

Rethinking Justiciability and Enforcement of Socio-Economic Rights in Ethiopia: International Context and Comparative Perspective

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Abstract

The Constitution of the Federal Democratic Republic of Ethiopia has incorporated civil and political rights and economic, social and cultural rights in the Fundamental Rights and Freedoms (the Bill of Rights) part. The Constitution ensures the indivisibility, interdependent and interrelatedness of human rights. Furthermore, it directs the state to ensure its policies aiming at realizing the rights under the National Policy Principles and Objectives-the Directive Principles of State Policy section of the Constitution. The inclusion of socio-economic rights in the directive principles are most of the time, presumed to make them beyond the reach of the courts. However, the justiciability and enforcement of socio-economic rights are guaranteed under the United Nations Human Rights System, the African Human Rights system and domestically-in the courts of some countries. The changes on socio-economic landscapes in the international arena have necessitated the rethinking of justiciability and enforcement of socio-economic rights in Ethiopia. This article endeavors to analyze the justiciability and enforcement of socio-economic rights under the 1995 Constitution of Ethiopia. It argues that the model of adjudicating socio-economic rights in India and South Africa should be imported to Ethiopia for the better achievement of socio-economic justice throughout the country. It, *inter alia*, reviews the jurisprudence and practices of enforcing socio-economic rights under the Committee on ICESCR, the African Commission on Human

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and Peoples' Rights, and the experiences and jurisprudence of the Constitutional Court of the Republic of South Africa and the Supreme Court of India.

1. Introduction

“...may you live, and all your people. I too will live with all my people. But life alone is not enough. May we have the things with which to live it well; for there is a kind of slow and weary life which is worse than death.”

Chinua Achebe¹

The adoption of the Universal Declaration of Human Rights (UDHR) in 1948 is a cornerstone for the promotion and protection of human dignity in the history of human rights. It recognizes the indivisibility, interrelatedness and interdependence of economic, social and cultural rights, and civil and political rights.² Though it is not binding on states, the UDHR is considered to be a common standard to be achieved by all states and ‘continues to be a source of inspiration to national and international efforts to promote and protect human rights and fundamental freedoms’.³

¹ Quoted in C. Achebe, ‘Arrow of God’, (Heinemann Ltd, 1989), at 95.

² It comprises almost all catalogues of human rights and fundamental freedoms in a single document. The International Bill of Rights is the UDHR and the two covenants were adopted on the basis of the Declaration-International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

³ L. Chenwi, “*Correcting the Historical Asymmetry between Rights: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*”, 9(1) African Human Rights Law Journal (2009), at 24.

After completing the adoption of UDHR, the United Nations Commission on Human Rights started its work to come up with a binding international human rights instrument on ratifying states.⁴ At the time when the UDHR was drafted and adopted, ‘there was not much doubt that economic and social rights had to be included’.⁵ However, at the time when the Commission started to draft a binding international human rights instrument, there was no consensus among the members of the Commission and then:

... The Commission was split on the question of whether there should be one or two covenants. The question was turned over to the General Assembly, which, in a resolution (General Assembly Resolution 421 (V) of 4 December 1950) adopted in 1950, emphasized the interdependence of all categories of human rights and called up on the Commission to adopt a single convention. The next year, however, the western states were able to reverse the decision, asking the Commission to divide the rights contained in the UDHR into two separate international covenants, one on civil and political rights (CCPR) and the other on economic, social

⁴ At the time when the General Assembly adopted the UDHR, it instructed the Commission to draft a single binding international human rights instrument by the General Assembly Resolution No. 217 E(III) (10 December 1948).

⁵ A. Eide, ‘*Economic, Social and Cultural Rights as Human Rights*’, in A. Eide et al (eds.), ‘*Economic, Social and Cultural Rights*’, (2nd ed., (2001), Kluwer Law International, The Netherlands) at. 14. Eide further noted that the UDHR’s great contribution is that it extended the human rights platform to embrace the whole field-civil, political, economic, social and cultural, and made the different rights interrelated and mutually reinforcing.

and cultural rights (CESCR) (General Assembly Resolution 543 (VI) of 5 February 1952).⁶

As a result, it has become common to consider the International Bill of Rights to consist of two distinct categories of human rights. In the years that have since gone by, civil and political rights have attracted much attention in theory and practice, while economic, social and cultural rights have often been neglected.⁷

As a result, in 1966, the General Assembly adopted civil and political rights in one covenant and economic, social and cultural rights in another covenant and both of them come in to force in 1976.⁸

The indivisibility and interrelatedness of the two sets of human rights that the General Assembly adopted in its resolution (General Assembly Resolution 421 (V) of 4 December 1950) has been repeated in the 1993

⁶ This resolution is separation resolution-that separates the UDHR into two different covenants even though the rights are indivisible, interdependent and interrelated. At the time when the General Assembly passed the resolution that orders the Commission to draft two distinct covenants, it emphasized that the different sets of human rights are inter-related and indivisible. See on this issue, M. Nowak, 'UN Covenant on Civil and Political Rights: CCPR Commentary, ((1993), Kehl am Rhine) p. xx; Eide, supra note 5, at 9-11.

⁷ Asbjorn Eide & Allan Rosas, "*Economic, Social and Cultural Rights: A Universal Challenge*" in A. Eide et al (eds.), 'Economic, Social and Cultural Rights', (2nd ed. (2001), Kluwer Law International, The Netherlands), at 3; for a general discussion on the issue, see also M. Craven, 'The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development', ((1995), Oxford: Oxford University Press), at. 9.

⁸ ICCPR, adopted and opened for signature, ratification and accession by GA res. 2200A (XXI), of 16 December 1966 and entered in to force on 23 March 1976; ICESCR, adopted and opened for signature, ratification and accession by GA res. 2200A (XXI), of 16 December 1966 and entered in to force on 3 January 1976.

