

**Economic, social and cultural rights and their enforcement under the FDRE Constitution**

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**Introduction**

It has been about six decades since economic, social and cultural rights (ESCRs) emerged as human rights on international plane with the introduction of the Universal Declaration of Human Rights in 1948. Yet, most of the holders of the rights are not capable of (fully) enjoying these rights partly because of the controversies pertaining to the nature of the rights and the difficulties their enforcement entail and partly due to lack of (sufficient) awareness about the existence and content of the rights. This article is an attempt to consider the ESCRs under the FDRE Constitution.<sup>1</sup> It proceeds with a brief introduction to ESCRs in general and considers the ESCRs that the

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<sup>1</sup> 'the Constitution' hereinafter

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Constitution recognizes both explicitly and implicitly. It will also consider the enforcement mechanism of these rights by emphasising on who can seek their enforcement and where and the possible remedies that can be obtained by appealing to the nationally existing enforcement machinery. Finally, the article will conclude the discussion with a brief recommendation on what has to be done to better enjoy these rights.

### **Background**

In any organized society, the right to life as a human being is not ensured by meeting only the animal needs of man. It is secured only when a man is assured of his basic needs.<sup>2</sup> Economic, Social and Cultural Rights (ESCRs) are rights that create material entitlements for these basic needs.<sup>3</sup> The recognition and realization of these rights is, therefore, necessary for human life. For instance, poor housing conditions can be a root cause of disease, a poor quality workforce, and moral malaise.<sup>4</sup> These repercussions can be prevented by providing citizens with adequate housings instead of letting them have only 'roofs on their heads' or even none.

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<sup>2</sup> S.K. Awasthi and P.P Katoria, *Law Relating to Protection of Human Rights*, 2<sup>nd</sup> ed, Orient Publishing Company, 2005, p 62

<sup>3</sup> Danie Brand and Christof Heyns (eds), *Socio-Economic Rights in South Africa*, Pretoria University Law Press, 2005, p 3

<sup>4</sup> Jean Conway, *Housing Policy*, The Gildredge Press, United Kingdom, 2000, p 1

Moreover, the realization of ESCRs is of central importance to the enjoyment of Civil and Political Rights (CPRs).<sup>5</sup> This is true because, for instance, people who do not have some thing to eat to sustain their lives or places to have both physical and psychological rest when they need it can hardly afford the luxury of indulging themselves into political life to exercise their political rights.

However, the recognition and enforcement of ESCRs even after the adoption of the UDHR and other subsequent human rights instruments has remained divisive. Firstly, the very nature of the rights itself is controversial as they are sometimes seen as socialist manifesto thinly veiled in the form of rights,<sup>6</sup> or as societal goals, not human rights,<sup>7</sup> or as non-justiciable rights.<sup>8</sup> Secondly, even when they are considered to be human rights, they are regarded as progressively realizable rights.<sup>9</sup> This creates an opportunity for states to use scarcity of resource as smokescreen for not enforcing them. Similarly, states consider the obligation to progressively enforce these rights as the obligation to gradually enforce the rights. Nonetheless, the progressive

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<sup>5</sup> See, for example, the Preamble of the African Charter on Human and Peoples' Rights

<sup>6</sup> Iain Currie and Johan de Waal, the Bill of Rights Handbook, 5<sup>th</sup> ed, 2006, p 568-569

<sup>7</sup> See for instance Ralph Beddard and Dilys M Hill (Eds), *Economic, Social and Cultural Rights Progress and Achievement*, St. Martin's Press, New York, 1992, p 6

<sup>8</sup> Cited at note 6

<sup>9</sup> See Committee on Economic, Social and Cultural Rights, General Comment No 3, The Nature of States Parties' Obligations

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obligation is an obligation to move as expeditiously and effectively as possible towards the full realization of the rights recognized.<sup>10</sup> If a state, therefore, fails to realize, for instance, the right to health when it is possible to do so, it will violate its obligation to progressively fully realize the right.<sup>11</sup> Thirdly, poverty has become an obstacle to the realization of ESCRs<sup>12</sup> although there are still certain 'minimum core obligations' that every state should/can perform regardless of its economic situation<sup>13</sup> such as refraining from taking 'deliberately retrogressive measures'<sup>14</sup> like in the case of arbitrary eviction, in relation to the right to housing, which is a method of "de-housing".<sup>15</sup>

It is important to note that although the enforcement of ESCRs is difficult and this difficulty has resulted in its marginalization<sup>16</sup> and also the fact that the involvement of economic and financial issues makes their enforcement

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<sup>10</sup> Cited above, General Comment 4, the Right to Adequate Housing, Paragraph 9

<sup>11</sup> Cited at note 3, p 99

<sup>12</sup> Evadne Grant, *Enforcing Social and Economic Rights: The Right to Adequate Housing in South Africa*, African Journal of International and Comparative Law, V 15, PT1, Edinburgh University Press, Edinburgh, 2007, p 1

<sup>13</sup> Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997, paragraph 9

<sup>14</sup> Cited at note 6, p 572

<sup>15</sup> Human Rights, *Forced Evictions and Human Rights*, Fact Sheet No. 25, Centre for Human Rights, United Nations, Geneva, p 4

<sup>16</sup> B.F. Bankie, C. Marias, and J.T. Namiseb (Compilers), *The Southern African Human Rights Reader Towards Creating a Sustainable Culture of Human rights*, UNESCO, 1998, p vi

complex,<sup>17</sup> there are instances where the enforcement and enjoyment of these rights can be less problematic than even the enforcement and enjoyment of CPRs. For instance, in the case of the right to adequate housing, abstaining from forced evictions, giving the homeless or the inadequately housed people vacant government houses, or granting access to land to those who can afford to build their own houses are some of the ways of implementing the right to housing and taking these measures is relatively easier than even enforcing some CPRs such as the right of accused person to have a lawyer at the expense of the government.

