforced in a court of law.

Nearly all the constitution of the world states constituted socio economic rights provisions, they are not enforced in usual fashion and the recognition of these rights as justiciable is hardly accepted by all countries. In fact, this is mainly from the difference of the legislation policy from state to state.

In Ethiopia, for instance, it is the parliament that which decides what is justiciable or not. On the other hand, in South Africa it is up to the judiciary to decide the justiciability of rights. The primary significance of justiciability is that ones socio economic rights can be brought before the court where the court inevitably redress or legal remedy for the aggrieved party. A person, for instance, who evicted unlawfully from her farm land due the action of Multinational Corporation or a corrupted designated officer, can bring the case before the court to entitle compensation.

The three branches of the government have the responsibility to respect, fulfil and protect socio economic rights. The legislature is expected to incorporate international socio- economic rights to the national legal system. Besides, the executive must allocate adequate budget and also

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<sup>26</sup>BA Yitay The African Human and Peoples' Rights Charter as a Means of Poverty Reduction in Africa. A Dissertation Submitted in Partial Fulfillment of Bachelor degree in law (LLB) Mekelle University Mekelle, Ethiopia (2007) 71.



should promote the optimal use of the country's resources so as to realize these rights. Most importantly, the judiciary is considered as the guarantor of socio economic rights in domestic level, thus it has the responsibility of applying international socio economic rights bills and standards<sup>27</sup>, while it redress litigations at court of law.

In principle, resource allocation for a certain project is the function of the policymakers or it is the task of the political organs. This can be a reason for the perception of the courts that socio economic rights are non-justiciable. However, this is a wrong hypothesis due to the fact that human rights are indivisible and interrelated. It is, therefore, generally accepted norm is that civil and political rights are justiciable in almost all nations legal system implies that socio economic rights should get the same status. In addition, considering socio economic rights as non-justiciable rights gain saying the role of the courts for protecting the rights of the most disadvantaged sections of the society (for example the poor), whom only have the law as a shield for defending their socio economic rights from arbitrary violations.

The CESCR noted that even if the judges noted the importance of the ICESCR, the use of this Covenant is rarely applied in practical case. Yet, the judiciary branch of the government has international human right law obligation that they must respect the ICESCR. It also noted that national legislations should be interpreted in a broad sense so as to conform with the international human rights obligation of the state.

Furthermore, efficient and effective institutions at national level are significant for the full realisation and implementation of socio economic rights. In addition, international financial institutions such as the World Bank, International Monetary Fund (IMF) and the World Trade Organisation (WTO) has to in manner to supplement the endeavour of the

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<sup>27</sup> In fact, the ratification of international treaties is comes first before the judiciary apply these international human rights instruments (including socio economic rights).

full realisation of socio economic rights at national level while they promote their aid, development assistance and debt programmes.

## Conclusion

Socio economic rights have the objective of redressing economic and societal problems of the society, such as hunger, homelessness, illiteracy and diseases. The socio economic rights need the willingness of the state to allocate adequate resources for their progressive realisations. Furthermore, the realisation of socio economic rights needs right handed policies for developmental projects such as housing, infrastructures of different kind, educational and health institutions.

It must be understand that the law (human rights law) is nothing without facilitating the country's development via avoiding the obstacles of socio economic development. In addition, democratic governance will be conducive prerequisites for the realisation of socio economic rights. This is because international and national laws concerning to socio economic rights laid down obligation on the state. The state can hardly meet its obligation to respect, protect and fulfil socio economic rights in authoritarian government, due to facts like the absence of independent and strong civic societies, whose contribution in awareness giving of the public is so vital. In fact, awareness is the first step for socio economic development.

Hence, the full and meaningful realization of socio economic rights will be real when the government<sup>28</sup> meet its obligation and when there is promotion and awareness of the socio economic rights by the people. Furthermore, the role of democratic institutions (such as the Human Right Commission, the Ombudsman) and independent institutions like NGOs or civic societies will not gain saying because it is these organs that can press, lobby the government for the ratification of international socio economic instruments and they are the one that criticise and appreciate what the government done so far on the improvements of quality of life of the public.

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<sup>28</sup> The judiciary is a branch of the government that the judicial enforceability of socio economic rights is an obligation bear upon the judiciary.

## Chapter two

### Socio economic rights in Ethiopia

#### Introduction

Ethiopia is a country which is located in East Africa, in the Horn of Africa, with a total area of 1.1 million sq. km and a population which is above 90 million, which makes up the country the third most populous country in Africa.<sup>29</sup> Ethiopia is believed to be the cradle of human beings. In terms of social composition, the country is the most diverse one where, there are 64 major recognised ethnic groups, and there are more than 250 distinct languages.<sup>30</sup> Amharic is the official language of the federal government.

It is the only country in Africa which was never colonised by European countries, thus, it becomes the Head Quarter of African Union. It is a land of mountains, dominated by the vast highlands, the Great Rift Valley, and major rivers and lakes, including the Blue Nile, as well as hot lowlands and dry desert regions. The most lowland area in the world is ‘Dallol’ Depression is found in North East part of Ethiopia. Furthermore, the country is rich in fauna where there are seven endemic animals and so many birds.

Today Ethiopia is a land-locked country and uses ports of Djibouti and Berbera in Somalia.<sup>31</sup> Its economy is predominantly agriculture.<sup>32</sup> Archaic methods of cultivation and frequent drought are the major challenges of the agricultural sector. Coffee is the major source of export. ‘chat’ is the other stimulant crop, which earned most of the export income. ‘chat’ is also cultivated for local use.<sup>33</sup> Furthermore, coffee, sorghum and castor bean are to have originated from Ethiopia.

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<sup>29</sup> According to the Population Census in 2007 <<http://www.cia.org>> (accessed 20 May 2011).

<sup>30</sup> NT Oscar & RT James Human Rights violations Cause Internal Conflict: Case Study of Ethiopia and Haiti (2006).

<sup>31</sup> Ethiopia does not have Navy force following the secession of Eritrea all the naval facilities of Ethiopia remained there.

<sup>32</sup> Agriculture is also contributing 45% of the GDP and 85% of the countries employment.

<sup>33</sup> Chat is a stimulant crop and it is legal in Ethiopia, Somalia and Djibouti in the Horn of Africa which are the most trade partner in importing Ethiopia’s ‘chat’. However, the United States categorized ‘chat’ as illicit drug.

Ethiopia has been governed by monarchical government throughout its history until the last king Emperor Haile Selassie was overthrown by the military junta called Dergue in 1974. However, the Dergue regime was toppled by a collation of rebel forces called Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) in 1991. The major causes for the failure of the Dergue socialist regime were bloody coups, uprisings, wide scale drought, and massive refugee problems.

### **1 Overview of the 1995 Ethiopian Constitution**

The EPRDF government facilitates the way to adopt the Constitution of the FDRE on the 8 December 1994 and it became effective in 22 August 1995. The Constitution of the Federal Democratic and Republic of Ethiopia (FDRE), 1995 envisaged democratic frameworks, principles of accountability, human rights<sup>34</sup> and democratic institutions which safeguard or facilitate the democratization process. The principle of separation of powers is the underpinning base of the Constitution that it stipulates three branches of the government.

The legislative branch is bicameral parliament consists of the House Federation<sup>35</sup> and the House of Peoples Representatives.<sup>36</sup> The House of Peoples' Representative has 547 seats, where members directly elected by popular vote from single member districts to serve five year terms.

The executive branch is headed by the Council of Minister. The Ministers are selected by the prime minister and approved by the House of Peoples Representatives. The president is the head of state and it is ceremonial. The Prime Minister is the head of government.

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<sup>34</sup>The 1995 Constitution of FDRE has given one third of its part for human rights. The Constitution should be a document, which facilitates 'the building of a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development.' as the preamble stated.

<sup>35</sup> House of Federation is the upper chamber or House which is responsible for interpreting the constitution via the Constitutional Inquiry Commission and settling federal and regional boundary disputes.

<sup>36</sup> House of Peoples' Representatives is an organ of state which is responsible for passing legislations. It is the name given to the Ethiopian parliament.

The judicial branch is vested in the courts, at both federal and regional level. The highest judicial power is conferred on the Federal Supreme court where the president and the vice president are recommended by the prime Minister and appointed by the House of Peoples Representatives. Other federal judges are nominated by the prime minister and the House of Peoples Representatives will approve the appointment.

The judiciary has no power to interpret the provisions of the Constitution, including the Bill of Rights. The House of Federation (the upper chamber) is responsible for interpreting the Constitution via the Council for Constitutional Inquiry Commission. This remains as one of the obstacles for the enforcement of socio economic rights. The Constitution gives a chapter for fundamental rights and freedoms. This chapter, which is further divided in to two parts, lists all ‘generations’ of rights. The subdivision of the Bill of Rights as human rights and democratic rights, however, confusing in that the aim and ground of the division is unclear. Moreover, the Constitution enshrined socio economic and cultural rights an official way. The relevance of judicial enforcement of socio economic rights is paramount for nations such as Ethiopia where socio economic development is below the minimum standard.

## **2The judicial system of Ethiopia**

The 1995 Constitution declares Ethiopia as a federal state which implied that there are two tiers of government: the federal and the regional governments. There are hierarchical administrative units under the regional government. These are zone governments, ‘Woredas’<sup>37</sup> and ‘Kebeles’.<sup>38</sup> Moreover, the Constitution states that Ethiopia has nine states, which are among others: Afar, Amhara, Beneshangul, Gambella, Harari, Oromiya, Somali, Southern Nations, Nationalities and Peoples’ (SNNP), and Tigray.

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<sup>37</sup> ‘Woreda’ is an Amharic word (official language of Ethiopia) which refers to the smaller unit of the Ethiopian administration unit.

<sup>38</sup> ‘Kebele’ refers to the last and the smallest unit of administration of Ethiopia.

Besides, there are two autonomous administrations notably Addis Ababa and Dire Dawa.

Both the federal and regional governments have their own legislative, executive and judiciary organ. At each level, the judiciary branch is constituted by:

- ✚ Supreme Court
- ✚ High Court
- ✚ First Instance Court and
- ✚ Social Court

The highest judicial power is constituted in the Federal Supreme Court, where the appeal for regional cases is finally resolved. In fact the Federal Supreme Cassation court has the power to review cases that are decided by the Federal Supreme Court.

Ethiopia is a country with a civil law legal system, where the courts use enacted codes<sup>39</sup> to resolve disputes. The country's source of law is the Roman Justinian code. As a federal state, there is a mix of national and regional courts vested with the judicial power.

Lack of qualified lawyers and the question of independency of the court has a huge impact for the justice system of Ethiopia.<sup>40</sup> Courts have a tendency to entertain civil and political rights cases and as it is obvious in most countries justice system socio economic rights are the most neglected rights in courts of Ethiopia. Lack of awareness among the people and the absence of active civic societies are the major reasons for the neglect of socio economic rights, which has huge impact on human and economic development of the country.<sup>41</sup>

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<sup>39</sup> In Ethiopia, there are civil code, criminal code, commercial code, the criminal procedure code, and the civil procedure court to entertain cases in the court of law.