Vienna World Conference on Human Rights.⁹ However, states have neglected economic, social and cultural rights and have given less attention in the protection and enforcement of the rights domestically than civil and political rights. Moreover, there was no international enforcement mechanism of economic, social and cultural rights until 2008.¹⁰ The availability of individual complaints mechanism for civil and political rights at the international level ‘has helped victims of human rights violations and resulted in the clarification of the rights in CCPR’.¹¹ Chenwi further pointed out that ‘victims of economic, social and cultural rights violations, on the other hand, have not had this benefit at the international level. This neglect of economic, social and cultural rights has observably been due to the general perception of these rights as programmatic, having to be realized gradually, and of a more political nature and not capable of judicial enforcement’.¹²

⁹ Under Part 1, Paragraph 5, the Vienna Declaration and Programme of Action states that ‘all human rights are universal, indivisible, and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis...’

¹⁰ The year 2008 was the 60th Anniversary of the Universal Declaration, when the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights- an international complaints mechanism for claiming socio-economic rights-was adopted. Before the coming in to force of the Optional Protocol, the implementation mechanism of the ICESCR was state reporting. Under article 16 of the ICESCR, states parties are duty bound to submit periodic reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized in the covenant.

¹¹ Chenwi, *supra* note 3, at 24.

¹² *Id.*, at 24-25; see generally, ; Eide, *supra* note 5, at 14; M. Craven, ‘*The Committee on Economic, Social and Cultural Rights*’ in A. Eide et al (eds.), ‘Economic, Social and Cultural Rights’, (2nd ed., (2001), Kluwer Law International, The Netherlands) at 470; Henry J. Steiner & Philip Alston “International Human Rights in Context: Law, Politics and Morals, ((2007), Oxford University Press, New York) at 263-4.

Though the two sets of rights are inter-related and indivisible, it is undeniable fact that ‘there are some significant differences of emphasis between the typical civil rights on the one hand and some of the economic, social and cultural rights on the other’ by the states.¹³ The constitutions (comparable legislation or court judgments) of some countries states socio-economic rights as fundamental rights and directive principles for the state. The inclusion of the socio-economic rights in the part of the Directive Principles of State Policy (DPSP) creates confusion on the enforcement and justiciability of the rights.¹⁴ This does not mean that socio-economic rights are not considered legal rights and enforced before courts of law. The jurisprudence of some countries demonstrate that socio-economic rights are applied and enforced before judicial organs even if the rights are vaguely worded and stated as premier goals in the Directive Principles of State Policies.¹⁵

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) has incorporated socio-economic rights in chapter three-the Bill of

¹³Eide & Rosas, *supra* note 7, at 5. They further noted that socio-economic rights are surrounded by controversies both an ideological and technical nature. And thus, some perceived socio-economic rights as not true rights at all, while others accord priority to civil and political rights than socio-economic rights due to political sloganism and shallow understanding of the nature of the rights.

¹⁴ See generally DM Davis, *The Case against the Inclusion of Socio-Economic Demands in a Bill of Rights except as Directives Principles*, 8 S. Afr. J. Hum. Rts.(1992).

¹⁵ See generally, R. Gargarella *et al* (eds.), *Courts and Social Transformation in New Democracies: An Institutional Voice for the Poor?* (Ashgate 2006); Y. Ghai *et al* (eds.) *Economic, Social and Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social and Cultural Rights* (London: Interights) (2004); J. Squires *et al* (eds.) *The Road to a Remedy: Current Issues in the Litigation of Economic, Social and Cultural Rights*(2005); S. Liebenberg, *The Protection of Economic and Social Rights in Domestic Legal Systems*, in A. Eide, C. Krause & A. Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, (2nd ed., 2001)

Rights.¹⁶ The socio-economic provisions in the Constitution provide ‘entitlements to Ethiopian nationals’ and ‘obligations of the state’. The rights guaranteed to the citizens are ‘the right to freely engage in economic activity and to pursue a livelihood of his choice’, ‘the right to choose his/her means of livelihood, occupation and profession’, ‘the right to equal access to publicly funded social services’, the rights in work and ‘the right to improved living standards’.¹⁷ These rights are worded in vague and unclear terms. The vagueness and openness of the rights is a bone of contention in enforcing the rights. The rights should be interpreted in line with the provisions of international human rights instruments.¹⁸ The General Comments of the Committee on ESCR will help elaborate the unclear socio-economic provisions of the Constitution. The obligations of the state under Article 41 include ‘the allocation of ever increasing resources to provide to the public health, education and other social services’, ‘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’, ‘to pursue policies which aim to expand job opportunities for

¹⁶ See FDRE Constitution, article 41 which is entitled as ‘Economic, Social and Cultural Rights’, and articles 42.

¹⁷ See FDRE Constitution, arts 41, 42 & 43(1). Eide notes that the enjoyment of adequate standard of living ‘requires, at a minimum, that everyone shall enjoy the necessary subsistence rights-adequate food and nutrition rights, clothing, housing, and the necessary conditions of care. Eide, *supra* note 5, at 17-18;

¹⁸ Article 13 (2) of the FDRE Constitution states that chapter three of the constitution-the Bill of Rights part-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. For a general discussion on the issue of interpretation of the fundamental rights and freedoms specified in chapter three of the constitution in light of international human rights treaties ratified by Ethiopia, GebreamlakGebregiorgis, ‘*The Incorporation and Status of International Human Rights under the FDRE Constitution*’ in GirmachewAlemu&SisayAlemahu “The Constitutional Protection of Human Rights in Ethiopia: Challenges and Prospects” , Vol. 2 Ethiopian Human Rights Law Series, (2008), at 37.

the unemployed and the poor’, ‘to take all measures necessary to increase opportunities for citizens to find gainful employment’ and ‘to protect and preserve historical and cultural legacies, and to contribute to the promotion of the arts and sports’.