Interestingly, however, some people argue that even with all their difficulties and complexities ESCRs should be implemented like the CPRs. For instance, they argue, "...why is it apparently acceptable to die of hunger than to be shot?"<sup>18</sup> By extending this question, one can ask *why it is acceptable to be eaten by hyena or to be taken by flood than to be killed by a human being, or, why is acceptable to die of preventable disease than to be killed by a human being?* After all, ESCRs are so important for the protection of life and of human worth and dignity.<sup>19</sup> The UN Declaration on the Right to development (1986) which places ESCRs on a par with CPRs<sup>20</sup> also favours the need to enforce ESCRs as CPRs; that is, it wants the

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<sup>17</sup> Cited at note 4, p 2

<sup>18</sup> Cited at not 7, p 4

<sup>19</sup> Cited above, p 47

<sup>20</sup> Anthony Hall and James Midgley, *Social Policy for Development*, SAGE Publication, London, Thousand Oaks, New Delhi, 2004, p 11

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rights to be enforced even with their difficulties and complexities for the betterment of human conditions.

Further, it is worth noting that economic and financial implications are not unique to the enforcement of ESCRs but also applicable to the CPRs. Similarly, every state has the capacity to perform certain obligations to enforce ESCRs irrespective of its economic and financial capacities such as refraining from taking measures contrary to the enjoyment of these rights. Therefore, at times, disregarding the enforcement of ESCRs under the guise of scarcity of resources or their difficulties to enforce them is not sustainable. In the following paragraphs, I will try to consider the status of ESCRs in Ethiopian legal system.

From the 1991 onwards, the current Ethiopian government, unlike its predecessors, has accepted different human rights treaties that recognize the ESCRs. By virtue of article 9(4) of the Constitution, which stipulates that all international agreements ratified by Ethiopia are an integral part of the law of the land, these ESCRs can be said part of the law of the land. But whether the judiciary is supposed to take judicial notice of these agreements immediately after their ratification is subject to debate. The main source of the debate is the Federal Negarit Gazeta Establishment Proclamation, Proclamation No 3/1995, which provides, under article 2(2) that 'All laws of the Federal Government shall be published in the Federal Negarit Gazeta' and under article 2(3) 'All Federal or Regional legislative, executive and judicial organs as well as any natural or juridical person

shall take judicial notice of Laws published in the Federal Negarit Gazeta'. There is no doubt that treaties are federal laws. Hence, according to this proclamation, they must be published in the Federal Negarit Gazeta for judicial notice. The practice, however, is the House Peoples' Representatives simply enacts a proclamation declaring the ratification of a given treaty without even attaching the text of the treaty to the proclamation. Hence, legally speaking, human rights treaties are not published in the Negarit Gazeta and this in turn means taking judicial notice of these treaties or their provisions is not mandatory. The absence of the publication has also resulted, even among the legal professionals, in to lack of (adequate) awareness about ESCRs.

On the other hand, however, one can argue that, under article 9(4), the Constitution caters for a single criterion for international agreements to become part of the law of the land; that is, ratification. Hence, judicial notice of international agreements should be taken, via this provision, even in the absence of their publications in the Negarit Gazeta. Then, logically, the criterion of publication in the Negarit Gazeta does not apply to international agreements.

Nevertheless, as far as the enforcement of ESCRs is concerned this controversy loses its importance if one can locate the different ESCRs in the Constitution itself, by way of interpretation, because courts are obliged to take judicial notice of the provisions of the Constitution as it is published in the Negarit Gazeta. Unfortunately, however, the Constitution has not specifically given adequate

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coverage to ESCRs. This does not in anyway mean that there are no material needs for the people of Ethiopia. In fact, there are and, for that matter, certain measures with regard to certain ESCRs were and are being taken to respond to these needs, either directly or indirectly. The following part deals with the status of ESCRs under the Constitution.

### **Socio-Economic Rights under the FDRE Constitution**

The FDRE Constitution is the fourth written constitution of Ethiopia. It came into force in 1995. The Constitution is generous as far as human rights are concerned because it has devoted one chapter (Articles 13-44), which is almost one third of the total provisions it contains, to human rights issues. However, one may wonder whether this generosity equally extends to all rights including ESCRs or it is limited to some rights alone. So, the following part will consider how ESCRs have been accommodated by this Constitution.

I would like to begin by quoting one researcher's astounding assertion about the status of ESCRs under the FDRE Constitution. The researcher asserts, '[t]he Ethiopian Constitution has recognized a number of socio-economic rights as justiciable human rights.'<sup>21</sup> There are two things to note here. Firstly, the ESCRs the Constitution recognizes are many as the phrase 'a number of' indicates, and, secondly, these ESCRs are justiciable. Is it really true that the Constitution recognizes a number

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<sup>21</sup> Rakeb Messele, *Enforcement of Human Rights in Ethiopia*, Research subcontracted by Action Professionals' Association for the People (APAP), 2002, (unpublished), p 28

of ESCRs and if so as justiciable rights? It is argued that many legal professionals lack (adequate) understanding of issues pertaining to ESCRs, which in turn is one of the obstacles to the enforcement of ESCRs. For instance, Akumah says:

...many people familiar with basic human rights principles are not aware that economic, social and cultural rights are human rights. Their familiarity with human rights is limited to civil and political rights. In order to implement economic, social and cultural rights, it is important that their beneficiaries are aware that the rights in question exist. Without awareness that the rights exist, it will be difficult to put them into effect.<sup>22</sup>

In Ethiopia, not only the beneficiaries but also some legal professionals do not have clear understanding about the existence and content of these rights while others do not make distinction between ESCRs recognized as directive principles and ESCRs recognized as human rights.<sup>23</sup> For instance, the right to housing is *expressly* recognized under the Constitution not as a human right but as a directive policy principle. Some people, however, believe that there is *expressly* guaranteed and enforceable right to housing under the Constitution. The Constitution mostly imposes duties on the government to provide different services to people without guaranteeing corresponding rights thereto. For that matter, the Constitution deals with ESCRs under one article (article 41) entitled 'Economic, Social and Cultural Rights' although these rights can be

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<sup>22</sup> Evelyn A. Akumah, *The African Commission on Human and Peoples' Rights*, V 16, Martinus Nijhoff Publishers, The Hague, London, Boston, 1996, p 183

<sup>23</sup> Cite above at note 21

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found under some other articles as well. For instance, article 42, which deals with rights of labour, can be taken as a provision dealing with socio-economic rights. Article 40, the right to property, can also be taken as socio-economic right provision to the extent it deals with the acquisition of property. Further, article 36(1)(d) provides for a kind of negative ESCR by granting children the right not to be required to perform work which may be hazardous or harmful to his/her education, health and well-being.