<sup>40</sup> M Rakeb Enforcement of Human Rights in Ethiopia (2002)27.

<sup>41</sup> The United Nations Development Programme (UNDP) Human Development Index placing Ethiopia 170th out of 177 nations (2005).

### 3 Socio economic rights in Ethiopia

The 1995 Constitution articulated fundamental rights and freedoms in chapter three, which includes almost all the three generation rights, it also includes socio economic rights, which are categorised under second generation rights. The provisions of socio economic rights are found just after Article 39, which states that ‘every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.’<sup>42</sup>

The socio economic rights that articulate under the Constitution include:

- ✚ The right of labour,(article 42),
- ✚ The right to property (article 40),
- ✚ The right to engage freely in economic activity and to pursue a livelihood of his choice (article 41(1)),
- ✚ The right to choose his or her means of livelihood, occupation and profession (article 41(2)),
- ✚ The right to equal access to public funded social services (article 41 (3)),
- ✚ The right to receive a fair price for agricultural products (article 41(8))<sup>43</sup>,
- ✚ The right to education, health, and other social services. (article 41(4)),
- ✚ The right to development (article 43),
- ✚ The right to a clean and healthy environment (article 44),
- ✚ The right to a clean water, housing, food and social security (article 90).<sup>44</sup>

It is proper to raise ‘access’ and ‘qualified’ rights concepts. ‘Access’ rights refer to rights that persons are entitled to have access to, for instance, education. Article 41(3) of the 1995 Constitution enshrines that ‘every Ethiopian national has the right to equal access to public funded social services’. On the other hand, ‘qualified’ rights means independent and self-

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<sup>42</sup>Article 39 of the 89(2) of the 1995 Constitution, Proclamation 1 of 1994 remains as the most controversial provision in the political circle. One of the current senior Professors at University of Limpopo was also raise question about article 39 for the author. This means this article is well known in Trans-boundary level.

<sup>43</sup> This right is referred to Ethiopian farmers and pastoralists in most cases are disadvantaged and exploited for their production in global level especially that of coffee.

<sup>44</sup> This provision is find under chapter ten where the national policy principles and objectives laid down.



standing rights, most rights enshrined under the 1995 Constitution are ‘qualified rights’ such as the right to property, the right to development, the right to a clean and healthy environment. Moreover, the 1995 Constitution provides that certain rights are not directly stipulated rather they are provided under a statement ‘the state obligation’. For instance article 41(7) of the 1995 Constitution articulates that:

*‘The State shall undertake all measures necessary to increase opportunities for citizens to find gainful employment.’* In other words, the previous article enshrined about the right of labour.

It is clear that once socio economic rights which are enshrined under the 1995 Constitution of Ethiopia, they are justiciable. Though, categorising most of the indicated socio economic rights under a provision (i.e. article 41) will be difficult for the enforcement of these rights because it is abstract and needs further elaboration.<sup>45</sup> Such kind of articulation will open the door for the arbitrary violation, overlooking, and encroachment on socio economic rights. Yet, the constitution is merciful to give the right to property and labor as an independent article.

On the other hand, the rights of health, welfare and living standards, education, clean water, housing, food and social security are included under socio economic objectives in chapter ten. However, this does not mean that the preceding rights are not directly enforceable in a court of law. In addition, the national objectives and principles of the Ethiopian government that enshrined under chapter ten of the Constitution will be served as complimentary legal bases for the enforcement of other socio economic rights by the judiciary.<sup>46</sup>

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<sup>45</sup>Rakeb (note 40)28.

<sup>46</sup> Economic objectives under article 89 can be a motivated ground for enforcing economic rights like the right of labor, the right to engage freely in economic activity and to pursue a livelihood of his choice.

**(a) The obligation of the Ethiopian government towards socio economic rights under the 1995 Constitution**

In addition to the obligations laid down by the ICESCR, the Ethiopian government has the obligation to fulfil, respect and protect socio economic rights under the 1995 Constitution; where article 13(1) articulates that ‘all Federal and State legislative, executive and judicial organs at all levels have the responsibility to respect and enforce the provisions of Chapter three’, which deals with fundamental rights and freedoms.

Traditionally, there are three obligations of the state towards human rights (including socio economic rights) at global level which are also equally applicable in Ethiopia.<sup>47</sup> These are:

**(i) The obligation to respect**

The obligation to respect means that the state should take the first step for respecting socio economic rights. The Ethiopian state (including the legislature, the executive and the judiciary) should at all levels, refrain from infringing socio economic rights of all Ethiopian citizens. Socio economic rights are deemed to be infringed for instance when the legislature enact laws that force people to do economic activity against their right to choose their livelihood freely; or when the department of health (an executive organ) enforces the law against the right to health of individuals; or when a court interprets a law which is against the constitutionally guaranteed socio economic rights, for instance land grabbing is against the right to housing, food and more specifically it is against the land right of the Ethiopian peasants and pastoralists whose rights to ‘obtain an equitable share of the national wealth commensurate with their contribution’ enshrined under article 41(8) of the 1995 Constitution.

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<sup>47</sup>This kind of contention is strengthened by article 13(2) of the Constitution which stated that ‘The fundamental rights and freedoms specified in chapter three of the Constitution shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.’

Furthermore, Ethiopian peasants have the right to obtain land without payment and the protection against eviction from that land.<sup>48</sup>In the same manner Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own land.

**(ii) The obligation to protect**

This obligation refers to the positive hand of the state at all level to guard the encroachment of socio economic rights of individuals or groups by another one. Under article 42(2), for instance, workers have the right to reasonable limitation of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for public holidays as well as a healthy and safe work environment. These workers rights should be protected by the state from the infringement of private actors, more likely employers.

**(iii) The obligation to fulfil**

This refers to the measures that should be taken by the government in order to promote socio economic rights. Government should pave way for access to socio economic rights. Pursuant to article 41(5) of the 1995 Constitution, the state of Ethiopia should allocate resources for the implementation of the socio economic rights. By their nature, socio economic rights need resources for their practical implementations, the right to education, for instance, requires educational institutions, materials and professional teachers. The Ethiopian state will be answerable for the infringement of socio economic rights if it is reluctant to allocate the available means of resource at maximum level for social and economic projects and goals. According to the ICESCR, ‘available means of resource’ refers to the resources that are available in the state and the resources from international assistance and aid.<sup>49</sup>However, the state cannot uphold resource constraints as a pretext for the violation of socio economic rights.

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<sup>48</sup> Article 40(4) of the 1995 Constitution.

<sup>49</sup> The international community is responsible for the realisation of socio economic rights, since human rights are universal by nature and human foes like abject poverty, instability, illiteracy, diseases, exploitation, hunger are in most cases the violation of socio economic rights which can be combat not only an individual state endeavours rather via the coupled

The duty to full fill socio economic rights will be more burdensome to the government when the beneficiaries of the right are vulnerable groups; in this regard article 41(5) of the 1995 Constitution envisaged that the states of Ethiopia has the obligation to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to orphans. Moreover, in accordance with article 41(6) of the 1995 Constitution, ‘the State shall pursue policies that aim to expand job opportunities for the unemployed and the poor and shall accordingly undertake programmes and public works projects.’ However it must be understand that socio economic rights are not absolute in themselves, they will be limited in certain circumstances by law of general application; even the government will not be liable if it justify the inadequacy of resource constraints in rational manner. Furthermore, in *Soobramoney*<sup>50</sup> case the government has the autonomous to allocate resources which it believe needs urgency than other socio economic problems and if suck kind of decision made in rational fashion. In such cases, the government department or organ made rational decisions for giving priority of a socio economic right than the others, the court will not interfere to reverse rational decision.

The Ethiopian Constitution has put down obligations for the state for fulfilling socio economic rights. The principles and objectives which are enshrined under chapter ten of the Constitution has imposed duty on the government to provide access to health, education, clean water, housing, food and social security.<sup>51</sup> The preamble of the Ethiopian Constitution also states that ‘mutual commitment to fulfil the objectives and the principles set forth’ in the constitution should be upheld. One of the fundamental principles of the Constitution is human and democratic rights.<sup>52</sup>

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assistance of other states, multinational corporations and international Non Governmental Organisations (NGOs).

<sup>50</sup>*Soobramoney v Minster of Health ,KwaZulu Natal* 1998(1) SA 765 (CC)Para 19.

<sup>51</sup>Article 89(2) of the1995 Constitution.

<sup>52</sup> Ibid article 10 (1) ‘human rights and freedoms, emanating from the nature of mankind are inalienable and inviolable’.

The socioeconomic rights which are indicated earlier are not the only rights guaranteed in the Ethiopian Constitution. At article 36(9) of the 1995 Constitution postulates that, the state shall accord special protection to orphans and shall encourage the establishment of institutions that ensure their adoption, advancement of their welfare, and education. This provision is clearly indicating the socio economic rights of children to be applied in their best interests.

Furthermore, Ethiopian women have the following socio economic rights<sup>53</sup>:

- ✚ The right to maternity leave with full pay,
- ✚ The right to acquire, administer, control, use and transfer property,
- ✚ The right to equality in employment, promotion, pay, and the transfer of pension entitlements,
- ✚ The right of access to family planning education, information and capacity to prevent harm arising from pregnancy and childbirth in order to safeguard their health.

It is a generally acceptable principle that human rights are integrated and interrelated. Socio economic rights are, in most cases, related to civil and political rights. The right to life, which is enshrined under article 15, is related to the right to a clean and healthy environment, which is one of the socio economic rights.<sup>54</sup> If a person is living in an environment which is hazardous, it will be infected with disease and he will be dead. This means that she no longer exercising her right to life. Legal theorists term such kind of correlation between socio economic rights with other rights integrated approach which means that protecting socio-economic rights through civil and political rights.<sup>55</sup>

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<sup>53</sup> Ibid article 35(4) (a), (6), (7), (8) respectively.

<sup>54</sup> Ibid article 44. Indeed, the right to life (civil right) is interlinked to various socio economic rights, such as the food, housing, health care, livelihood and other requisites for normal standard of life.

<sup>55</sup> Rakeb (note 40 above) 33.

## **Conclusion**

The 1995 FDRE Constitution constituted all kinds of socio economic rights. These socio economic rights are enshrined in two parts of the Constitution. First, there are socio economic rights which are constituted in Fundamental Rights and Freedom part, which is found in chapter three of the Constitution. In this chapter almost all socio economic rights which are contained in the constitution are found. These are the right to property, the right to choose ones livelihood, occupation, and profession; the right of labour; environmental rights and the right to development. Second place, socio economic rights are found in chapter ten of the Constitution under the heading National Policy Principles and Objectives. Here, the right to food, public health, clean water, housing, social security education, and environmental rights enshrines in implicit manner.