Furthermore, the Constitution incorporates the ‘National Policy Principles and Objectives’ (NPPO) under Chapter Ten.¹⁹ The NPPO are used as directive principles to the state. These provisions suggest a more active role on the part of the government to realize the basic needs of its citizens. The provisions in NPPO will help one in interpreting socio-economic rights that are vaguely worded in the Bill of Rights part of the Constitution. The NPPO explicitly provides that ‘to the extent the country’s resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security’.²⁰

Regarding the justiciability of the socio-economic rights incorporated in the bill of rights part of the Constitution, there is no clear rule that either prohibits or allows the justiciability of the rights before the domestic courts. Very little is known concerning the legal nature of socio-economic rights in Ethiopia. And a great deal remains to be studied on the issue. Thus, this article will endeavor to discuss the issue of rethinking justiciability of socio-economic rights incorporated in the Ethiopian Constitution in a comparative constitutional context. It, *inter alia*, examines the implementation of socio-economic rights by the

¹⁹ See FDRE Constitution, articles 85-92.

²⁰ FDRE Constitution, article 90(1).

Human Rights Committee of ICESCR and the integrated human rights approach undertaken by the African Commission on Human and Peoples' Rights in attempting to decide on complaints. It attempts to assess the jurisprudence of the Republic of South Africa and India on justiciability of socio-economic rights in their respective domestic fora. Finally, I will conclude with comments on the challenges of enforcing socio-economic rights before domestic courts for the better advancement of socio-economic rights in Ethiopia in light of the experiences and jurisprudence of the Constitutional Court of South Africa and the Supreme Court of India.

2. The Justiciability of Socio-Economic Rights in the ICESCR

The indivisibility, interdependent and interrelatedness of all human rights raises the issue of justiciability of socio-economic rights before domestic and international fora. It is well-known that the violations of civil and political rights are rectified either at domestic judicial organs or at international judicial or quasi-judicial bodies. However, the violations of socio-economic rights are not given due attention in many countries, particularly in third world states. Koch pointed out that:

*while it is generally taken for granted that judicial remedies for violations of civil and political rights are essential, the justiciability of the other half of the indivisible rights, namely economic, social and economic rights, is usually questioned and sometimes even denied.*²¹

²¹IE Koch "The Justiciability of Indivisible Rights" 72 Nordic Journal of International law (2003), 3-39, at 3-4.

Economic, social and cultural rights have been marginalized due to the fact that until the adoption of the optional protocol to the ICESCR (which allows the complaints of violations of socio-economic rights before the Committee on ESCR);²² there was no strong enforcement mechanism in the ICESCR.²³ The only available means of enforcing the covenant before the coming into force of the Optional Protocol was state reporting²⁴ which is a difficult means to rectify the violations of the rights. States may submit their due reports in accordance with the reporting guidelines of the committee. But the committee could not go beyond making the state accountable at the international level through examination of the reports.

The adoption of the Optional Protocol, just like the Optional Protocol of ICCPR, ensures access to remedies to the victims for the violations of socio-economic rights at least at the international level. The Optional protocol establishes a procedure for individual or group of individuals' complaints for victims of economic, social and cultural rights violations. Thus, victims of violations of economic, social and cultural rights will

²² The adoption of the Optional Protocol, in the words of Arbour, is ‘‘a milestone in the history of the universal human rights system’’, one which ‘will mark a high point of the gradual trend towards a greater recognition of the indivisibility and interrelatedness of all human rights’. Statement by Ms Louise Arbour, High Commissioner for Human Rights to the Open-Ended Working Group on OP-ICESCR, Fifth session, on 31 March 2008.

²³ Though the covenant obliges states parties to submit periodic reports to the Secretary-General of the United Nations, the Covenant even did not establish a treaty body until the establishment of the Committee on ESCR by the ECOSOC in 1985. ECOSOC Res. 1985/17. The committee was established for the reason that the earlier monitoring arrangements are failed. It first met in 1987, after two years of its creation.

²⁴ States are obliged under the covenant to submit the initial report within two years after ratification, accession or signing the covenant and subsequent reports will be due in a five-year interval. See Henry J. Steiner, Philip Alston & Ryan Goodman ‘‘International Human Rights in Context: Law, Politics and Morals, 3rd ed. (2008), (Oxford University Press, New York) at 277.

have the opportunity to lodge complaints before the Committee on ESCR.²⁵ In addition to allowing victims of violations of economic, social and cultural rights to submit a communication to the committee, the Optional Protocol provides for the committee's power to adjudicate these complaints and issue views and recommendations for remedy and redress.²⁶ Thus, in examining the evidence produced by the parties (both by the complainants and the information forwarded by the state), the Committee may request interim measures, declare the presence of violations of the alleged rights, and recommend appropriate compensation to individual victims.

Furthermore, the Committee strives to avoid the questions on the vagueness and openness of the rights through its General Comments. The complaints mechanism will also create suitable condition for clarification of the rights and the jurisprudential development on economic, social and cultural rights.

3. The African Charter and the Jurisprudence of the African Commission on Justiciability of Socio-Economic Rights

The African Charter on Human and Peoples' Rights (simply, the African Charter or the Charter) which is the heart of the African Human Rights System comprehensively incorporates all generations of human rights in a single document. The African Charter enshrines economic, social and cultural rights under articles 14-18 and articles 21-22. However, the

²⁵ One must note that the complaints procedure is open for individuals as long as the alleged state is a party to the covenant and the Optional Protocol.

²⁶ For the general discussion on the optional Protocol to ICESCR, see C. Mahon, "Progress at the Front: The Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights", 8(4), HRLR, (2008), 617-646, at 618.