Article 41 by itself does not cater for many ESCRs although it has as many as nine sub-articles and the caption of the provision reads 'Economic, Social and Cultural *Rights*' giving the impression that mostly rights are covered by the provision than, say, government duties to enforce them. This means, the Constitution, particularly the different sub-articles of article 41 which deals with ESCRs, imposes different duties on the government to satisfy the material needs of Ethiopians than recognizing their rights to these material needs. The following is a brief introduction to what the sub-articles are all about.

### **Article 41: Economic, Social and Cultural Rights**

#### **A. Right to work**

1. Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory.
2. Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession.

The first two sub-articles guarantee the right to work and, it seems, what is dealt with under the second sub-article can also form part of the first sub-article. In any case, unlike some other ÉSCRs, the right to work under the two sub-articles is not a qualified right. Accordingly, every Ethiopian can choose any work and engage in any economic activity everywhere in Ethiopia provided that the activity is lawful. Any act contrary to this right, either by the government or others is actionable. For instance, under normal circumstance, no teacher can be forced to work in a given region if he/she does not want. Therefore, this right to work is a justiciable right. A right is said to be justiciable if the judiciary or other judicial organ has the power to enforce it such as by declaring any law or conduct that is inconsistent with the right invalid to the extent of its inconsistency.<sup>24</sup>

The two sub-articles need to be read with sub-articles 7 and 8. They state:

6. The State shall pursue policies which aim to expand job opportunities for the unemployed and the poor and shall accordingly undertake programmes and public works projects.

7. The State shall undertake all measures necessary to increase opportunities for citizens to find gainful employment.

Sub-article 7 is wider than sub-article 6 and it aims at facilitating the enjoyment of the right to work by *every citizen* by imposing, on the State, the duty to increase opportunities for gainful employment or activities. This is necessary because at times the enjoyment of the right to work may become illusionary without the involvement of

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<sup>24</sup> Cited above at note 6, p 9-10

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the State. Sub-article 6 also has the same goal but it is limited in scope than sub-article 7 because the duty of the State to expand job opportunities is limited to the unemployed and the poor. Indeed, these groups of people need help to earn their livelihood because although sometimes it is difficult to, for example, get job for everyone, the situation becomes worse in relation to the unemployed and the poor. Similarly, they may not succeed in creating their own jobs although government policies may encourage the creation of such jobs. Hence, without the involvement and assistance of the government, article 41(1)-the right to work-might mean a little or nothing to these categories of people.

Interestingly, sub-article 6 imposes duty on the government to directly get involved in the creation of job opportunities. Thus, government's policies should aim at creating job opportunities for the unemployed and the poor and one way of doing this is by formulating pro-investors policies to encourage them to invest in the country so that they will in turn hire those who need jobs. The other way of creating job opportunities by the government is by undertaking programmes and public works projects such as the construction of educational institutions and hospitals so as to create job opportunities for different people at different levels-from the moment the constructions commence and then afterwards.

Therefore, article 41(6) and (7) do not create any right. Instead, they impose duty on the government to facilitate the enjoyment of the right article 41(1) and (2) recognize-in crude term, the right to work. At this juncture, it should

be noted that the right to work the first these two sub-articles recognize can be exercised only by Ethiopians who are eligible therefor. For instance, some people may be deprived of their right to work as a consequence of their criminal activities. Moreover, Children who are under the age of 14<sup>25</sup> cannot claim the right to exercise this right. As far as they are concerned, the right is not ripe to be exercised. Hence, conducts restraining these groups of people from engaging in any economic activities of their choices will not be contrary to article 41(1) and (2). In other words, they do not have justiciable right to work under these provisions.

**B. Right to equal access to publicly funded services**

3. Every Ethiopian national has the right to equal access to publicly funded social services.
4. The State has the obligation to allocate ever increasing resources to provide to the public health, education and other social services.

Sub-article 3 is a tricky provision. It recognizes the right that every Ethiopian has to equal access to publicly funded social services such as health, housing, educational and electricity services. At first glance, it appears that it grants the right to these services, which would have been ESCRs. Yet, the provision does not give anyone the right to have these services. For instance, it does not provide for the right to health, housing, water, or electricity. In short, it does not provide for the right to get social services. After all, the sub-article does not seem an

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<sup>26</sup> See article 48(2) of the Labour Proclamation, Proclamation No 377/2003, and article 36(1 and 2) of the Constitution

ESCR provision but a CPR provision as it provides for equality principle. So, one can see some kind of overlap with article 25 of the Constitution as it stipulates that *whenever there are publicly funded social services such as housing and health services everyone has the right to have equal access to these services without discrimination.*

To understand sub-article 3 more, it is necessary to read it with sub-article 4 which imposes obligation on the state to allocate its increasing resources (both national and international such as aids and loans) to provide social services such as public health and education. For instance, all patients should have equal access to health services publicly funded and without discrimination on the basis of the grounds listed or envisaged under article 25 of the Constitution. What if the government fails to allocate its resources to provide these social services? Sub-article 3 cannot be invoked because there is nothing to have *equal access to*. Therefore, although seemingly sub-article 3 provides for the right to social services, which might have been interesting, it is a non-discrimination provision like article 25 the Constitution.

### **C. Duty to provide social security**

5. 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.

This is a social security provision. Like sub-article 4, sub-article 5 provides for the obligation of the government but unlike the sub-article 4 the obligation of the government is qualified by the availability of resources

and it is only towards certain groups of people. The government is obliged to allocate its resources, within its available means, to provide for rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian. But this group of people have not been granted, under this sub-article, the right to get rehabilitative services or any other assistance-social security. This means, in case, the government fails to provide for social security, none of these people can claim that their right has been violated since the obligation of the government cannot be their justiciable right.

**D. The right to receive fair prices**

8. Ethiopian farmers and pastoralists have the right to receive fair prices for their products, that would lead to improvement in their conditions of life and to enable them to obtain an equitable share of the national wealth commensurate with their contribution. This objective shall guide the State in the formulation of economic, social and development policies.

Like the first two sub-articles, sub-article 8 provides for a right; that is the right to receive fair prices for one's own products. It is believed that the reception of fair prices (without alluding to what constitutes fair and the competing interests to determine fairness) would enable the farmers and pastoralists to improve the conditions of their life and also enables them to obtain an equitable share of the national wealth commensurate to their contribution. For instance, these people may, as a result of the reception of fair prices for their products, eventually turn out to be investors in the country in

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different fields such as mining or agriculture thereby becoming the beneficiary of the national wealth.