The Constitution has also laid down obligations for the state to respect, fulfil and protect socio economic rights. As a principle, socio economic rights are resource oriented, which implies that the availability of resources is must for the realisation of these rights; the right to health is hardly put into practice, if there is no health professional or institutions. Tough resources to fulfil socio economic rights can be obtained from international cooperation and civic societies, the big obligation lies on the shoulder of the respective state or government. The government should try very hard to realise the success in the implementation of the socio economic rights. As a federal state, the Ethiopian government at national and regional level is expected to meet the obligation which is assigned by the Constitution and other international socio economic right instrument (Such as ICESCR).

## Chapter three

### Analysis of selected socio economic rights in Ethiopia

#### 1 The right to food

The right to food means the right to be able to feed oneself through physical and economic access to food. This involves equal access to food and water for everyone and to ensure access to agricultural land and irrigational water for the farmer.<sup>56</sup> One should in bear in mind that, the right to food does not mean giving rendering food to everyone rather, it is a right that laid down a duty on the government to facilitate the way for the access to food. The right to food makes the people to be independent and it builds their capacity to feed themselves. What the government is expected to do is that means of livelihood such as land should be allocated to every farmer without discrimination, an act which is prohibited under article 25 of the 1995 Constitution of Ethiopia. The accessibility of food is closely related to land rights that it is significant to examine the land right situation in Ethiopia, which the paper will raise later in this chapter. The right to food is one of the basic rights of socio economic rights. Yet, the 1995 constitution does not specifically articulated this right; rather the right to food is find in national principles and state objectives under chapter ten of the Constitution. Most interestingly, the 1995 Constitution is among the 20 countries of the world which make reference to food in their constitution.<sup>57</sup>

Ethiopia has been labelled as the most famine stricken country in the world. The problem of food provision and self-sufficiency in food production is one of the greatest challenges faced the current Ethiopian administration. The main objective of socio economic development in first place is to assure and satisfy the basic necessities of human beings: food and shelter. The 1995 Constitution does not recognise the right to food as an independent socio economic right, rather it is included in the national policy principles and objective, where article 90 requires that state policies should

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<sup>56</sup>Ziegler 'Justiciability is Feasible, Human Rights Features. Report of the Special Rapporteur on the Right to Food Addendum – Mission to Ethiopia (2005) 19.

<sup>57</sup>Food and Agricultural Organisation (FAO) Voluntary Guidelines to support the progressive realisation of the right to adequate food in the context of national food security (2004) 16.

aim ‘to the extent the country’s resources permit to provide all Ethiopians access to food.’ Moreover, Ethiopia is a contracting party for various international instruments, including ICESCR<sup>58</sup>, which promoted the right to food under article 11. Besides, the Universal Declaration of Human Rights (UDHR) enshrined the right to food under article 25(1).<sup>59</sup>

According to article 9(4) of the FDRE Constitution, all international agreements ratified by Ethiopia are an integral part of the law of the land. This makes the right to food to be one of the rights which the government of Ethiopia has the obligation to respect, protect and fulfil. The right to food is an abstract right which constitute other rights and freedoms. Freedom from hunger is an essential part of the right to food.<sup>60</sup> Freedom from hunger laid down a duty on the state not to lay its people on starvation.<sup>61</sup> As a state party to the ICESCR, the Ethiopian government has the obligation to protect its people from famine and it must ensure the Ethiopian people freedom from hunger. In nature, socio-economic rights are rights that will be implemented progressively; this means they cannot be fulfilled overnight. Socio economic rights also need resources for their implementation, yet being a poor country cannot be a defence for failure to guarantee freedom from hunger or famine. If the government of a country blames on resources shortages and capacity or enforcement problems, for its inability to safeguard people’s freedom from hunger, it has the obligation to prove whether it has not adequate finance or not. Besides, as the Union<sup>62</sup> case in India revealed that the stock of food should be used without delay to prevent hunger and starvation since this hazardous need immediate action.

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<sup>58</sup>Ethiopia became a state party to ICESCR in 1993.

<sup>59</sup>Article 25(1) of the UDHR, ‘[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food’.

<sup>60</sup>AV Alexander Understanding Famine in Ethiopia: Poverty, Politics and Human Rights. Paper presented at the 16<sup>th</sup> conference of Ethiopian studies by University of Oslo, 16-21 November, Trondheim (2009).

<sup>61</sup>General Comment 12 on the Right to Adequate Food, UN Doc E/C12/1999/5 (1999).

<sup>62</sup>*PUCL v Union of India and Others* (note 24 above) par 121.



The right to food is closely related to the issue of land rights. Since all crops, vegetables, dairy products associated with the livelihood of the farmers, is one remedy to solve the land tenure security in Ethiopia. The Government is also accountable for the shortage of food in the country to exercise ones right to food. It receives food aid from donor countries at the same time it export cash crops.<sup>63</sup>

The state of Ethiopia has a huge opportunity to ensure the right to food and to guarantee the people freedom from hunger. This is due to the fact that the government's main policy is ADLI (Agricultural Development Led to Industrialisation), which implies that the government renders more attention to the agricultural sector, which is the source of food. In addition to this, Ethiopia has received a huge amount of donor from the international community in order to finance the consecutive famine or drought crisis. However, if the government blames lack of resources for its failure, it is difficult to believe since the government of Ethiopia spent almost one million per day during the war against Eritrea.<sup>64</sup>

Finally, according to a United Nation Special Rapporteur on the right to food, Ziegler, defining the right to food as an enforceable right will be significant for rendering remedy for the famine which consecutively hit the country.<sup>65</sup> The author observes that many foreigners have misunderstood about the image of Ethiopia. Almost all foreigners consider the whole Ethiopia as a starved and famine victim still, which is extremely unrealistic. Most of them think that the country is as starved as it was in 1984. In fact, there was a massive famine during the 1984, that day had passed as a historical brutal day of Ethiopia.

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<sup>63</sup>JM Peter *Food Security and Social Protection Literature: From Ethiopia to India* United Arab Emirates Geo Policy (2008) 6.

<sup>64</sup>E Wax 'The Secret Behind the Ethio-Eritrea war' *The Washington Post* 2005 (25 December 2006).

<sup>65</sup>Ziegler (note 56 above) 21.

## 2 Land rights

Land rights refer to the sole ability of individuals to acquire, use and dispose of land so as to improve their livelihoods.<sup>66</sup>

Under the domain of land rights there is land right ownership, which is a base for exercising land rights. If a person is entitled to land ownership, she can get shelter, food, water and collateral property for debts. According to the United Nations Global Land Tool Organization, the absence of land ownership in rural areas is one of the elements which to poverty and hunger and it has also a huge adverse effect on the empowerment of the poor, women and disadvantaged sections of the society (such as disables) and it opens the door for the realisation of human rights.<sup>67</sup> Besides, land law provides the legal framework for specific legislations that address land ownership. Though the land law of a country promotes equal access to land, the land rights cultural foundation may hamper the equal land right allocation. So that, land laws need to take account culture of the society to efficient land system that change the livelihoods and quality of life a nation.

The state of a given country has the obligation to fulfil, respect and protect the land rights of persons or group of persons (such as farmers, peasant associations and indigenous peoples), if the state evict or displaced these people from their land; if the government fails to intervene when a person (for example multinational corporation) evicts these people from their land, it amounts to the violation of land rights. As indicated earlier, the right to food and land rights are two interlinked rights, so that in order to ensure the right to food the state has to promote inclusive, non-discriminatory and sound land use and land reform policies, which enable individuals to feed themselves and to lead a more safe lives.<sup>68</sup>

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<sup>66</sup>E Wickeri & A Kalhan *Lands Rights Issues in International Human Rights Laws* The Netherlands Institute of Human Rights & Business (2009) 11.

<sup>67</sup><<http://www.unhabitat.org/content.asp?cid=2798&catid=283&typeid=24&subMenuId=0>> (accessed 21 June 2011).

<sup>68</sup>Food and Agricultural Organisation (FAO) (note 57 above) 18.

In Ethiopia, land rights are stipulated under article 40(3) (4) and (5) of the Constitution. In addition to this, land-related powers of the Regional States include article 52 (2) (d), specifically it gives states the responsibility ‘to administer land and other natural resources in accordance with Federal laws’. Article 35 (7) of the Constitution affirms that women have the right to acquire, administer, control, use and transfer property, this is crucial for women who suffer discrimination because of their sex, but now they have equal rights with men at least in the rhetoric level.<sup>69</sup>

However, the land rights question is still a hotly debated issues in Ethiopia, the main reason is that the state has the exclusive right to ownership of the rural and urban land.<sup>70</sup> Because land remains state owned with strong restrictions on transfers, certificates document only inheritable use rights.<sup>71</sup>The farmer who does not feel sanctuary due to losing of land ownership right is likely to apply his resources for long term investment. So that, the land right policy of the state which prohibits private ownership of land rights has been criticised by legal scholars, economists and agricultural experts.

Accordingly, they contend that land legislations of Ethiopia have frequently been used as a tool for political itinerary, such as a threat for famers who do not support the regime during election.<sup>72</sup>Furthermore, land legislations are used for furthering the advantage of powerful or dominant forces, which are the elites of the society who are far from the rural land farming world.<sup>73</sup> In fact, the foremost remarks should be assessing the historical background of the rural peasantsin order to know where the country must go. In Ethiopia

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<sup>69</sup>A Martin & P Robin (eds) ‘Land Rights in Eastern and Southern Africa’ (2007) 3 *Independent R of Land Issue* 31, 48.

<sup>70</sup>Article 40(3) of the 1995 Constitution.

<sup>71</sup>T Shimelles, KM Zahidul Islam & T Parviainen Effects of Land Tenure and Property Rights on Agricultural Productivity in Ethiopia, Namibia and Bangladesh University of Helsinki Department of Economics & Management Discussion Papers no: 33 Helsinki (2009) 19.

<sup>72</sup>Ziegler (note 56 above) 31.

<sup>73</sup>D Rahmato, ‘Revisiting the Land Issues: options for change’ (1999) 2 *Economic Focus*16, 21.

land rights have moved from unproductive and archaic system to more vigorous and proficient forms of feudal private ownership. In this historical context, the land legislations should make attempt for the improvement of rural livelihoods and the achievement of sustainable livelihoods than worrying about adopting possible land tenure system. This should take into consideration factors such as, history, demography, economy and politics of the country. Tenure security is possibly associated with land rights as an option for improving the rural livelihoods and sustainability of the livelihoods.

It can be recommended that equitable land distribution via land rights legislations may be a tool to scale down rural poverty.<sup>74</sup> However, in the long term it will have negative impact on the livelihoods of rural population. What is required is that the peasant should feel that she owns the land. This is termed as tenure security, than rendering the state the ownership of land. Moreover, the protection of land rights means protecting human rights, including socio economic rights, which can effectively protected via strengthening domestic land systems. So that it needs awareness and training of politicians, civil servants and judges, especially have huge role and duty to safeguard the land rights of the people via encouraging the people to appeal against unfair, irrational and illegal administrative decisions, at both federal and regional levels of governments.<sup>75</sup>

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<sup>74</sup>Ibid 20.