Charter does not encompass all the rights provided in the 1966 UN Covenants such as the right to privacy,²⁷ the right to form trade unions,²⁸ the right to free, fair and periodic elections,²⁹ freedom from forced labor,³⁰ and rights related to housing, food and social security.³¹ However, the combined interpretation of articles 5 (the right to inherent dignity), 15 (the right to work), 16 (the right to health) and 17 (the right to education) will cover the above missing rights.³² Furthermore, the African Commission on Human and Peoples' Rights adopted the 'Pretoria Declaration on Economic, Social and Cultural Rights in Africa' in 2004. Article 10 of the Declaration states that:

The social, economic and cultural rights explicitly provided for under the African Charter, read together with other rights in the Charter, such as the right to life and respect for inherent human dignity, imply the recognition of other economic and social rights,

²⁷ See article 17 of the Covenant on Civil and Political Rights of 1966.

²⁸ Article 8 of the Covenant on Economic, Social and Cultural Rights of 1966.

²⁹ Article 25 of the Covenant on Civil and Political Rights of 1966.

³⁰ Id, article 8(2) and (3).

³¹ Article 11 of the Covenant on Economic, Social and Cultural Rights of 1966.

³² The combined reading of articles 60 and 61 of the African Charter enables the Commission to draw inspiration from international law on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of the African Unity, and also to take in to consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules recognized by member states of the Organization of the African Unity, general principles recognized by African states as well as legal precedents and doctrines. Furthermore, the Reporting Guidelines of the African Commission, which is adopted in 1989, interprets the Economic, Social and Cultural Rights of the Charter in a way that includes the right to form and belong to free and independent trade unions, social security and social insurance, rest, leisure, and holiday with pay, and an adequate standard of living. See 'The African Charter on Human and Peoples' Rights', (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

including the right to shelter, the right to basic nutrition and the right to social security.

Article 6 of the Declaration also stipulates that the right to work in article 15 of the Charter entails... among others things ‘the right to freedom of association, including the rights to collective bargaining, strike and other related trade union rights’ and ‘prohibition against forced labor’.

The unique features of the Charter are the recognition of the indivisibility and interdependence of all generations of rights;³³ the recognition of individual duties;³⁴ inclusion of peoples’ rights;³⁵ and the use of claw-back clauses to civil and political rights³⁶ as opposed to the traditional derogation clauses. Therefore, limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies or special circumstances. Socio-economic clauses are free of neither claw-back clauses nor limitations. The Charter also makes reference to individual and state duties.³⁷

³³ The 8th paragraph of the preamble of the African Charter states that ‘it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights’.

³⁴ See articles 27-29 of the African charter.

³⁵ Id, articles 19-24.

³⁶ Id, articles 9,10,12,13 and 14.

³⁷ The unique features of the Charter, such as immediate implementation and claw-back clauses, are somehow modified by the jurisprudences of the African Commission on Human and Peoples’ Rights. For better analysis of the developments of the jurisprudences of the Commission, see Heyns, C. and Magnus Killander (eds.), *Compendium of Key Human Rights Documents of the African Union*, (3rd ed., University of Pretoria, Pretoria University Law Press, 2007); see also Viljoen, F., *International Human Rights Law in Africa*, (New York, Oxford University Press, 2007); Odinkalu A.C., “Analysis of Paralysis or paralysis by Analysis? Implementing Economic, Social, and Cultural Rights under the African Charter on Human and

Unlike the ICESCR, the African Charter obliges member states to realize the rights enshrined in the charter immediately. Likewise, civil and political rights, economic, social and cultural rights require the immediate application except article 16 (1) the right to health which states ‘the best attainable state of physical and mental health’ which requires the fulfillment of minimum core obligations and implies the gradual realization of the rights.

The African human rights system has developed various human rights norms and jurisprudence. For the effective implementation of these human rights instruments, different organs have been established. The African Commission on Human and Peoples’ Rights (The African Commission) is one of the most important organs for the effective implementation of human rights in general and the African Charter in particular in the continent.³⁸

It should be noted that the African Commission on Human and Peoples’ Rights (here after ‘the African Commission’ or simply the Commission’) is a monitoring body of the African Charter established under article 30 of the Charter. The Commission is empowered to receive individual complaints on violations of the rights provided in the Charter, in addition to reviewing state reports, and conducting investigations when it believes that there is serious violation of human rights.

Peoples’ Rights,” Human Rights Quarterly, Vol. 23, (The Johns Hopkins University Press, 2001).

³⁸To complement the protective mandate of the Commission, the African Court on Human and Peoples’ Rights is established.

State parties to the Charter are duty bound to submit reports every two years on ‘the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognized and guaranteed by the Charter’ on the basis of the form and contents of the General Guidelines for periodic Reports which is prepared and adopted by the Commission.³⁹ In reviewing periodic reports, the Commission interprets the scope and content of economic, social and cultural rights in a way that comprehends all the rights which are not mentioned by name in the Charter and gives priority to socio-economic rights. Odinkalu pointed out that:

The Commission has interpreted the Charter obligation to protect economic, social and cultural rights as requiring the inclusion of these rights in the national constitutions... Through this process it has also addressed the protection of the right to work, and trade union rights, including the right to strike... The Commission considers that states have a responsibility to bridge the rural/urban divide, declaring in one case [Examination of the initial report of Namibia in 1998] that “we cannot talk about human rights without insisting on the need to emphasis on social, economic and cultural rights and to allow a major portion of our population to have minimum living standards”. This extends to a commitment to eliminate poverty and provide access to basic utilities, health and access to electricity. Recognizing the permeability of the rights, the Commission has shown a

³⁹Article 62 of the African Charter.

*particular interest in access to justice and legal aid as an issue of economic, social and cultural rights.*⁴⁰

The Commission also receives inter-state⁴¹ and non-state complaints on the violations of the rights enshrined in the Charter. The communications include the violations of economic, social and cultural rights by states parties in addition to the traditional civil and political rights. In deciding on the communications, the Commission either directly deals with the violations of socio-economic rights-using the violations approach-or deals with the violations of socio-economic rights on the basis of the indivisibility and interdependence and interrelatedness nature of all human rights-the integrated approach.