But it is important to note, at this juncture, that, firstly, the right is limited to farmers and pastoralists and secondly the right to receive fair prices may be seen as an extension of the protection of the right to property which is seen as CPR. In fact, the right to receive fair prices can also be seen as ESCR to the extent that it aims at improving the conditions of life by creating better opportunity to satisfy one's material needs better.

Sub-article 8 further stipulates that the government should use the right to receive fair prices as a guide in the course of formulating economic, social and development policies. This facilitates the enjoyment of the right and it gives a kind of second protection to the farmers and pastoralists.

### **E. Cultural right**

9. The State has the responsibility to protect and preserve historical and cultural legacies, and to contribute to the promotion of the arts and sports.

This is the last sub-article of article 41 and it is the only sub-article making reference to culture although the caption of article 41 suggests that cultural rights are equally important as the economic and social rights. More interesting is, however, the fact that this sub-article itself does not recognize any cultural right beyond giving the government the responsibility to protect and preserve historical and cultural legacies, and to contribute to the promotion of the arts and sports. Hence, there is not cultural right recognized under article 41 of the Constitution. Hence, the use of the term '...Cultural Rights'

under this article may be taken as a misnomer unless one interprets the obligation it recognizes as delivering cultural right.

However, one can find the right to culture recognized under article 39(2) of the Constitution. The article provides that *[e]very Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.*<sup>26</sup> However, the cultural right this article recognizes is a group right while cultural right can be both group and individual. For instance, if everyone is granted *the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits,*<sup>27</sup> there will be individual than group cultural right. Hence, one can argue that the constitution does not recognize individual cultural rights either under article 41 or under other provisions.

#### Articles 40

Article 40 recognizes and protects the right to property which is one of the oldest rights. For instance, the protection of property is one of the three interests John Locke advocated.<sup>28</sup> Hence, the right to property is commonly regarded as first generation right; that is civil and political right. Yet, to the extent that the right to

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<sup>26</sup> See also article 5(1) of the Constitution which gives equal protection to all Ethiopian languages as part of group cultural rights

<sup>27</sup> See article 27(1) of the UDHR

<sup>28</sup> Ian Adams and R.W. Dyson, *Fifty Great Political Thinkers*, Routledge, London and New York, 2004, p 63

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property deals with the acquisition of property as recognized, for example under article 40(1) and (4), it can be seen as ESCR. However, article 40 does not remedy the drawbacks article 41 suffers from. For that matter, article 40 protects only those who have property or who are in a position to acquire property.

### **Article 42: Right to labour**

Article 42 is a protection for workers. It does not apply to other categories of people. Similarly, it provides for some rights some which take the form of ESCRs while others are not. For instance, the right to form associations such as trade unions and the right to equal pay for equal work for women are covered under this provision. These rights are not ESCRs but civil and political right although they can be used to one's materials needs in the same way as some ESCRs. There are also some rights which can be regarded as ESCRs such as the right to strike, the right reasonable limitation of working hours, to rest, to leisure, to leaves, and remuneration for public holidays. But as said before, these rights are limited only to one part of the society-the workers- who can earn their livelihood. Hence, those people who cannot afford to earn their livelihood (who are not workers) are not covered by this article. Of course, even for workers whose salaries cannot sufficiently support, for instance, their families, this provision says nothing about their right to food, clothing, clean water, housing, and others. Therefore, article 42 does not remedy the deffects in article 41 although it adds something to it.

In conclusion, despite the fact that the caption of article 41 suggests the recognition of many ESCRs, the Constitution recognizes only few ESCRs rights, for that matter, only two—the right to work and the right to receive fair prices. The third right, the right to equality is not an ESCR. It does not give adequate coverage to social rights such as the right to have social security. For instance, the rights to housing, health, clothing, electricity, clean water, education, food and social security and assistance are not expressly enshrined in the Constitution. Surprisingly, the Constitution does not recognize cultural right under article 41. Moreover, the other provisions of the Constitution that have ESCRs dimensions do not sufficiently remedy the inadequacies in article 41.

It is necessary to bear in mind that the Constitution recognizes, under article 90(1), some ESCRs such as the right to public health, education, clean water, housing, food and social security as matters guiding national policy formulation than as human rights. This means no one can claim that his/her right to housing, health or others under article 90(1) is violated because ESCRs recognized as principles guiding policy formulation are not justiciable. (This is without prejudice to the possibility of making such claims on the basis of pertinent international human rights instruments such as the African Charter on Human and Peoples' Rights). Article 90(1), like most of the sub-article of article 41, imposes duty on the government to do something and government's obligations are not justiciable human rights.

### **Implied rights**

The fact that the Constitution does not provide for many ESCRs does not mean that the Constitution cannot be used to claim the enforcement of these rights. For instance, one can claim the enforcement of the right to housing or health by invoking the Constitution itself. One way of doing this is by trying to read these rights into the expressly recognized rights. In the *SERAC* case, the African Commission on Human and Peoples' Rights came up with the doctrine of *implied rights*; that is, reading rights which are not expressly recognized by the African Charter on Human and Peoples' Rights into those which are expressly recognized.<sup>29</sup> By following this doctrine<sup>30</sup> one will be able to locate some ESCRs into the Constitution through those rights that are expressly recognized. For instance, the right to life, which is recognized under article 15 of the Constitution, can be used to include many ESCRs. Indeed, at the first glance, the right to life sounds the right not to be killed. But as the Supreme Court of India, in *P.G. Gupta v State of Gujarat*, observed, the right to life is wide and far-reaching as it goes beyond the animal existence of human beings.<sup>31</sup> Similarly, in *Olga Tellies and Others v Bombay*

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<sup>29</sup> *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria*, Communication No.155/96, African Commission Human and Peoples' Rights, 2001, Paragraph 62

<sup>30</sup> Article 13(2) of the Constitution seems to favour having recourse to this principle because to determine the content of the rights the Constitution recognizes other international human rights instruments Ethiopia has ratified can be used.