<sup>75</sup>WW Montgomery 'The Protection of Land Rights in Ethiopia' (2007) 20 *Afrika Focus* 153, 168.

### 3 The right to housing

*'The Constitution will be worth infinitely less than its paper if the reasonableness of state action concerned with housing is determined without regard to the fundamental value of human being'*<sup>76</sup>

It is obvious that shelter remains a basic human need. The problem of homelessness is a feature of abject poverty, especially in developing countries. Since housing is the most basic need of human beings, it can be argued that the right to housing is the next most basic human right after the right to food. In *The Social and Economic Rights Action Centre (CERAC) and the Centre for Economic and Social Rights v The Federal Republic of Nigeria*<sup>77</sup>, the court held that the right to housing even goes further than a roof over ones head rather this right extends the individual rights to privacy and to live in peace and the right to enjoy the best attainable state of mental and physical health.

The right to housing is closely associated with the right to life<sup>78</sup>, dignity<sup>79</sup>, and privacy<sup>80</sup> of human beings. Furthermore, the right to a healthy and clean environment is another important socio economic, which closely associated with the right to housing because in most cases people forced to leave their home due to hazardous and waste material of nearby manufactures. The preceding rights are categorized under 'first generation' or civil rights; this contention indicates the indivisibility of human rights. In fact, in current socio economic rights system, it is not the right to housing that is guaranteed rather, it is the right to adequate housing. 'Adequate' refers to adequate privacy, adequate space, adequate security, adequate

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<sup>76</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 11 69(CC) para 39.

<sup>77</sup> African Commission on Human and Peoples' Rights, Comm 2001(155) 96 para 60.

<sup>78</sup> Article 15 of the 1995 Constitution.

<sup>79</sup> Article 24(1) of the 1995 Constitution.

<sup>80</sup> Article 26 1995 Constitution.

lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities-all at reasonable cost.<sup>81</sup>

It is the legal duty of the government to formulate policies that promote the provision of housing for everyone without discrimination and at a reasonable price. Access to land or vacant places should also be provided. The government has an obligation to protect peoples' right to housing via, as in for instance, prohibition of unlawful evictions. It can also refrain from undue or arbitrary evictions in order to achieve its obligation to respect. Besides the obligation to promote urged the government to create awareness to the public or encouraging other stakeholders (e.g. civic societies) who render awareness to the public. The government should also encourage real estate Companies to engage in housing project to provide homes with reasonable payments. However, the obligation of the state organ or department and the enjoyment of a socio economic right can achieve only if both sides act reasonably and in good faith. As the Constitutional court of South Africa held in the occupiers<sup>82</sup> case, the claimants of the right of access to adequate housing should not raise unreasonable demand and people in need of housing are not necessarily a disadvantage sections of the society because people who have the capacity to get their own house or who already have shelter will demand the fulfillment of their rights since human beings in nature does not hate free service. The obligation for the government to fulfil right of housing is differ depend on the position of the beneficiaries. In *Grootboom* case<sup>83</sup> the Constitutional Court ruled that the obligation of the state to fulfil the right to shelter is differ from state to state, from city to city, from rural to urban areas and from person to person. The rural youth want a plot of land for farm and the urban youth looking for a land to shelter. In Ethiopia, nomads,

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<sup>81</sup>S Mignon 'Women and the Right to Adequate Housing' (1998)16 *Netherlands Q of Human Rights* 152,168.

<sup>82</sup>*Occupiers of 51 Olivia Road, Berea Township,, and 197 Main Street, Johannesburg v City of Johannesburg and Others* 2008(3)SA 208 20 CC para 38. (The balancing of rights between the right of access to housing and the right to a healthy and safe environment)

<sup>83</sup>*Government of the Republic of South Africa and Others v Grootboom and Others* (note 76 above) para 37.

for instance, look for a land not to build houses rather they need pasture lands for their cattle or camels.

The right to housing is one of the socio-economic rights that enshrined under the 1995 Constitution.<sup>84</sup> Furthermore, article 90 of the Constitution states that policies shall aim to provide all Ethiopians access to public housing. This means that the judiciary has optional grounds for the enforcement of the right to housing in Ethiopia since it enshrines as a justiciable right and a state social objective. However, this glimpse of hope is not impeded by the absence of specific legislation that recognises the right to housing in Ethiopia. In fact, the government of Ethiopia has taken legislative measures to address the housing problems in the country, especially in the urban areas via enacting the condominium house proclamation.<sup>85</sup> Even if the condominium house project was able to solve the housing problem of the middle income section of the society, the endeavour of the government to fulfil its duty towards the right to housing of the urban public of Ethiopia cannot be overlooked.

The government should make another specific legislation to address urban slums and homelessness for the poorest section of the society.<sup>86</sup> The legal justification for this recommendation is that the state of Ethiopia has the obligation to provide socio economic services to the beneficiaries without any discrimination to class of societies (wealthy, middle or lower) because the government has the obligation to respect article 25 of the 1995 Constitution, which prohibits discrimination on any ground. In this regard,

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<sup>84</sup> The 1995 Constitution does not articulate the right to housing in clear manner. Yet, it enshrines in abstract manner under Article 41(3), which states every Ethiopian national has the right to equal access to publicly funded social services. The term 'social services' including the right to housing, Article 41(4) imposes obligation on the state to allocate its ever increasing resources to provide to the public social services.

<sup>85</sup> The Condominium Proclamation 370 of 2003.

<sup>86</sup> *Housing for the poor in Addis*

*Ababa* <<http://www.google.com/search?hl=en&sa=X&oi=spell&resnum=0&ct=result&cd=1&q=Ministry+of+Urban+Development+and+housing+in+ethiopia&spell=1>> (accessed 07 June 2011).

the Constitutional court of South Africa in case of *khosa*<sup>87</sup> is challenging legislations that exclude or unfairly discriminate peoples from accessing socio economic services, such as health or education or social security. This is because dignity, equality and freedom are the bases of socio economic rights.

#### **4 The right to education**

The right to education means the provision of educational materials, professionals and the fleshing of barriers that obstacle the implementation of this right by the state. Education embraces various forms such as elementary, secondary, higher institution, it include Technique and Vocational Education Training (TVET), College and University level Educations). This education system can take forms: continuing (distance learning) and regular Education. So that when one talks about the right to education, it should be noted to refer to every forms of education.

Education should be available to everyone without discrimination. In order foran education system to be functional and to contribute to the socio economic problem of a country, it should be accessible to all and of high quality.<sup>88</sup> The 1995 Constitution guarantees the right to education under Article 41 (4), which categorised under a domain Economic, Social, and Cultural Rights. This Article provides that the state has the obligation to allocate ever increasing resources to provide to the public health, education and other social services.

On the other hand, article 90(1) of the 1995 Constitution states that policies must have the objective to provide all Ethiopian access to public education. This provision deals with inclusive education, which refers to an education system that is open to all learners without any discrimination on the ground of economic status, gender, ethnic backgrounds, language, learning difficulties and impairments (for instance, disable persons should get equal

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<sup>87</sup> 2004(6) SA 505 (CC). (The banning of legislation, which exclude permanent residents and their children from access to social security)

<sup>88</sup> Ibid.



access to education with that of non-disables).<sup>89</sup> Inclusive education also refers to identification of barriers that hinder the right to education, it reduces these barriers at all levels of education.<sup>90</sup>

According to article 90(2) of the 1995 Constitution, education shall be provided in a manner that is free from any religious influence, political partisanship or cultural prejudices. This provision is related with academic freedom. According to the United Nation's Committee on Economic, Social and Cultural Rights report, the right to education can only be enjoyed if escorted by the academic freedom on staff students.<sup>91</sup>

Further the committee expressed its experience as staffs and students, especially, in higher education are vulnerable to political and other pressures which under-mine academic freedom.<sup>92</sup> Staffs and students at higher education shall have:

- ✚ the right to express freely opinions about the institution or system in which they work,
- ✚ the right to fulfill their functions without discrimination or fear of repression by the State or any other actor,
- ✚ the right to participate in professional or representative academic bodies, and
- ✚ the right to enjoy all the internationally recognised human rights applicable to other individuals in the same sway.<sup>93</sup>

Academic freedom obliged the duty to respect the rights of others which is for instance treating contrary views of the community of education institutions, especially during discussion, without discrimination. Institutional autonomy should also be maintained in order to

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<sup>89</sup>The Ethiopian Ministry of Education, 'Ethiopia Inclusive Education: The way for the Future'. <<http://www.ibe.unesco.org>> (accessed 04 June 2011).

<sup>90</sup>Ibid.

<sup>91</sup>General comment 3 on the nature of States parties' obligations, UN Doc E/1991/23, Annex III (1991)86.

<sup>92</sup>Ibid 87.

<sup>93</sup>Ibid 88.

promote academic freedom. Autonomy refers to the degree of self-governance necessary for effective decision making by institutions of higher education in relation to their academic work, standards, management and related activities. However, the exercising of autonomy should be in line with the principle of public accountability, means that educational institutions should promote public interest and they should dispose the resource on their hand (for instance the annual budget) for interest of the public and to render solution for the socio economic problem of the society: illiteracy, extreme poverty, disease, hunger.

Another important sub theme of the right to education is girls' education. Girls in Ethiopia, especially in the rural part deprived of their right to education. Even basic education is hardly attainable in such places. There are countless reasons for these. According to UNICEF<sup>94</sup> the subsequent rationales are the basic ones:

- ✚ lack of adequate appreciation of the importance of girl's education on the parts of parents and the community, particularly in rural areas,
- ✚ early marriage as an old tradition of the rural part of Ethiopia also reinforces attitudes that decry the value and need to send girls to school, married girls who would like to continue their schooling are often prevented from doing so,
- ✚ High adult illiteracy rates, with only one in four adults in rural areas able to read and write also contributing for the limited awareness of community members to the importance of girls' education.<sup>95</sup> The significance of education to transform a male dominant system of the society to equal and non discriminatory world is affirmed by the Constitutional court of South Africa in Essay case.<sup>96</sup>

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<sup>94</sup> UNICEF- Girls education Initiative in Ethiopia (August 2009). <[http://www.Unicef.org/c82c572A/ethiopia/ET\\_media\\_GirlsEduc.pdf](http://www.Unicef.org/c82c572A/ethiopia/ET_media_GirlsEduc.pdf)> (accessed 17 June 2011).

<sup>95</sup> Ibid.