Violations approach advocates the violations of socio-economic rights resulting from either actions or policies of the government, or violations related to discrimination, or violations taking place due to the failure of the state to fulfill minimum core obligations.⁴² In the case of Purohit and Another v the Gambia,⁴³ the African Commission found the violation of the right to enjoy the best attainable state of physical and mental health.

⁴⁰ CA. Odinkalu '*Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social and Cultural Rights under the African Charter on Human and Peoples' Rights*', 23 Hum. Rts. Q. (2001), 327, at 356-357.

⁴¹ The only inter-state complaints submitted to the Commission is the case of Democratic Republic of the Congo v Burundi, Rwanda and Uganda, Communication 227/99, (2004) AHRLR 19 (ACHPR 2003). In its first inter-state communication, the Commission finds that the respondent states have violated a number of human and peoples' rights, including the right to self-determination, the right to development and the right to peace and security. See Haynes & Killander (eds.), '*Compendium of Key Human Rights Documents of the African Union*', (2007), PULP, at 190.

⁴² AR. Chapman, '*A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights*', 18 Hum. Rts. Q. (1996), 23, at 24.

⁴³ Purohit and Another v the Gambia, (2003) AHRLR 96 (ACHPR 2003).

The Commission noted that enjoyment of the human right to health is not only vital to all aspects of a person's life and well-being but also crucial to the realization of all the other fundamental human rights and freedoms.⁴⁴ Furthermore, mental health patients should be accorded special treatment which would enable them not only attain but also sustain their optimum level of independence and performance in keeping with Article 18(4) of the African Charter and the standards applicable to the treatment of mentally ill persons as defined in the Principles for the Protection of Persons with Mental Illness and Improvement of Mental Health Care.⁴⁵ Mental health care, under the Principles, includes analysis and diagnosis of person's mental condition and treatment, care and rehabilitation for a mental illness or suspected mental illness. The Principles envisage not just 'attainable standards', but the highest attainable standards of health care for the mentally ill at three levels; first, in the analysis and diagnosis of a person's mental condition; second, in the treatment of that mental condition; and thirdly, during the rehabilitation of a suspected or diagnosed person with mental health problems.⁴⁶ Holding that the acts of the government violated, among others, article 16 of the African Charter, the Commission declared that 'persons with mental illness should never be denied their right to proper health care, which is crucial for their survival and their assimilation into and acceptance by the wider society.'⁴⁷

⁴⁴Id, Para 80.

⁴⁵Id, para 80-82.

⁴⁶Id, para 80-82.

⁴⁷Id, Para 85.

In some other cases, the Commission adopted the integrated approach so as to protect the violations of economic, social and cultural rights. The best known case of the African Commission is the case of Social and Economic Rights Action Centre (SERAC) and Another v Nigeria.⁴⁸ In this case, the Commission asserted that:

*Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health and family life are adversely affected. It is thus noted that the combined effect of articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing which the Nigerian government has apparently violated.*⁴⁹

The Commission also notes that ‘the right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment

⁴⁸ Social and Economic Rights Action Centre (SERAC) and Another v Nigeria, (2001) AHRLR 60 (ACHPR 2001). The decision of the Commission deals with socio-economic rights provided in the African Charter on Human and Peoples’ Rights, including the implicit socio-economic rights.

⁴⁹Id., Para 60. The Commission, under paragraph 61 further argues that ‘at a very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The state’s obligation to respect housing rights requires it... to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing up on his or her in a way he or she finds most appropriate to satisfy individual, family household or community housing needs’.

and fulfillment of such other rights as health, education, work and political participation'.⁵⁰ The Commission, in its decision, concluded that the treatment of the Ogonis [people who live in the Niger Delta of Nigeria] by the Nigerian government has violated article 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter and hence appealed to the government of Nigeria to ensure the protection of the rights of the people of Ogoniland.

To sum up, the jurisprudence of the African Commission affirms the indivisibility, and interdependence of all human rights, and the justiciability and enforcement of socio-economic rights. The violation of socio-economic rights means the indication for endangering the situation of the traditional civil and political rights. Thus, the Commission endeavors to ensure the realization of all human rights in the continent.

4. The South African Constitution and the Jurisprudence of the Constitutional Court on Socio-Economic Rights

After the end of the apartheid rule, the 1996 South African Constitution was adopted which is a symbol of democratic South Africa. The Constitution enshrined, among others things, the comprehensive set of economic, social and cultural rights among the fundamental rights (Bill of Rights-the traditional civil and political rights) guaranteed to its

⁵⁰Id. Para. 65. The Commission, under paragraph 66, states that 'the government's treatment of the Ogonis has violated all three minimum duties of the right to food. The government has destroyed food sources through its security forces and state oil company; has allowed private oil companies to destroy food sources; and through terror, has created significant obstacles to Ogoni communities trying to feed themselves. The Nigerian government has again fallen short of what is expected of it as under the provisions of the African Charter and international human rights standards, and hence, is in violation of the right to food of the Ogonis.

citizens. These rights are, as expressly provided under the Constitution, fully justiciable rights and enforceable before the courts and thus the courts are empowered to remedy the violations of the rights.⁵¹ Likethe UDHR and the African Charter on Human and Peoples' Rights, the Constitution of South Africa affirmed the indivisibility and interrelatedness of human rights. This is due to the fact that the Constitution is adopted after the universality, indivisibility and interrelatedness and interdependent of human rights is reiterated at the Vienna World Conference of 1993.

Socio-economic rights are predominantly entrenched under sections 26 and 27. These rights include housing, health care services, including reproductive health care, food, water, social security and social assistance. These rights require the state to take reasonable legislative and other measures for the realization of the rights within its available resources. The measures taken by the state must be reasonable to eliminate or at least reduce the severe deprivation of the society. Furthermore, Section 7(2) of the Constitution imposes obligation on the state to 'respect, protect, promote and fulfill the rights in the Bill of Rights' which includes socio-economic rights⁵² and 'the Bill of Rights

⁵¹ The Constitution of the Republic of South Africa Act, 108, 1996, section 38.