<sup>31</sup> *P.G. Gupta v State of Gujarat and Others* (1995 Supp (2) SSC 182), paragraph 8, Included in Bartrand G Ramcharan (ed), *Judicial*

*Municipal Corporation and Others*, the same Court stated:

[t]he right to life does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood [food, housing, water, work, etc] because no person can live without the means of living. If the right to livelihood is not treated as part of the constitutional right to life, the easiest way to deprive a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.<sup>32</sup>

Further, in *Shantistar Builders v Narayan Khimalal Totame case*, this Court made a more specific comment on the inclusion of ESCRs into the right to life. It stated that '[t]he right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in'.<sup>33</sup>

According to the Supreme Court of India, therefore, the right to life concomitantly includes, among others, the right to housing, clothing, food, water, work, health and others. Anything which helps people have a decent life is engulfed by the right to life. Hence, one of way promoting the enjoyment and protection of ESCRs under the Constitution is by interpreting any right which is expressly recognized so that they can give birth to some

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*Protection of Economic, Social and Cultural Rights: Cases and Materials*, V<sup>22</sup>, Martinus Nijhoff, Leiden/London, 2005, p 341

<sup>32</sup> *Olga Tellies and Others v Bombay Municipal Corporation and Others*, (AIR (1986) SC 180), paragraph 32, See note 6, p 364

<sup>33</sup> Cited above at note 31, p 342

ESCRs. This holds water because failure to meet these rights, say, the right to food, would jeopardize the enjoyment of those rights, say, the right to life, which are explicitly recognized.

Another right which can deliver some ESCRs, if interpreted, is the right to dignity. Article 24(1) of the Ethiopian Constitution provides that *everyone has the right to respect for his human dignity, reputation and honour*. Respect for human dignity is highly related to the enforcement of ESCRs.<sup>34</sup> For instance, the Constitutional Court of South Africa stated that failure to meet housing needs of people would amount to denial of human dignity.<sup>35</sup> Certainly, it is not possible to say that the right to dignity, reputation and honour of those who are living in slums, 'left in the cold', exposed to the sun, rains, flood, and other hazards can be enforced without adequately housing them. Hence, the right to dignity, reputation and honour under article 24(1) necessarily implies some ESCRs such as the right to housing, food, and clothing. Therefore, one can argue that, by using the doctrine of implied rights, the Constitution has recognized many ESCRs.

#### **Enforcement of the ESCRs**

As the previous discussion reveals, there are certain ESCRs that the Constitution recognizes both implicitly and explicitly. Hence, there are duties on the side of the government to enforce these rights. In the *SERAC* case

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<sup>34</sup> See, for instance, note 7 above at page, p 47

<sup>35</sup> Cited above at note 13, paragraph 23

the African Commission on Human and Peoples' Rights explained these duties as follows:

...the various obligations engendered by human rights indicate that all rights-both civil and political rights and social and economic-generate at least *four levels of duties* for a State that undertakes to adhere to a rights regime, namely the duty to *respect, protect, promote, and fulfill* these rights.<sup>36</sup>

The Commission also defined the obligation to *respect* as the obligation to *refrain from interfering* in the enjoyment of all fundamental rights, the obligation to *protect* as the obligation to *protect right-holders against other subjects* by legislation and provision of effective remedies, the obligation to *promote* as the obligation to *make sure that individuals are able to exercise their rights and freedoms*, for example, by promoting tolerance, raising awareness, and even building infrastructure, and the obligation to *fulfill* as the obligation to *directly provide the basic needs* such as food or resources that can be used for food (direct food aid or social security).<sup>37</sup>

The closer scrutiny of the Constitution reveals that all the above obligations are recognized. Under article 13(1), the Constitution states that *[a]ll Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter*. At first glance, it seems that the Constitution recognizes only two of the States' obligations the African Commission has endorsed; that is, the duty to respect and the duty enforce because the duty to enforce may seem to refer only to the duty to

<sup>36</sup> Cited above at note 29, paragraph 44 (Emphasis added)

<sup>37</sup> Cited above at note 29, paragraphs 45-47 (Emphasis added)

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fulfill. Yet, the duty to enforce is wide enough to embrace all the four duties including the duty to respect which the Constitution specifically mentions.

Therefore, the ESCRs that are enshrined in the Constitution either explicitly or impliedly entail on both Federal and States' organs the duty to respect, protect, promote and fulfill them. Failure to do so will be contrary not only to the specific provision of article 13(1) but also to the general provision of article 9(2) which imposes a general duty on all organs of state to ensure the observance of the Constitution and to obey it. Moreover, the supremacy clause of the Constitution (article 9(1)) will also be violated because failure to, particularly deliberately, enforce the provisions of the Constitution amounts to undermining or compromising its supremacy.

With this in mind, it is worthy to consider who can challenge the violations of these rights and where and also what type of remedy can possibly be obtained by successfully challenging their violations.

### **Standing**

The issue of who can challenge the violations of the constitutional provisions on human rights raises the issue of standing. Who does have a vested interest? Can everyone challenge every violation of everyone's ESCRs recognized by the Constitution? It is argued that, the concept justiciability embodies the principle of standing.<sup>38</sup> This means, it is only for those persons who

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<sup>38</sup> Cited above at note 6, p 79

have standing (vested interest) that the right violated can be justiciable. Hence, lack of standing makes a right non-justiciable for a party that does not have vested interest in the enforcement of the right. Therefore, standing is a prerequisite to challenging the constitutionality of a conduct violating constitutional provisions (tacit or express) on human rights.

It is argued that only persons who can allege that their constitutional rights have been infringed or threatened can have standing.<sup>39</sup> This means, any ESCRs becomes justiciable, though genuinely violated, only for those persons who can make these allegations. Of course, this is without prejudice to the possibility of challenging the constitutionality of a conduct on behalf of persons who cannot act for themselves. In our legal system, too, no one can sue unless he/she has a vested interest in the subject-matter of the suit; that is, the right that is alleged to be violated, unless the plaintiff is a legal representative of someone else.<sup>40</sup> But when cases in which several persons have vested interests arise, such as the violations of the rights to health, education or housing, any of these persons can challenge the violation of the rights by representing the others.<sup>41</sup> Therefore, a person that has a vested interest to challenge the actions or inactions of the government, it seems, should be linked in one way or

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<sup>39</sup> Cited above, p 85

<sup>40</sup> See articles 33(2) and 34 of the Civil Procedure Code of the Empire of Ethiopia, Decree No. 52 of 1965, *Negarit Gazeta*, Extraordinary Issue, 1965

<sup>41</sup> Cited above, article 38(1)

another to the case at hand unless he/she is a legal representative of another person who is linked to the case.