<sup>96</sup> *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* [2011] ZACC 13; CCT 29/10; 2011 (8) BCLR 761 38(CC) para 43. (The Right to Basic Education)

Furthermore, education helps women to claim their rights and to realise their potential in economic, political and social arenas. Basic education provides girls a better understating of basic health, nutrition. Education will enable them to know about family planning which can give them the choices and the power to decide over their own lives and bodies. Girls' education results into better reproductive health, improved family health, economic growth for the family and for society and lower rates of child mortality and malnutrition.<sup>97</sup>

Most interestingly, the right to education embraces its recent development to include special education for special need children. Special needs are a term with many definitions which range from retardation, terminal illnesses, food allergies or developmental delays.<sup>98</sup>

Special needs education refers to education system to students with special need in order to treat the problems of the students. For instance, some children may need wheel chair accessibility, adaptive bathrooms, physio therapy, speech therapy as part of their daily school routine, thus the need for special education school's came about when student's required support that goes beyond which is normally offered or received in the regular school and class room setting.<sup>99</sup> There are many schools which focus on special needs such as Autism, deaf or blindness, developmental delays, emotional disturbances, mental retardation, multiple disabilities, Orthopaedic impairments, traumatic brain injury and the like. Article 41(5) of the 1995 Constitution is about the duty of the state to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents and guardians

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<sup>97</sup>United Nations Children's Fund (UNICEF) Girls education Initiative in Ethiopia (August 2009) <[http://www.Unicef.org/c82c572A/ethiopia/ET\\_media\\_GirlsEduc.pdf](http://www.Unicef.org/c82c572A/ethiopia/ET_media_GirlsEduc.pdf)> (accessed 17 June 2011).

<sup>98</sup>What is special need: definition <<http://www.the-special-needs-child.com>> (accessed 19 June 2011).

<sup>99</sup>Special need education, what exactly is special education? <<http://www.the-special-needs-child.com/special-education.html>> (accessed 19 June 2011).

<sup>100</sup>(concerning to this, Ethiopian children are among the foremost choices of adopting individuals or agencies, which in most cases are Westerners).<sup>101</sup> The term physically and mentally disabled can be applicable to children with special needs. The government has the duty to fulfil the educational needs of children in special needs, with resources at their disposal.

Finally, the right to education is one of the basic socio economic rights that enshrined under the 1995 Constitution of Ethiopia. In order to fully and meaningfully realise the right to education the following recommendation can be applicable.

- ✚ Quality education. The right to education should best be realize when there is an attention to quality of education, in terms of quality teaching materials, human resources, educational institutions. The quest to ensure that students achieve decent learning outcomes and acquire values and skills that help them play a positive role in their societies is at the heart of quality education.<sup>102</sup>In Ethiopia educational quality is the one of the most debated theme in the educational circle, especially in higher education (both in private and public institutions) level. The new educational curriculum of Ethiopia is believed to open the door for many students to join higher education institutions, which lacks quality skills. Accordingly, this leads to a high dropout rate in higher institutions, which will be questioned the education system of the country and which will disappoint the hope longing parents and it also will be moral hazard for the student themselves.

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<sup>100</sup>In Ethiopia HIV/ AIDs is the major cause of orphanage , according to a 2007 UNICEF estimation there were around 5 million orphans in Ethiopia <<http://www.Hopeadoptagency.org/ethiopia/ethiopian-orpahn-statistics.pdf>> (accessed 08 June 2011).

<sup>101</sup>Ethiopia's adoption dilemma <<http://news.bbc.co.uk/2/hi/Africa/4312722.html>>(accessed 07 March 2011).The state of Ethiopia shall accord special protection to orphans and shall encourage the establishment of institutions that ensure and promote their adoption and advance their welfare, and education. Yet, caution is must concerning to adoption because westerners, for instance, who able to adopt Ethiopian orphans can provide education and care for the adoptee, but growing up in foreign culture can cause long-lasting problem on the psycho development of the adoptee.

<sup>102</sup>DS Derebssa , Quality of Teaching and Learning in Ethiopian Primary Schools: Tension Between Traditional and Innovative Teaching – Learning Approaches (2007).Also available at: <<http://home.hiroshima-u.ac.jp/9CD90C37-D5D8-4402-8825-9FDBODF9F530/FinalDownload/Download-...cice/forum/paper68.pdf>> (accessed 24 May 2011).

Experience from other countries shows that high local and school level management, research and assessment are needed to strengthen quality education system.<sup>103</sup>

✚ Free education. At the heart of the right to education is free education. If the right to education is a human right, education should be provided for free to every human being. Free education does not only refer to tuition fees but it should also include other factors that can be barriers for the attainment of education, especially in primary level. Free education should also included uniforms, stationary, transportation fee, costs related to sports and other school activities and so forth charges.<sup>104</sup> Ethiopia is one of the countries which have abolished school fees; however, making school fee by itself is not sufficient for the realisation of the right to education. According to the study conducted by UNICEF, the Poor, excluded and vulnerable groups may still not go to school even after fees have been abolished.<sup>105</sup> Parents, especially, in rural areas want their children to work on the field or at home (especially girls) since they rarely see the outcome of education (a better job that change the live of the family) even if it needs a long sighted decision making, parents prefer to stay their children outside school to help them. The state of Ethiopia is recommended to extend or strengthened the awareness programmes about the significance of education both in the long term and short term.<sup>106</sup> In addition, rewarding schools that achieve desired result helps to reinforce the right to education for all without charges- free. Performance awards are usually offered to groups (such as school boards) or individuals (such as head teachers).Offering money to schools that have

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<sup>103</sup>Rahmato (note 73 above) 20.

<sup>104</sup> Free Education in Ethiopia [www.mulabi.org/epu.6ta%20ronda/Ethiopia\\_submission\\_UPR-6.pdf](http://www.mulabi.org/epu.6ta%20ronda/Ethiopia_submission_UPR-6.pdf) (accessed 12 June 2011).

<sup>105</sup>O Jeliu The Challenges of Free Primary Education in Ethiopia International Institute for Educational Planning (IIEP) (2007)15.

<sup>106</sup> The importance of education in long term is clear and obvious. In the short term education has the importance of acquiring knowledge to do tasks in planned manner, to have a better hygiene and to have better disease protection awareness, an understanding of the surrounding environment and the rest of the country especially for the rural areas community.

improved students' performance will help them to enhance their undertakings.<sup>107</sup>

✚ Education for all, particularly for vulnerable groups. The education system of Ethiopia should be more attentive to vulnerable peoples' education, which includes disables, children with special need and even girls. Ethiopian blind students, for instance, should only enjoy their right to education if texts transcribed to Braille, which the Ministry of education claims one of its achievements in the education sector.<sup>108</sup> In addition, sign languages should be taken as medium of instruction at all levels of state education institutions to ensure access to deaf learners. Moreover, student with special needs should entitled special protection for their right to education, so that the government expected to provide special educational institutions for them. In many cases, educational facilities and institutions are relatively more accessible in the Federal government sphere, especially in the Capital city Addis Ababa. Hence, the federal government should intervene on regional governments which fail to deliver quality education due to insufficient resources.<sup>109</sup> However, it is unacceptable to blame on resource for failure to enforce socio economic services, as in *Treatment Action Campaign(TAC) case*<sup>110</sup> government policy always should be in line to protect the violations of socio economic rights, if the government faces resource constraints, it can use others option to deliver the needed service. The civic societies can be supplementary organs for the delivering socio economic services to the society, including education. Hence, the state of Ethiopia is expected to work closely with civic societies to fill the gaps that created due to inadequate resources. Furthermore, the government shall give immediate measures for the complaints or critics of civic societies concerning to failure to observe its constitutional obligation to respect, protect and full fill socio economic rights. Above all Ethiopian courts shall entertain cases that brought by civic societies in fair, expeditious,

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<sup>107</sup> Jeliu (note 105 above) 79.

<sup>108</sup> Ministry of Education (note 88 above).

<sup>109</sup> Jeliu (note 105 above) 80.

<sup>110</sup> 2002 (5) SA 703 (CC) para 69. (TAC demanded that government provides Nevirapine, which is anti retroviral drug, under the public health care system to be delivered freely to prevent mother to child transmission of HIV)

reasonable and just manner as the Constitutional court of South Africa responds for the allegation of Treatment Action Campaign, which is indigenous NGO.

As considerable note countries such as Ethiopia can learn more experience from the Constitutional Court of South Africa, which takes the leading role in developing the socio economic jurisprudence and the enforcement of these rights. South Africa has a well developed legal system and the existence of Constitutional Court paved the way for better enforcement mechanisms of socio economic rights than other African countries, as a scholar argue this is because socio economic rights need resources for their implementation and since South Africa is in a better economic position enforcement of socio economic rights going on in smooth ground.<sup>111</sup>

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<sup>111</sup> JC Mubangizi 'The Constitutional Protection of Socio Economic Rights in Selected African Countries: A Comparative Evaluation' (2006)2 *Africa J of Legal studies* 1 19.

## Conclusion

Socio economic rights are inherently associated with the wellbeing of individuals. They are associated with the basic necessity of human beings, such as food or water or housing. The entrenchment of socio economic rights under the 1995 Constitution of Ethiopia has significant impact since the country is a developing country which is in need of socio economic development.

The 1995 Constitution incorporates those socio economic rights in abstract fashion, which means that additional interpretational mechanism is must to lenient application of socio economic rights in the real world. These mechanisms can be via judicial enforceability or it may be the task of the legislature to enact supplementary legislations. Land rights, for instance, is backed up by two consecutive legislations, which make an attempt to the land rights regime more practicable.<sup>112</sup> This means that, under citrus paribus circumstances, the legislature had already started its task to make socio economic more fully fledged rights.

The judiciary is the other branch of the government that should make the interpretation of socio economic rights more implementable. It is the judiciary, which refers to the system of judge ship and courts, that expected to interpret socio economic right clauses which enshrined under the Constitution and other international bill of rights.<sup>113</sup> When the judiciary entertain socio economic rights, it must give prior attention to vulnerable groups; for instance when the courts enforce the right to education, they must not overseethe rural women illiteracy rate or children with special needs or in case of the right to health HIV/AIDS victims should be entertain at foremost place.

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<sup>112</sup>The two basic land right legislations are the Federal Democratic Republic of Ethiopia Rural LandAdministration and Land Use Proclamation 456 of 2005 & the Federal Rural Land Administration Proclamation 89 of 1997.

<sup>113</sup> The so called International Bill of Rights often included the three human right instruments notably: The Universal Declaration of Human Rights (UDHR), The International Convention on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Certain human rights literatures called them as 'Bell of Rights' than Bill of Rights.



Courts should also look at the experience of other jurisdiction that has an elaborative jurisprudence on socio economic rights. South Africa, for instance, can be an example since it has well developed legal system.

Moreover, the judiciary is expected to be a standby institution to aware recent development of socio economic rights at international and domestic level. Currently, the right to education is, for instance, not about building primary level schools or providing teachers rather it is about the provision of quality education at all level in order to get quality professionals.