⁵² In the case of *Grootboom*, under paragraph 42, the Constitutional Court stresses that "The State is required to take reasonable legislative and other measures. Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The State is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the Executive. These policies and programmes must be reasonable both in their conception and their implementation. The formulation of a programme is only the first stage in meeting the State's obligations. The programme must also be reasonably implemented. An otherwise reasonable programme that is not implemented reasonably will not constitute compliance with the

applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.⁵³ The Constitutional Court concludes that the rights enshrined in the Constitution ‘does not give rise to a self-standing and independent positive right enforceable irrespective of the considerations’ of the obligations of the state under the constitution so as to define the scope of the positive rights.⁵⁴

The Constitutional Court of South Africa plays a great role for both making justiciable the socio-economic rights entrenched in the Constitution⁵⁵ and adjudicating the rights and awarding remedies to victims in South Africa. The Court argues that it is empowered not only to enforce the rights provided in the Bill of Rights of the Constitution but also to examine the reasonableness of the measures taken by the government and to challenge the government policies.⁵⁶

State’s obligations.” See *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC).

⁵³ The Constitution of the Republic of South Africa Act, 108, 1996, Section 8(1).

⁵⁴ *The Minister of Health and Others v Treatment Action Campaign and Others* 2002 (10) BCLR 1033(CC) (SA) 29.

⁵⁵ At the time of crafting the constitution, the Constitutional Assembly incorporated socio-economic rights in the Bill of Rights, and propose them to be fully justiciable before the courts of law. However, the justiciability of socio-economic rights was faced with strong opposition by different groups until the opposition was dismissed by the Constitutional Court. This contributes a lot to inquire the realization of the rights and rectifying the damage. See ‘*Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa*’, 1996 (4) SA744 (CC) Para. 77-8.

⁵⁶ See, the cases of *Premier, Mpumalanga, and Another v Executive Committee, Association of State-Aided Schools, Eastern Transvaal* 1999 (2) SA 91 (CC); 1999 (2) BCLR 151 (CC); and *August and Another v Electoral Commission and Others* 1999 (3) SA 1 (CC); 1999 (4) BCLR 363 (CC).

The first socio-economic case presented before the Constitutional Court was the case of *Soobramoney v. Minister of Health, Kwa-Zulu-Natal*,⁵⁷ where Mr. Soobramoney—an unemployed and diabetic with chronic renal failure—pleaded the court for regular kidney dialysis at the state hospital in Durban, invoking the violations of the rights to life, health and emergency medical treatment that are enshrined in the 1996 Constitution. The court affirmed that socio-economic rights are integral part of human rights particularly in connection to the rights of human dignity, equality and freedom. However, the court interpreted the obligation of the state provided under section 27(2)⁵⁸ and (3) narrowly. The court also failed to give serious consideration to the rights that the plaintiff invoked. Then it rejected the claim and missed the opportunity to interpret the constitutional rights invoked by the plaintiff in light of socio-economic rights.

In the subsequent claims on socio-economic cases, the jurisprudence of the Constitutional Court demonstrated that ‘violations of these rights can be judicially remedied without intruding unduly on legislative discretion’.⁵⁹ In the case of *Grootboom*,⁶⁰ where groups of families (comprising 390 adults and 510 children, out of this 276 of them are under the age of 8) living in appalling conditions and evicted from where

⁵⁷*Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (CC).

⁵⁸ Section 27 (1) states that ‘Everyone has the right to have access to (a) health care services... (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of the rights. (3) No one may be refused emergency medical treatment’.

⁵⁹J.M. Woods, ‘EMERGING PARADIGMS OF PROTECTION FOR “SECOND-GENERATION” HUMAN RIGHTS’, 6 *Loy. J. Pub. Int. L.* 103 (Spring, 2005), at 115.

⁶⁰*Government of the Republic of South Africa v. Grootboom*, 2000 (11) BCLR 1169 (CC).

they lived, claim the right to access to adequate housing, the Constitutional Court applied the standard of ‘minimum core obligations’: "Minimum core obligation is determined generally by having regard to the needs of the most vulnerable group that is entitled to the protection of the right in question."⁶¹ However, the court stressed that ‘minimum core obligation’ does not accord the right to housing on demand but the people in desperate need should not at least be evicted from where they live. The Court stressed that the housing program of the government shall be expeditious and effective in realizing the rights. The judgment of the Court reveals that the failure of the government to meet even the core minimum shelter needs of the applicants was a violations of sections 26 (the right to housing) and 28 (children’s right to shelter). Finally the court ordered the government program to include ‘reasonable measures... that 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’.⁶² The interpretation of the Court in relation to the concept of progressive realization has showed advancement when it is compared with what it

⁶¹Grootboom, 2000 (11) BCLR at 1187 In applying the minimum core obligations of the state, the Court gave emphasis on the reasonableness standard in terms of the state’s duty enshrined in the constitution to address the most basic needs of human needs. The nationwide housing program is not affordable to desperately poor black majority in the Republic of South Africa. The People in question were extremely poor and had no income at all. Forcible evicting those people amounts violations of their rights enshrined in the 1996 constitution. Thus, after examining the ambitious and comprehensive housing program developed by the government, the Constitutional Court declared that the government’s program lacked the requisite expeditious and effective realization socio-economic rights; and the court ordered the government to plan in a way that "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."

⁶²Grootboom, 2000 (11) BCLR, at 1209.

interpreted the concept in the case of Soobramoney. However, the declaratory order of the Court fell short of remedying the defects.⁶³

In other subsequent complaints, the Constitutional Court revisited the scope of the rights and the duty of the state. The duty of the state extends to realizing the rights within reasonable period of time. The jurisprudence of the Court clearly puts the nature and scope of the rights and the reasonableness of the measures taken by the state to realize the socio-economic rights. The Constitutional Court declared that Socio-economic rights are clearly justiciable and made declaratory orders to the government to take actions and award relief to the victims. The Constitutional Court, for instance, made declaratory and mandatory orders against the government in one case⁶⁴ for the failure of the state's programme to prevent Mother-to-Child transmission of HIV and for not complying with its obligations provided under section 27 (1) and (2) of the Constitution (which deals with access to qualified health care services). However, more is expected from the Constitutional Court in protecting the economic, social and cultural rights of persons who are in desperate situations.