However, it is important to note article 9(2) of the Constitution seems, by imposing duty on everyone, to give wide standing to everyone. It stipulates, among others, that all citizens and associations have the duty to ensure observance of the Constitution. There are many ways of ensuring the observance of the Constitution. For instance, citizens and associations can report any activities which are against the Constitution or challenge these activities themselves. The question, then, is whether a person whose private constitutional right is not violated can challenge the violation of other's constitutional right by claiming that he/she is trying to discharge his/her obligation under article 9(2). One obvious answer is if the person (natural or legal) who wants to challenge the violation of a given constitutional right has a power (for example, emanating from contract or law), then, the violation can be challenged. If however, the victim of the violation who is capable of giving consent has not consented to the action, then, challenging the violation of his/her right would be contrary to his/her will. Eventually, this would amount to forcing the person to enjoy his/her constitutional right. This, on the other hand, makes us follow Jean-Jacques Rousseau's 'infamous and chilling' principle of forcing a person to be free (that is, exercise his/her right).<sup>42</sup> But individual rights by their very nature give two options: the option to exercise them or the option to waive them. Hence, they do not give

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<sup>42</sup> Cited above an not 28, p 81

standing to every person to challenge their violations without the consent of the right holder. Therefore, it seems logical to conclude that the consequence of article 9(2) is that every person can challenge any conduct attributable to any person, for that matter, which is contrary to the Constitution as a whole. But as far as the violation of a specific human right provision is concerned, only those whose individual rights are violated or their legal representatives can challenge the violations.

The same conclusion also holds water with respect to legal persons that have the purpose of defending human rights. By using their duties under article 9(2), they can challenge the constitutionality of conducts in general. For instance, they can challenge the government's inaction to make specific housing law or national housing policy to enforce the right to housing because lack of such law or policy results in the violation of the right to housing of the general public. But to challenge the right to health of an individual (for example, denial of emergency service), the legal person must secure the consent<sup>43</sup> of that individual and this should apply to any legal persons. For example, Ethiopia established Human Rights Commission in 2000.<sup>44</sup> Inter alia, the objective of the Commission, according to its establishment proclamation, is to educate the public to be aware of

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<sup>43</sup> This consent can be tacit if the right holder fails, being aware of the fact and consequences thereof, to object to the challenge of the violation of his/her right.

<sup>44</sup> Article 3, Ethiopian Human Rights Commission Establishment Proclamation, Proclamation No. 210/2000, *Federal Negarit Gazeta of the Federal Democratic Republic Of Ethiopia*, 2000

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human rights, see to it that human rights are protected, respected and fully enforced as well as to have the necessary measures taken where they are found to have been violated.<sup>45</sup> Hence, the Commission has a vested interest under its enabling legislation, in addition to article 9(2) of the Constitution, in the enforcement of human rights. But, it cannot do so contrary to the consent of a right holder.

Therefore, the general standing that article 9(2) recognizes applies to those persons who are interested in the enforcement of the Constitution itself than in the enforcement the right of a particular person. This conclusion might seem self-contradictory because the enforcement of part of the constitution is still the enforcement of the Constitution. But, as explained before, right should not be enforced contrary to the will of the right holder and, accordingly, only those who can allege that their rights are violated or threatened (or their legal representatives) can have standing to challenge the violations or threats.

### **Remedies**

The word 'remedies'<sup>46</sup> in its procedural sense refers to the process by which arguable claims of human rights violations are heard and decided by any competent bodies

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<sup>45</sup> Cited above, article 5

<sup>46</sup> Although in international and national laws other terms such as *reparation* and *redress* are used human rights instruments generally use the term *remedies* for violations of human rights. See Dinah Shelton, *Remedies in international Human Rights Law*, 2<sup>nd</sup> Ed, Oxford University Press, New York, 2005, p 8

while in its substantive sense it refers to the outcome of the proceedings, the relief afforded the successful claimant.<sup>47</sup> But although, when there are human rights violations, states are obliged to provide for effective remedies, both procedural and substantive, the obligation to cater for remedies is secondary because it comes into picture only when states' primary obligations are violated.<sup>48</sup> In relation to ESCRs, the primary duty of a state is to enforce the rights while its secondary duty is to provide effective procedural and substantive remedies in case these rights are not enforced or otherwise violated. As explained before, the Constitution caters for the primary obligation of the state under article 13(1). Does it provide for the secondary obligations too; that is, the duty to provide for procedural and substantive remedies for the violation of or threat to the ESCRs it recognizes?

Just to look at a single experience in this area, the Constitution of South Africa stipulates that the Constitutional Court (CCT), which has the final say on constitutional matters,<sup>49</sup> must be accessible to any person either directly or from any court.<sup>50</sup> This is a procedural remedy this Constitution recognizes and on the basis of this procedural remedy some cases such as the *Grootboom case* on the right to adequate housing were able to find their way to the CCT. With regard to substantive remedy, the Constitution of South Africa gives the CCT the power to make *any order it deems*

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<sup>47</sup> Cited above, p 7

<sup>48</sup> Cited above

<sup>49</sup> Section 167(3) of the South African Constitution

<sup>50</sup> Cited above, Section 167(6)

necessary to discharge its responsibilities<sup>51</sup> and such order binds all persons to whom and organs of the states to which it applies.<sup>52</sup> Consequently, the CCT has been making different orders it deemed necessary. For instance, in the *Grootboom case*, the CCT found the South African government in violation of its duty to realize the right to access to adequate housing by failing to have a programme that targets people in deplorable conditions.<sup>53</sup> As a result, it made a declaratory order that the [housing] programme must include reasonable measures to provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations.<sup>54</sup> In *Modderklip cases*, the CCT ordered the government of South Africa, thinking that it violated its obligation to realize the right to access to adequate housing, to pay damage to the property owner whose land was occupied by unlawful occupiers for want of access to land and housing.<sup>55</sup> More interestingly, the procedural and substantive remedies recognized in South Africa are not limited to the CCT. Other courts can also grant these remedies when they deal with constitutional matters. For instance, the CCT's remedies in the *Modderklip cases* were preceded by the decision of the Supreme Court of Appeal of South

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<sup>51</sup> Cited above, Section 172(1)(b) (Emphasis added)

<sup>52</sup> Cited above, Section 165(5)

<sup>53</sup> *The Government of the Republic of South Africa and Others v Irene Grootboom and Others*, Case CCT 11/00, 2000, paragraphs 66 and 69

<sup>54</sup> Cited above, paragraph 99

<sup>55</sup> Mia Swart, *Left Out in the Cold? Crafting Constitutional Remedies for the Poorest of the Poor*, (2005) 21SAJHR, JUTA Law, Lansdowne, 2005, p 230

Africa.<sup>56</sup> In the *City of Johannesburg v Rand Properties (Pty) Ltd and Others*,<sup>57</sup> Witwatersrand Local Division High Court issued an order prohibiting eviction of people from the building they occupied until alternative adequate accommodation is provided as envisage under section 26(1) of the South African Constitution. Therefore, it is this type of remedies that a constitution needs to recognize if the rights it recognises have to serve their purposes while the body that is entrusted with the interpretation of constitutional provisions on human rights should have the guts to use all its powers, like the South African judiciary, to see to the enforcement of a constitution.