## Chapter four

### The judicial enforceability of socio economic rights in Ethiopia

#### Introduction

*'Socio economic rights should be at least to some extent justiciable; and at the very minimum be protected from invasion.'*<sup>114</sup>

Judicial enforceability refers to the ability of courts to entertain cases which constitute justiciable matters. In relation to socio economic rights, it refers to whether these rights can be brought the court for relief or not. It answers the questions do courts have the jurisdiction or the power to entertain socio economic right cases or not.

This chapter analyses whether socio economic rights are the subject matter of Ethiopian courts or not. It explores to what extent the Ethiopian courts have the power to make judgement on individual or group<sup>115</sup> socio economic rights: can Ethiopian courts issue the eviction of a peasant from her plot of land as unconstitutional since it is against her right to livelihood as enshrined under article 41(1) of the 1995 Constitution? or does the Ethiopian courts have the jurisdiction to oblige the state to make good its obligation to provide rehabilitation and assistance to the 'physically and mentally disabled, the aged, and to children who are left without parents or guardian' in accordance with article 41(5) of the 1995 Constitution<sup>116</sup>?

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<sup>114</sup> *Ex parte Chairperson of the Constitutional Assembly: in re Certification of the Constitution of the Republic of South Africa, (1996)(4) SA 744(CC)(Justiciability of Bill of Rights, which constituted under the 1996 Constitution of South Africa).*

<sup>115</sup> The usage of the word 'group' is to indicate Nation, Nationalities and Peoples' of Ethiopia, which adopted the 1995 Constitution.

<sup>116</sup> Article 41(5) of the Constitution provides that:

'The State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian'.

## **1 The obligation of the judiciary in Ethiopia**

The judiciary is among the three tiers of the government, which is responsible for interpreting the laws made by the legislative branch of the government. The judiciary refers to institutions (e.g. courts) and the justice system at large. The judiciary is regarded as the protector of human rights from abuse and violation by other state organs and private individuals.

According to article 13(1) of the 1995 Constitution, the judiciary has the duty and responsibility to respect and enforce the provisions of Chapter three of the Constitution, which articulated Bill of rights including socio economic rights. Moreover, the judiciary also has the responsibility to interpret the socio economic right provisions in conformity with the principles of UDHR<sup>117</sup> and international covenants pursuant to article 13(2) of the Constitution. Article 9(4) of the 1995 Constitution states that international agreements which are ratified by Ethiopia are integral part of the law of the land—the Constitution. Furthermore, the judiciary has the duty to respect and protect the supremacy of the Constitution.<sup>118</sup> The provision of article 37(1) which provides that everyone has the right to bring a justiciable matter to the court and to obtain a decision or judgment by a court of law or any other competent body with judicial power can be raised as another argument for the justiciability of socio economic rights.

## **2 Justiciability of socio economic rights in Ethiopia**

Justiciable refers to whether the case at hand is adjudicable in court of law or not. The judiciary of any country's jurisdiction has the power to enforce socio economic rights via granting privileges, sanctioning violators and rendering remedy for the victims. The court can do this only the matter is justiciable.

In Ethiopia, socio economic rights are not directly enforceable by the judiciary. Rather they are implemented via laws made by the

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<sup>117</sup>UDHR stands for Universal Declaration of Human Rights.

<sup>118</sup>Article 9 (2) of the Constitution stated that 'All citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and obey it'.

legislature.<sup>119</sup>The attitude of the judges and members of the Council of Constitutional Inquiry Commission<sup>120</sup> regarding to socio economic rights are either these rights are non-justiciable or as some of them contended the legislature is the one that determine by enacting laws whether socio economic rights are justiciable or not.<sup>121</sup>If the court deemed that a case needs constitutional interpretation, they are required to submit cases to the House of Federation and the Council of Constitutional Inquiry Commission.<sup>122</sup>

The 1995 Ethiopian Constitution tended to the non-judicial constitutional adjudications because it gives constitutional interpretation to non-judicial organ that is the House of Federation. Most countries of the world use judicial constitutional adjudication, though there are also countries which use non judicial constitutional adjudication such as Bahrain, China, Congo, Cuba, Finland, North Korea and Zimbabwe.<sup>123</sup> The role of the constitutional court is taken by the Council of Constitutional Inquiry Commission, which only have a legal advisory role to the House of Federation. As indicated earlier, the House of Federation has the final authority for interpretation of the Constitution.<sup>124</sup>

The Constitutional Assembly choose this option due to two main rationales. Ethnic Federalism is the first one. The rotifers of the Constitution (that is representatives of Nation, Nationalities and Peoples' of Ethiopia) viewed the Constitution as a political contract entered between them so that they render the power of Constitutional interpretation for a body that further the

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<sup>119</sup>R Tsegaye 'Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia' (2009) 3 *Mizan LR* 289,305.

<sup>120</sup>The Council of Constitutional Inquiry Commission is an organ responsible for examining cases that needs constitutional interpretation and submits the findings to the House of Federation, which have the final power to decide on the case.

<sup>121</sup>N Fasil *Constitution for a Nation of Nations The Ethiopian Prospect* Asmara/Lawrenceville Red Sea (1997) 36.

<sup>122</sup> As a federal State if there is a need of constitutional interpretation at regional level, there are Constitutional Interpretation Commission, Council of Nationalities, and Councils of Constitutional Inquiry which upheld the case.

<sup>123</sup>The former Soviet Union was also used non judicial constitutional adjudication system.

<sup>124</sup>The House of Federation is a representative organ of parliament whose members come from every ethnic group.

interests of Nations, Nation, Nationalities and Peoples'-House of Federation.<sup>125</sup> The second reason is that, the Constitutional Assembly is scared about 'judicial activism' or judicial dictatorship that can easily overwhelm the will of Nation, Nationalities and Peoples' of Ethiopia.<sup>126</sup> However, if the legislature decides which are justiciable and which are not, it is regarded as the undue intervention upon the role of the judiciary on protection and enforcement of socio economic rights, which the Constitution grant to the judiciary under article 13(1) – '...judicial organs have the duty to respect and enforce the provisions of this chapter'.<sup>127</sup> One can here look at the dependency of the judiciary branch on the legislature rather than being independent as the Constitution enshrines under article 78(1).<sup>128</sup> Comparative constitutional theories suggest that the drafters of the Constitution put non justiciable socio economic rights as state policy in other jurisdiction, but once socio economic rights articulated under the Bill of Rights chapter in the constitution, they must be directly enforceable.<sup>129</sup> This is because the intention of the drafters is to make socio economic rights justiciable; otherwise it is of no use to include the right to property (article 40), right of labor (article 42), right to development (article 43) , the right to a healthy and clean environment (Article 44), land rights (article 41) and other socio economic rights (article 41) in the 1995 Constitution. Even in lay man principle, if a person has a right, the court should protect this right from violation and to punish individuals who derogate this right. However, as indicated earlier this is not the case in Ethiopia.

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<sup>125</sup> M Chi, B Sarah, D Aron , M Melisa, S Felice ,& T Teramed 'Silencing the Ethiopian Courts: Non Judicial Constitutional Review and Its Impact on Human Rights' (2008) 1 *Fordham Int LJ* 259, 273.

<sup>126</sup> *Ibid* 268.

<sup>127</sup> The phrase 'this chapter' refers to Chapter III of the 1995 Constitution, which articulated about fundamental rights and freedoms, which include socio economic rights.

<sup>128</sup> Article 78(1) of the Constitution stated that 'an independent judiciary is established by this Constitution.'

<sup>129</sup> The 1996 Constitution of the Republic of South Africa, for instance, included socio economic rights under Bill of Rights and they are directly enforceable by the court of law.

### 3 Court cases of socio economic rights in Ethiopia

In Ethiopia, cases of socio economic rights that brought before the courts are mainly the right to property (e.g. housing) and the right of labor. In all cases the litigants are non-state actors. This means the cases are not brought before the court against the socio economic rights violation of the state or none of them are requesting the state to fulfil its obligation to fulfil, respect and protect socio economic rights. Hence, the cases where the parties are non-state actors are irrelevant for the purpose of this study. However, there is only one socio economic right case that brought by a private actor against the failure of a state department for discharging its duty is the following case.

*Action Professionals' Association for the People (APAP) v Environmental Protection Authority (EPA)*<sup>130</sup>

The alleged fact of the case is that the plaintiff (a local NGO) alleging the defendant (which is organ of the state) for failure to execute its duty as a department of state to protect the residents, which live along the rivers of 'Akaki' and 'Mojo', from environmental pollution.<sup>131</sup>

The residents use the river as the source of their livelihood (such as for irrigation, cooking, drinking and cooking). However, the municipalities and the surrounding factories pollute the river, which is against their right to a clean and healthy environment as enshrined under article 44(1) of the 1995 Constitution. The main supportive legislations for the allegation of APAP were the Environmental Pollution Control Proclamation 300 of 2002<sup>132</sup> and the Environmental Protection Organs Establishment Proclamation 295 of 2002.

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<sup>130</sup> *APAP v Environmental Protection Authority (EPA). Federal First Instance Court, Case No 64902. (The right to live in a healthy and clean Environment).*

<sup>131</sup> The Ethiopian law is only opt public interest litigation in case of environmental pollution.

<sup>132</sup> This proclamation is one of the exemplified legislation concerning to opting public interest litigation.

The defendant that is the EPA argues that APAP cannot sue it via the provisions of the indicated Proclamations. EPA also elaborates what it took as a measure to stop and protect the pollution of the river by the surrounding factories.<sup>133</sup>

At last, the Federal First Court gives a decision in favour of the defendant EPA on October 31, 2006. The court ruled that APAP is not entitled to sue EPA rather it can brought the parties that ultimately caused the pollution to the court of Law. Then, APAP lodged an appeal to the Federal High Court against the decision of the Federal First Instance Court. Still the case is pending in the High court, even if it is almost six years from the date of lodging the appeal, there is no final decision by the High Court. But, one can note the devastating effect of water pollution; it should be remedied as soonest possible. Since water pollution is a sensitive issue it needs expeditious solution or corrective measures. When the High court settles the case in the future, which is undefined time, the outcome of decision will be futile. Nevertheless, the APAP case is so significant that it is the first test case for socio economic rights. Besides, the case illustrates the importance of active civic societies for the realisation and protection of socio economic rights. Moreover, the '*actiopopularis*'<sup>134</sup> should be allowed as part of the basic procedural laws of the country, so as to ensure a high degree of justiciability of socio economic rights.<sup>135</sup> This is because APAP bring the environmental right case to the court since public interest litigation in case of pollution is allowed. Once public interest litigation is allowed for the realisation of socio economic rights, courts will be developed socio economic rights jurisprudence over cases through the application of the specific legislation and constitutional provisions regarding socio economic rights.

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<sup>133</sup> The alleged places 'Akaki' & 'Mojjo' is where various factories is found, which is located at East of the Capital City -Addis Ababa.