⁶³ For the criticism on the judgment of the Constitutional Court on the case of Grootboom, see T. Roux '*Understanding Grootboom – A Response to Cass R Sunstein*' (2002) 12(2) Constitutional Forum 41, 51; and

D. Bilchitz '*Giving Socio-economic Rights Teeth: The Minimum Core and its Importance*' (2002) 119 SALJ 484, 500-501.

⁶⁴ Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC).

5. The Indian Constitution and the Jurisprudence of the Supreme Court on Socio-Economic Rights

In the 1950 Indian Constitution, socio-economic rights are not part and parcel of fundamental rights (Part III of the Constitution) but they are listed under the Directive Principles of State Policies (DPSP)-Part IV of the Constitution. The Bill of Rights part constitutes the traditional civil and political rights. Economic, social and cultural rights are listed to guide state policies. Furthermore, the Constitution clearly states that socio-economic rights are not enforceable before courts.⁶⁵

Article 39 of the Indian Constitution provides that, "the state shall direct its policy towards securing that the citizens, men and women equally, have the right of adequate means of livelihood". It imposes obligation on the state that its policy shall direct towards that goal-assuring the right to adequate means of livelihood. 'Adequate means of livelihood' includes, among others, the rights to access to sufficient food, water, clothing, housing, work, health care services, social security and education. Article 41 of the Constitution also states that "the State shall, within its limits of economic capacity and development make effective provisions for the rights to work, to education, and to public assistance...." This provision explicitly imposed obligation on the state to take reasonable measures for the progressive realization of the socio-economic rights of the citizens. However, the measures taken by the state shall be reasonable, expeditious and effective in ensuring the rights.

⁶⁵ S. Muralidhar '*Judicial Enforcement of Economic and Social Rights: the Indian Scenario*', 237 in F. Coomans. (ed.), '*Justiciability of Economic and Social Rights: Experiences from Domestic Systems*', (2006), Intersentia, Antwerp-Oxford) at 240.

As it is expressly provided under the Indian Constitution, socio-economic rights are not justiciable before courts of law.⁶⁶ This is due to the fact that during the crafting of the Constitution, though socio-economic rights are part of human rights (as it is provided under the UDHR), there were contentions on the justiciability and enforcement of the rights before the courts of law. As a result, socio-economic rights were considered non-justiciable rights before courts until the 1980's 'when a group of judges on the Indian Supreme Court declared that the judiciary had a responsibility to address the vast poverty and misery in India'.⁶⁷

During the beginning of 1980's, the judiciary initiated the public interest litigation movement which was considered to be 'judge-led' and 'judge-dominated' movement.⁶⁸ Public interest litigation, which provides for the right to free legal aid, has contributed a lot in litigating destitute living

⁶⁶ Article 37 of the Indian Constitution stipulates that socio-economic rights 'shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.' According to Muralidhar, at the time of drafting of the Constitution, it was initially felt that socio-economic rights should be made justiciable. However, a compromise had to be struck between those who felt that the DPSPs could not possibly be enforced as rights and those who insisted that the Constitution should reflect a strong social justice. As a result, socio-economic rights are made non-justiciable before any court. See S. Muralidhar '*The Expectations and Challenges of Judicial Enforcement of Social Rights*', 102, in M. Langford (ed.), '*SOCIAL RIGHTS JURISPRUDENCE: Emerging Trends in International and Comparative Law*, ((2008), Cambridge University Press) at 103-104.

⁶⁷ See VijayashriSripati, '*Human Rights in India - Fifty Years after Independence*', 26 Denv. J. Int'l L. &

Pol'y 93, 107 (1997) (discussing the role created by the Supreme Court after the Court's decision in *Maneka*

Gandhi v. Union of India, A.I.R. 1978 S.C. 597).The creative interpretation of the right to life by the Supreme Court during the 1970's significantly contributes for the expansion of the contents of the dignified life and the development of judicial activism.

⁶⁸ S. Muralidhar '*Judicial Enforcement of Economic and Social Rights: the Indian Scenario*', 237 in F. Coomans (ed.), '*Justiciability of Economic and Social Rights: Experiences from Domestic Systems*', (2006), Intersentia, Antwerp-Oxford) at 240.

and working situations of the mass of the people. The judiciary played a decisive role in enforcing the directive principles using the public interest litigation in which any public spirited person could bring the matter to the attention of the courts.

The Supreme Court, through expansive interpretation of the right to life, enforced socio-economic rights. The Court applied socio-economic rights listed under the Directive Principles of State Policies (DPSP) in interpreting the content of fundamental rights of the constitution. The Supreme Court in interpreting the right to life held that it is not only mere animal existence but also includes, among others, the rights to shelter,⁶⁹ livelihood and right to work,⁷⁰ education,⁷¹ health,⁷² right to live with

⁶⁹ The right to shelter was for the first time accepted as part of the right to life in the case of *Francis Coralie Mullin v Union Territory of Delhi*, AIR 1981 (SC) 746. In one case, the Supreme Court stated that ‘Basic needs of man have traditionally been accepted to be food, clothing, and shelter. The right to life is guaranteed in any civilized society. That 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. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal, it is the bare protection of the body; for a human being, it has to be a suitable accommodation which would allow him to grow in every aspect—physical, mental and intellectual.’ See *Shantistar Builders v Narayan Khimalal Totame* (AIR 1990 SC 630).