In Ethiopia, the power to interpret the Constitution is given to the House of the Federation (HOF)<sup>58</sup> which is one of the Federal Houses with semi-legislative organ.<sup>59</sup> Article 83(1) of the Constitution stipulates that *all constitutional disputes shall be decided by the House of the Federation*. There is a debate whether this provision excludes the judiciary from interpreting the Constitution. But the contextual interpretation<sup>60</sup> of the provision leads to the conclusion that, at least, as far as the provisions on human rights are concerned, article 83(1) intends to give the HOF the power to *finally* decide on constitutional

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<sup>56</sup> Cited above

<sup>57</sup> *City of Johannesburg v Rand Properties (Pty) Ltd and Others*, 2006(6) BCLR 728 (W), Case No 04/10330; 04/10331; 04/10332; 04/10333; 03/24101; 04/13835 (Emphasis added)

<sup>58</sup> Article 62(1) of the Constitution

<sup>59</sup> See for instance, articles 53, 99, and 105(1)(c) of the Constitution

<sup>60</sup> Cited above at note 53, paragraph 22

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disputes. This is so because under article 13(1) of the Constitution all organs of the government at all levels are obliged to enforce the Constitution and interpretation of the Constitution is one of the ways of enforcing it for the judiciary.<sup>61</sup> On the other hand, article 6(3) of the Federal Courts Proclamation No. 25/1996 stipulates that *[w]here a case brought before them gives rise to issues of Constitutional interpretation, Federal courts shall refer the case to the Council of Constitutional Inquiry prior to giving decision on the matter.* This provision may strengthen the position that courts cannot interpret the constitution directly but use it to interpret other laws. So, because of this controversy, the following part will not consider what possible remedies courts can grant for the violations of or threats to the ESCRs the Constitution recognizes but the HOF.

Then, what are the procedural and substantive remedies the Constitution provides in case its provisions on ESCRs are violated or threatened? Procedurally, article 37(1) of the Constitution stipulates that *[e]veryone has the right to bring a justiciable matter to, and to obtain a decision or judgement, a court of law or any other competent body with judicial power.* Nowadays, the fact that ESCRs are justiciable rights, at least, to certain extent, is not subject to debate.<sup>62</sup> Hence, it is logical to argue that the ESCRs

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<sup>61</sup> See also articles 9(2) and 79(1) of the Constitution

<sup>62</sup> Cited above at note 9, General Comment 4, the Right to Adequate Housing, Paragraph 5, and Solomon Franc Saccó, *A Comparative Study of the implementation in Zimbabwe and South Africa of the international law rules that allow compulsory licensing and parallel importation for HIV/AIDS drugs*, (2005) 5 AHRLJ, p 106-107

the Constitution recognizes are justiciable at least to certain degree. Further, since article 13(2) of the Constitution authorizes consulting other international human rights Ethiopia ratified (such as the African Charter on Human and Peoples' Rights) for the purpose of interpretation and under these treaties ESCRs are treated as justiciable rights, the ESCRs under the Constitution are justiciable. Consequently, any person who has standing (that is, who feels that his/her right ESCRs is not enforced or otherwise violated or threatened) can approach the HOF, a body with judicial power on constitutional matters, and obtain decision or judgement thereon. Thus, like in South Africa, there is a constitutional procedural remedy, via article 37(1), for the violation of ESCRs in Ethiopia.

With regard to substantive remedies, however, the Constitution is not clear on whether the HOF can grant such remedies and what type of remedies can it grant. It simply provides that the HOF has the power to interpret the Constitution and all constitutional disputes shall be [finally] decided by the HOF. But one obvious remedy the HOF can make is the declaration of invalidity of any conduct contravening the Constitution. Article 9(1) of the Constitution provides that *[a]ny law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.* So, the HOF in the event it finds laws and/or decisions of government organs contrary to the Constitution can say these laws and/or decisions shall have no effect. But the big challenge, indeed the more important one, remains unsolved. If a person challenging the constitutionality of

the action or inaction of the government demands that something be done or abstained from, it is not enough that the HOF declares the action or inaction to be of no effect. The relief the person seeks should be decided on. The question then is whether the HOF can order the government to take actions or refrain from taking actions beyond declaring them unconstitutional after they have happened. For instance, can the HOF order the government to have national housing legislation and/or policies? Can it order the government to divert part of its budget to the provision of housing to those who cannot afford to pay for their own houses? No where in the Constitution is this power expressly given to the HOF.

Nonetheless, the interpretation of article 37(1) seems to suggest that the HOF can make such orders. According to article 37(1) everyone has the right to bring a justiciable matter to, and *to obtain a decision or judgement* by, a court of law or any other *competent body with judicial power*. In as long as the HOF is an organ with judicial power on constitutional matters and everyone has the right to bring a justiciable matter before it to obtain decision or judgement on the matter, the decision or judgement the HOF makes can include the relief sought by the concerned party. For instance, like the CCT of South Africa,<sup>63</sup> the HOF can order the government to allocate a reasonable part of its budget to respond to the housing or health needs of those who cannot pay for their own houses, or health services while leaving the

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<sup>63</sup> Cited above at note 53, paragraph 66

determination of the precise amount of the budget to be allocated to the government.

Then, assuming that all the conducts which are 'constitutionally suspect'; that is, which violate or threaten the ESCRs the Constitution recognizes, are impugned before the HOF, what possible remedies can and should the HOF order? Some of these remedies will be discussed by taking the violation of a particular right, the right to housing, as an example.