<sup>134</sup> "*Actiopopularis*" means bringing an action to the court to obtain remedy by a person or a group in the name of the collective interest. "*ActioPopularis*" is usually refers to public interest litigation.

<sup>135</sup> A Sisay, The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia (2007) 6.

#### **4 Challenges of the judicial enforceability of socio economic rights in Ethiopia**

Ethiopia is one of the poorest countries in the world that needs implementation of socio economic rights in order to have quality of life and a desirable standard of living. In order to enforce socio economic rights, judicial safeguarding in against violations must be compulsory. However, the enforcement of socio economic rights via the Ethiopian judiciary system<sup>136</sup> has been experienced challenges which include:

##### **A. Incompetency and legitimacy of courts**

Courts still use archaic methods of task performance. There are a few occasional trainings given for the judges. Most of the judges apply the law as it was; their legal knowledge regarding the *status quo* has an effect on the implementation of socio economic rights. They must have an updated knowledge of socio economic rights and the knowhow of their enforcement. Due to lack of qualified judges, non-qualified personnel to whom legal training of short period is given are appointed.

##### **B. Non judicial adjudication of the interpretation of the Constitution**

The Constitution gives constitutional interpretation to the House of Federation, which is a political organ. Courts have not the power to interpret the constitution rather this is the task reserved for the House of Federation, which will make the interpretation via Council of Constitutional Inquiry Commission. The Council accept application of cases concerning Constitutional disputes, entertain and submit its findings for the House of Federation, which has the final power to decide on the case.

##### **C. Non-reference of international socio economic rights cases and instruments by courts**

Ethiopian courts are rarely referred to the international human rights Conventions; their reference is very minimal at best, nil at worst.<sup>137</sup> Most rural citizens resort to religious, customary or social courts at the

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<sup>136</sup> The 'Ethiopian judiciary system' stands to connote both the federal and the nine regional court levels. In both judicial levels, there are First instance court, High court and Supreme court.

<sup>137</sup> Rakeb (note 40 above) 38.



‘kebele’<sup>138</sup> level, where the notion of human rights is unheard. However, linking the social fact of Ethiopia and the developments of socio economic rights is a better way for tackling hunger, illiteracy, homelessness, or other socio economic problems.

#### **D. Poor perception of the people towards the judiciary**

The public are not aware of the socio economic rights in the constitution. In rural areas, even in certain urban areas, the public has the tendency to resolve disputes in Social courts<sup>139</sup> since they anxiety by the backlog and delay of regular courts.<sup>140</sup>

#### **E. Non-publication of international instruments**

In Ethiopia it is not uneasy to get published international human right instruments, which include for instance socio economic right Conventions. This problem has an impact on the judge to apply the socio economic rights clause on her judgement. Moreover, it has an impact on the perceptions of the academics, activist, civic societies.

#### **F. Absence of domestic legislation on the contents of socio-economic rights**

This problem means that the constitution holds the provisions of socio economic rights on normative manner, it needs subsidiary legislation that deals with it in elaborative fashion; unfortunately this is not the case in Ethiopia. Besides, the constitution enshrined the socio economic rights in more unclear and broad manner that needs clarity and specifications, which may require the amendment of the constitution, which is by itself another colossal task.<sup>141</sup> It is enough to note that legislating subsidiary laws may not be sufficient for the full and meaningful enforcement of socio economic rights.

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<sup>138</sup> ‘Kebele’ is the smallest administrative unit in Ethiopia.

<sup>139</sup> Social courts are quasi-judicial organs having their roots in the traditional conflict resolution mechanism commonly known as ‘Shimagile’. The latter is an informal and traditional institution run by sage or venerable elderly men who arbitrate conflict arising between individuals within a community.

<sup>140</sup> H Abera Action Professionals’ Association for the People (APAP’s), Experience on Social Court Judges Training (2002).

<sup>141</sup> Article 41 of the 1995 Constitution enshrined various socio economic rights under one article. Yet, for a better enforcement of these socio economic rights, it is better to put each right in a separate and elaborative fashion.

### **G. Absence of public interest litigation**

Public interest litigation means lodging application to the court on behalf and for the benefit of others. The applicant may not be directly affected by the case. The public are not aware of public interest litigation, since there are few civic societies that make the attempt to make awareness about the subject. There are no people who take legal action against violation of socioeconomic rights in Ethiopia.

As discussed earlier in chapter three, the only notable socio economic right claim brought to court is the APAP case, which was about environmental rights. APAP is an indigenous NGO, which brought the case since public interest litigation is opt in case of environmental pollution issues. This means that if public interest is allowed for all kinds of socio economic rights, civic societies and individual activist will be initiated to refer socio economic right case to the court. In developing countries such as Ethiopia public interest litigation is must since the public is hardly knows its socio economic right. This is due to factors such as ignorance which is caused by lack of education. Before stating about the right to education, the state should first fulfil everyone's right to basic adult education. According to a research made by UNESCO<sup>142</sup>, four out of ten Africans cannot read or write and according to scholars this situation will hardly change soon.<sup>143</sup>

### **H. Absence of functional and recognised institutions which protect and promote socio economic rights**

Functional institutions refer to a well-established institution that operates its task in active or vigorous manner. When the Constitutional Assembly of Ethiopia drafted the constitution, it recommended the importance of constitutional court.<sup>144</sup> Later the Assembly cancelled its novel proposal and it renders the power to interpret the Constitution to a political or a

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<sup>142</sup> UNESCO stands for United Nations Education, Scientific, and Cultural Organisation.

<sup>143</sup> JC Mubangizi Prospects and challenges in the protection and enforcement of socio economic rights: Lessons from the South African experience. Paper presented at the 7<sup>th</sup> World Congress of the International Association of Constitutional Law, June 11-15, Athens(2007) 12.

<sup>144</sup> M Chi, B Sarah , D Aron , M Melisa, S Felice , & T Teramed (note 125 above) 34.

legislative organ called the House of Federation. If a Constitutional court were existing, they will not only ensure the safeguarding of socio economic rights from abuse or violation, but also they will safeguard the wellbeing of the Constitution itself from organs or persons that infringe its principles and who act in contrary to the purpose and objective of the constitution. This challenge will be coupled due to absence of strong human rights institutions, such as the Ombudsman and the Ethiopian Human Rights Commission. These bodies are not strong in themselves due to constraints like adequate resources and lack of long period of time experience.<sup>145</sup>

The problem will be severe due to the existence of weak and the small number of civic societies in Ethiopia to date which can promote socio economic rights. In February 2009, the government promulgated the Proclamation<sup>146</sup> to Provide for the Registration and Regulation of Charities and Societies (CSP), (2009).<sup>147</sup> The Proclamation, among other things, restricts NGOs that receive more than ten percent of their financing from foreign sources from engaging in essentially all human rights and advocacy activities. CSP under article 14 restricts participation of civic societies in activities that include the advancement of human and democratic rights including socio economic rights and the promotion of the efficiency of the justice and law enforcement services to Ethiopian charities and civic societies. In other words, charities and societies seeking to pursue promoting socio economic rights cannot receive foreign funding that amounts to more than ten percent of their overall income.<sup>148</sup>

This is the reason why foreign funding restrictions may force the closure of many organizations, especially human rights organisations. This is of particular concern in Ethiopia where local sources of financing are limited and NGOs are often dependent on foreign funding.

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<sup>145</sup> K Getahun 'Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System' (2006) 20 *Africa focus* 75, 84.

<sup>146</sup> Proclamation is the law that made by the federal parliament of Ethiopia.

<sup>147</sup> CSP is Ethiopia's first comprehensive law governing the registration and regulation of NGOs. The law is one of the most controversial NGO laws in the world.

<sup>148</sup> The International Centre for Not for Profit Law (ICNL), NGO Law Monitor of Ethiopia: A Commentary. *ICNL News Letter* (17 December 2009) 6.

NGOs are aid organisations which can complement the service delivery, human rights promotion, and they can contribute their share for development projects via providing human resource, logistic support, and financial aid.<sup>149</sup> Civic Societies, contribution for the judicial enforcement of socio economic rights in Ethiopia cannot be gainsaying. Hence, there is a need for reforming the Civic Society law of Ethiopia in order to make it more pro-socio economic rights enforcement legislation.

### **I. Absence of independent judiciary**

Independence of the judiciary means the judiciary as a branch of government and individual judges exercise their functions without undue interference in the decision making from the executive, the legislature, colleagues, the public and judges must decide matters before them fairly and impartially, relying only on the facts and the law.<sup>150</sup>

Lack of independent judiciary organ (the executive have power over it and through lobbying, financial inducements and sometimes intimidation it controls the action of the parliament) is one of the tackles against judicial enforceability of socio economic rights in Ethiopia.<sup>151</sup> Independence of the judiciary in Sub-Saharan Africa (which includes Ethiopia) faces serious challenges and is generally weak, among other things due to limited resources.<sup>152</sup> Mr. Singhvi, a former United Nations Special Rapporteur to independence of the judiciary observed that '[I]mpartiality and independence of the judiciary is more a human right of the consumers of justice than a privilege of the judiciary for its own sake'.

Absence of independent judiciary characterised by: inadequate constitutional guarantees, lack of commitment by political leaders, to promote and protect the principle of independency of the judiciary. It is

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<sup>149</sup> M Firoze, *The Missionary Position: NGOs and Development in Africa* (2002) 16.

<sup>150</sup> RR Mzikamanda *The place of the independence of the judiciary in democratic sub Saharan Africa* (2007) 28.

<sup>151</sup> *Ibid* 14.

<sup>152</sup> Mubangizi (note 143 above) 12.

perpetually threatened through unwarranted attacks and circumventing of the constitution, especially by the executive branch of government in Sub-Saharan Africa. Concerns have been expressed at various forums regarding strong pressure from the executive, incomplete financial and administrative autonomy of the judiciary, interference by the legislature, weak infrastructure, inadequate budgetary allocations, corruption, low pay and sometimes a hostile attitude of the media towards the judiciary. Those who profess to support it in most cases simply pay lip service to the principle.

According to Justice Mzikamanda, Ethiopia's constitution provides very weak protection to the judiciary against serious political manipulations and abuses of the judicial system.<sup>153</sup> With the provision of nominal constitutional guarantees to the independence of the judiciary and the fact that the judiciary is treated as an extension of the executive creates practical impediments to the independence of the judiciary. The judiciary does not see its role as upholding the constitution or exercising checks and balances over the executive and the legislature. Judges who assert their independence attract attention and may be punished for it. In rural areas, the concept hardly exists in practice as judges must be on the side of government or they will be removed by local administrators if considered not loyal to the executive.

In some instances, the executive may disregard the court order for the enforcement of socio economic rights; however, this is against the independence of the judiciary and rule of law. Instead of disobedience to the order of the court, the acceptable and civilised way for the executive is to challenge the order via appeal process.<sup>154</sup>

Thus, for the judiciary to effectively perform its function it must be endowed with independence from control, pressure or influence whether from the executive, the legislature, the press, the public, the non-governmental organizations or from any other quarter whatsoever. Again

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<sup>153</sup>Mzikamanda (note 150 above) 42.