The right to housing is not expressly recognized by the Constitution. Rather, it is expressly recognized as a directive policy principle under article 90(1). Yet, it can be implied from other rights, as discussed before, such as the right to life and dignity.<sup>64</sup> Although there are certain measures which the government is taking and which are capable of either directly or indirectly enforcing the right to housing there are also certain measures which are violative the right. For instance, while the construction and allocation of condominium houses in some urban areas is a measure responding to the housing needs of those who can afford to pay for the houses either in lump sum or by instalments, it is discriminatory because it is not accessible to the most needy ones (those who cannot

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<sup>64</sup> The fact that this right is expressly recognized in the International Covenant on Economic, Social and Cultural Rights should not be forgotten. But since the status of international agreements in our legal system is not clear and also the Covenant was not published in Federal Negarit Gazeta and this is worth independent consideration, I prefer to rely on the right to housing as recognized in the Constitution.

afford to pay for the houses) and it is territorially limited to some urban areas as if there were no housing problems in the other parts of the country. Further, there have been instances of forced evictions. For instance, in 2007 'about 111 households of Bole Sub-City, Addis Ababa, were forcibly evicted and their houses demolished after they were order to leave their homes within seven days and without alternative accommodation prepared for them'.<sup>65</sup> Moreover, in November 2004, 463 houses of the Guji people (one of the tribes in the southern part of Ethiopia) were burned down by Ethiopian park officials and local police to coerce them to leave the land they made their home for centuries.<sup>66</sup> More importantly, although the realization of the right to housing requires the existence specific legislation or policy aiming at the enforcement housing rights as its primary purpose,<sup>67</sup> there is not such legislation or national housing policy so far.<sup>68</sup> Further, the

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<sup>65</sup> See statement on 27 May 2007 by APAP, local human rights NGO, condemning the forced eviction at Ethiopia: Bole Sub-City Eviction Order Violation of Law of Land – APAP, Daily Monitor (29 May 2007) posted to the web on 31 May 2007, <<http://allafrica.com/stories/200705310424.html>> (accessed on 9 July 2007)

<sup>66</sup> *World Rainforest Movement Bulletin*, No 105, April 2006, See at Ethiopia: Dutch conservation organization involved in eviction of thousands of tribal people <<http://www.wrm.org.uv/bulletin/105/Ethiopia.html>> (accessed on 9 July 2007)

<sup>67</sup> Cited above at note 13, paragraph 6 and note 9, paragraph 3

<sup>68</sup> Azeb Kelemework Bihon, *Housing for the poor in Addis Ababa*, p. 7, <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 on 28 August 2007)

right to housing includes access to land. But the land supply system in some places such as Addis Ababa is regarded as sluggish to the extent of affecting even private housing supply.<sup>69</sup> All these conducts are contrary to the right to housing and, as a result, they can be challenged.

With regard to the absence of housing law and/or national housing policy, the HOF can declare this omission invalid as per article 9(1) of the Constitution because, firstly, it violates the impliedly guaranteed right to housing and, secondly, it is contrary to the government's duty (under article 41(4)) to provide housing to those in need of it as social service. Then the HOF can order the Ethiopian government to have such law and/or policy to facilitate the enjoyment of the rights to housing. Since it is necessary to devote reasonable part of the national housing budget to the amelioration of the situation of people in desperate need of housing,<sup>70</sup> the HOF can order the government to allocate some part of its budget, particularly from the budget that is used to build condominium houses for those who can pay for them, to provide housing to those who cannot pay for their own houses.

With regard to the discriminatory housing measures such as the distribution of condominium houses to those who can afford to pay and the limitation of such measures only to some urban areas, the HOF can declare them contrary to article 25, equality clause of the Constitution,

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<sup>69</sup> Cited above

<sup>70</sup> Cited above at note 53, paragraph 66

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and order the government to allocate some of the condominium houses, so that the measure will be inclusive, to those people who are in need of housing but who are incapable of paying for their own houses. Likewise, it can order the government to launch reasonable housing programmes in other parts of the country where there are housing problems.

In relation to the practices of forced evictions, they violate different constitutionally guaranteed rights such as the right to life (article 15) and the right to dignity (article 24(1)), from which the right to housing can be inferred, and peasants' and pastoralist' right to be protected against eviction and displacement, respectively, under article 40(4 and 5) of the Constitution. Hence, the HOF can declare them unconstitutional and, since damage is already caused and reinstatement may not be possible, order the government to pay compensation to the victims and probably give them adequate accommodations.

In respect of the delay in getting access to land, it should be noted that as per article 40(3) of the Constitution, the government owns land so that it can deploy it for common benefit and development.<sup>71</sup> If government is not granting easy access to land to people when they need it<sup>72</sup> then the purpose of vesting ownership right of land in it will be defeated. Consequently, the HOF can declare that the delay in granting access to land is constitutionally untenable and then remind the government the purpose of

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<sup>71</sup> Article 89(5) of the Constitution

<sup>72</sup> Housing development for oneself or for others is part of **development** work.

the Constitution while vesting ownership right of land in it, that the sluggish land acquisition process is contrary to that purpose as far as the right to housing is concerned, and urge the government to improve these procedures so as to enable individuals to get easy access to land and enjoy their housing rights.

These are some of the remedies that can be obtained from the HOF if the violation of the right to adequate housing is challenged before it. With respect to the enforcement of these orders, unlike section 165(5) of the South Africa Constitution which obliges all persons and government organs to which the decision of the CCT applies to enforce the decision, the Ethiopian Constitution does not make such clear stipulation. Yet, it stipulates 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 to obey it.*<sup>73</sup> Accordingly, since ensuring the observance of and obeying the Constitution necessarily imply observance and obedience to decisions on the Constitution by the HOF, the government (and every person, if the decision applies to them) should be bound to enforce the decision of the HOF.

### **Conclusion and recommendations**

The FDRE Constitution expressly recognizes very few ESCRs. But this does not mean that there is no possibility

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<sup>73</sup> Article 9(2) of the Constitution

of using the Constitution to advance those rights which are not expressly recognized. Particularly, by reading ESCRs into those rights which are expressly catered for, though this requires judicial activism, one must be able to claim the enforcement of those impliedly recognized rights. The HOF should also give generous interpretation of the provisions of the Constitution on human rights and accord appropriate remedies in case violations thereof are tabled before it. More important, however, is the need to have some civil associations that can promote the enjoyment of these rights in different ways such as by raising awareness (since no one can claim what he/she does not know) and challenging violations of or threats to the ESCRs under the Constitution.