<sup>154</sup>Mzikamanda (note 150 above) 64.

the judiciary requires public trust, confidence and respect. It must be a judiciary that is transparent and accountable with ethical judges whose court system is not corrupt. For the judiciary to be effective it also requires adequate resources to be allocated to it.

**J. The absence of translation of socio economic rights conventions to local languages**

International conventions, which include ICESCR, have not been translated in the official languages of courts, such as Amharic, Oromiffa, Tigrigna and the like. This is the challenge especially at the regional level where courts use the language of their respective region. Hence, translating international or regional socio economic rights to the working language of the regional governments results in ease of the judge to enforce socio economic rights. This is because the judge will understand the socio economic rights provisions; if it is written in the language she will be well known, it may be her mother tongue language.

**K. Extreme poverty**

Extreme poverty is a condition where residents of a country get an income less than one dollar per day. Even if the judiciary offers relief to the violation or the non-observance of socio economic rights, for a developing country such as Ethiopia, the order or decision of the court to the fulfillment of socio economic needs may not be attainable. In most cases, state party to the ICESCR provides resource constraint as an excuse for the non-observance of socio economic rights. In fact, the abject poverty of a developing country like Ethiopia and the inadequate public resource, which is too small to satisfy the order of the court for redressing socio economic goods and services which is made against another actor whether it is private or public (such as state organs).<sup>155</sup>

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<sup>155</sup>Mubangizi (note 143 above) 42.

## L. Corruption

Institutional<sup>156</sup> or individual<sup>157</sup> corruption can be defined as an inevitable challenge to the protection and enforcement of socio-economic rights in Africa, including Ethiopia. Accordingly:

*'Money stolen from government coffers, bribery in the public and private sectors, corruption in the judiciary and embezzlement of public funds are ... practices that lead to violations of socio-economic rights...in countries where corruption is rampant, human rights violations also abound. In such countries any talk of the protection and enforcement of socio-economic rights is rather meaningless.'*<sup>158</sup>

The question of corruption is the most challenging barrier for the enforcement of socio economic rights. In Ethiopia, in order to reduce both institutional and individual corruption, the Federal Anti Corruption and Ethics Commission must work together other related state organs such as the Ethiopian Human Rights Commission, the Ethiopian Ombudsman Institution. These organs expect to encourage individual complaint against corrupted practices and public officials. As reports suggest civic societies are good and effective in reporting socio economic right abuse.<sup>159</sup> This means that civic societies that activate throughout Ethiopia should be part of the anti corruption campaign.

### **5 Remedial recommendations for the challenges of judicial enforceability of socio economic rights in Ethiopia**

The following points serve as remedies for the problems associated with judicial enforceability of socio economic rights. These include:

- ✚ Socio economic rights should fully be entrenched in the constitution and they should be contained in a bill of rights in clear way. Their justiciability

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<sup>156</sup> Institutional corruption means if a private or public institution needs favor from its clients.

<sup>157</sup> Individual corruption refers to a bribe that made to a private person.

<sup>158</sup> Mubangizi (note 143 above) 46.

<sup>159</sup> The International Centre for Not for Profit Law (note 14 8 above) 18.

ought to be guaranteed. Firstly, the Constitution should clearly articulate that socio economic rights are directly adjudicable by court of law.

- ✚ A vibrant, independent and innovative judiciary is necessary for effective enforcement of socio economic rights. The role of the judiciary is critical. In particular, the existence and role of the Constitutional Court cannot be over-emphasized. Without such a court it is difficult to envisage how socio-economic rights – or indeed any human rights – can be enforced. The current system of constitutional interpretation by the House of Federation is open to arbitrary infringement of socio economic rights by the judiciary. The existence of a Constitutional court is crucial.

In Ethiopia, the importance of Constitutional Court as an ultimate guardian of socio economic rights cannot be overlooked. This organ should interpret the constitutional rights than rendering this power to a political organ – House of Federation.<sup>160</sup>

Once an independent and impartial constitutional court established Political leaders inevitably respect the ruling of the court as ex-President of South Africa Nelson Mandela once said:

*“The Constitutional Court has declared invalid proclamations which I made. At the time I was assured by my legal advisors that I had the authority and power to do so. I fully accept the decision of the constitutional Court. We all act under the Constitution and I, as President, must be the first one to show respect for the Constitution as interpreted by the Constitutional Court.”*<sup>161</sup>

- ✚ Effective human rights education should also be provided for beneficiaries to claim their rights; unless people are aware that they have these human

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<sup>160</sup>Rakeb (note 40 above)33.

<sup>161</sup>WJ Frederick (ed) *The Independence of the Judiciary and the Rule of law: Strengthening Constitutional Activism in East Africa 2<sup>nd</sup>* ed Uganda (2004) 12.



rights, it will be very difficult to raise the issue of socio economic rights such as the right to food or its parcel freedom from hunger.

- ✚ Civic society organisations have a huge contribution for the judicial enforceability of socio economic rights in Ethiopia.

In Ethiopia, due to the new law on non- profit organizations, most Civic Societies are not operated in their full potential even in terms of human power, local NGOs compel to lessen the number of their employees due to income limitation imposed by the new civic Society law. Hence, reforming the new NGO law of Ethiopia, especially Article 14 that restricts the activities of NGOs in promotion of socio economic rights is very significant for the full realisation of socio economic rights and for getting an auxiliary hand of civic societies.

- ✚ Legal and judicial education and training. This is very important for members of the judiciary in order for them to maintain or even enhance their competence. As the world is dynamic so does human activities and trends, which needs the adaptation of the law with current trends and recent developments of the society. The law is changing all the time and there is need for constant updating, not just on the law itself, but also on the skills required on the bench. Most judges realize this requisite. Conservative as courts may be, technology has infiltrated them, and quite useful technology. Continuing legal and judicial training contributes significantly to the sustenance of the independence of the judiciary in that it aims to maintain and enhance competences in the judiciary. This is because:

*'an incompetent judiciary would be a public disgrace and would not endangered the much needed public trust and confidence. An incompetent judiciary would undermine the independence of the judiciary'.*<sup>162</sup>

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<sup>162</sup>Mzikamanda (note 150 above) 21.

✚ Enactment of socio economic legislations. Specific laws that supplement the implementation of the broad socio economic rights or socio economic spheres (such as education, health, land, housing, labor, and environment) are significant for the enforcement of socio economic right at judicial sphere. Though promulgation of legislations might not be sufficient on its own, they have a positive impact on the attitudes of the judiciary and it will remind the people had they forgot or unaware of this rights.<sup>163</sup>The legislator of Ethiopia is expected to enact specific legislation for specific socio economic rights. Right to education, for instance, needs legislation concerning to quality education or a law on how to operate special needs education system for children or ;the right to food requires specific land right legislation. Enacting specific legislation will render the judiciary a broader possible option to settle socio economic cases. This bold step will result in the facilitation of the development of socio economic rights jurisprudence by the judiciary. Having enact specific legislations the judiciary will be in legal ground to enforce socio economic rights; yet the commitment and willingness of the executive branch of the government (these includes different educational, health, political institutions) is crucial for fully implemented these rights and benefit the peoples of Ethiopia at large without discrimination.

However, the 1995 Constitution of Ethiopia itself enshrines socio economic rights in unclear manner and in a very broad way. This is one of the barriers that should first be addressed, before enacting specific socio economic legislation for the right of labour or environment or livelihood or the right to food or housing.<sup>164</sup>

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<sup>163</sup>Rakeb(note 40 above) 36.

<sup>164</sup>The Ethiopian parliament has promulgated the following legislations that relate with socio economic rights: --the right of labour (Labour Proclamation 377 of 2003),  
-the right to housing(Condominium Proclamation 370 of 2003),  
-land right (land Proclamation providing for the Expropriation of Urban Lands and Extra Houses 47 of 1975; Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation 455 of 2005; and Urban Land Lease Holding Proclamation 272 of 2002),  
-Environmental rights (Environmental Protection Proclamation 295 of 2002; Environmental

## **Conclusion**

Socio economic rights are human rights that need effective promotion, protection and fulfillment for their full realisation. These rights are enshrined in a comprehensive manner under the International Convention for Economic, Social and Cultural Rights (ICESCR).

Subsequently, almost all Constitution of the world nations are constitutes socio economic rights. Ethiopia cannot be the exception. The 1995 Constitution of Ethiopia envisaged socio economic rights under Chapter III. Even if socio economic rights are articulated in a broad manner, almost all of these rights are constituted under the Constitution. These rights are the right to property, right of labor, environmental rights, the right to ones livelihood, land rights, the right to housing, the right to education, environmental right, the right to development, farmers right.

Ethiopia is a federal state where the power of the government is divide among the federal government and nine regional states. Both forms of governments have their own legislatures, executive and judiciary. Among these branches of the government the judiciary is responsible for the enforcement of socio economic rights.

The judiciary is expected to enforce socio economic rights as they contained under the 1995 Constitution via referring regional (e.g. the African Human and Peoples' Rights Charter) and International (e.g.

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Pollution Control Proclamation 300 of 2002; and Environmental Impact Assessment Proclamation

299 of 2002). Even if it is encouraging still there is a need to address other areas of socio economic rights in detail, clear fashion to address the socio economic problems of every sections of Ethiopian without discrimination. The Condominium proclamation, for instance has promulgated to address urban housing shortage or homeliness, nevertheless, thus is not the case. In order to get the condominium house a person shall pay in thousands, which can afford only to the high income class of the citizens; this means the poor and middle class section of the society cannot afford to pay for the house to lead a happy and stable life. I believe the proclamation shall be reformed to include all section of the society; otherwise it counts as discrimination and it is a barrier for the enforcement of socio economic rights.

Universal Declaration of Human Rights and ICESCR) human rights instruments.

However, the judicial enforcement of socio economic rights in Ethiopia is not an easy task. There are complicated constraints that have been drawbacks for this enforcement system. This problem ranges from the absence of constitutional court to corruption from incompetence of the judiciary to vagueness of socio economic rights, which enshrined under the 1995 Constitution.

The remedies will be reforming the Constitution to give the power of constitutional interpretation to the judiciary. Judges must be trained in order to make them competent enough in their performance.<sup>165</sup> Human right education to the public will be another recommended measure to make enforcement of socio economic rights possible, through human rights education the public will aware its right and when there is violation, the public can lodge application to the court for redress. Furthermore, the role of civic societies cannot be gain saying. Civic societies should be backed by the government via promulgating legislation that encourage them to perform tasks (such as advocate, research, human right training and development relief) effectively and via using their full potential.

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<sup>165</sup> Human right training to the judiciary will help them to acquire knowledge on recent development of the world legal system. Hence, the major objective of training will be updating the trainee with novel ideas and principles.

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