⁷⁰ *Olga Tellis v Bombay Municipal Corporation* (AIR 1986 SC 180), in which the Supreme Court made the following observations: “It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of 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 because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that article 39(a) and article 41 require the state to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.” Similarly in a judgment, the Court reasoned that the expression ‘life’ assured in section 21 of the constitution does not connote mere animal existence but has a much wider meaning that includes right to livelihood, better standard of life, hygienic conditions in work-place and leisure facilities. See *Consumer Education and Research Centre v Union*

human dignity,⁷³ and right to social security.⁷⁴ In general, the right to life,-for the Indian Supreme Court- means the right to live with human dignity with minimum sustenance and all those rights are aspects of life that would go to make life complete and worth living.⁷⁵

To sum up, the innovative efforts of the Supreme Court of India have contributed to the application of the integrated approach to enforce socio-economic rights. The Court has recognized socio-economic dimensions of the right to life-with a colorful and liberal interpretation of the right. Thus, the judiciary has given teeth to socio-economic rights listed under the directive principles of state policy.⁷⁶

of India, (1995, 3 SCC 42) For further discussion on the issue, see S. Deshata& K. Deshata, 'Fundamental Human Rights: The Right to Life and Personal Liberty', (2007) Deep & Deep Publications, at 68-73.

⁷¹ *Mohini Jain v State of Karnataka and ORS* (AIR 1992 SC 1858), in which the Indian Supreme Court found a Constitutional Protected right to education in the right to life and held that the right to life is the compendious expression for all those rights which the courts must enforce because they were basic to the dignified enjoyment of life. It held that the right to education flows directly from the right to life. The dignity of an individual cannot be assured unless it is accompanied by the right to education. See Deshata&Deshata, supra note 70, at 73-76.

⁷² *Vincent v Union of India* (AIR 1987 SC 990), in which the Supreme Court held that the right to health is a fundamental right and thus' it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good health'. In one case, the Supreme Court held that failure on the part of government hospital to provide timely medical treatment to a person in need of such treatment results in the violation of his right to life guaranteed under section 21 of the constitution. See *Paschim Bang KhetMazdoorSamiti v State of West Bengal*, (1996 4 SCC 37).

⁷³ *Francis Coralie Mullin v Union Territory of Delhi*, AIR 1981 (SC) 746 in which the Supreme Court held that 'the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing, and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.'

⁷⁴ *Regional Directors ESI Corporation v Francis de Costa* (1993, Supp. 4 SCC 100).

⁷⁵ Deshata&Deshata, supra note 70, at 67.

⁷⁶ M. Pieterse, "A Different Shade of Red: Socio-Economic Dimensions of the Right to Life in South Africa", 15 S. Afr. J. on Hum. Rts. (1999), 372, at 375.

6. Socio-Economic Rights under the FDRE Constitution

Ethiopia is one of the poorest countries in the world and the third most populous country in Africa with a total population of 74 in 2007 and is estimated to be more than 84 million in 2012.⁷⁷ In Ethiopia, millions of people are living in deplorable conditions and in great poverty. Poverty is widespread, with slightly less than half the population living below the poverty line. There is a high level of unemployment, inadequate social security, and many do not have access to adequate housing, clean water, and sufficient food and adequate health care services. Although the government announces that poverty level is coming down, when examined from the point of capabilities approach, large numbers of Ethiopians are still unable to afford basic needs like shelter, clothing, food, and health. Every year millions are in need of basic needs-food, clean water, shelter, clothing and health care services. The health care system is wholly inadequate though there are promising efforts undertaken by the government and domestic and international organs.⁷⁸

⁷⁷2007 *Population and Housing Census of Ethiopia*, CSA,13 July 2010, retrieved 30 May, 2013.

⁷⁸ See R. Wamai, "Reviewing Ethiopia's Health System Development", *JMAJ* 52(4): 279–286, 2009. The UN-Habitat report states that most of the country's urban centres are currently suffering from a host of problems, including rising unemployment, deepening poverty, severe housing shortage and lack of good governance. The government's efforts to improve the living conditions of the rural population have begun to bear fruit, whereas the incidence and severity of poverty have intensified in the urban areas in the recent past. The incidence of poverty dropped from 47 percent in 1995/1996 to 45 percent in 1999/2000 in rural Ethiopia. Comparatively, the same indicator rose from 33.3 percent to 37 percent in urban Ethiopia during the same period. More recent research also suggests that the income gap between the wealthy and the poor has been widening in urban centres. This appears to be particularly the case in Addis Ababa, which currently has an estimated population of no less than four million. See *Situation Analysis of Informal Settlements in Addis Ababa*, UN-Habitat. United Nations, Human Settlements Programme, 2007. See generally, *Ethiopia: A Country Status Report on Health and Poverty*, June 2004, The World Bank Africa Region Human Development & Ministry of Health Ethiopia; see generally, Bertelsmann Stiftung, *BTI 2012 — Ethiopia Country Report*, Gütersloh: Bertelsmann Stiftung, 2012; see generally, *Rural poverty in*

Moreover, the state violates the housing rights of large sections of the people in major cities and towns across the country due to (illegal) evictions from land where they are (in some occasions, illegally) residing. Although there is a major achievement in addressing the acute shortage of housing problems in major cities of the country, the government housing programme failed to provide in any way for those sections of the peoples in desperate need and cannot be affordable for most of them.⁷⁹

The Constitution of Ethiopia, which became effective when Ethiopia became a federal democratic republic on August 21, 1995, declared that ‘human rights and freedoms, emanating from the nature of mankind, are inviolable and inalienable’.⁸⁰ The rights guaranteed under Chapter Three of the FDRE Constitution comprise of both civil and political rights and economic, social and cultural rights including group rights. The human rights and freedoms guaranteed under the Constitution are inviolable and inalienable. Thus, one can say that the 1995 Constitution of Ethiopia guarantees the indivisibility, interdependent and interrelatedness of all human rights.

The economic, social and cultural rights are crafted in vague and open manner, under chapter III as fundamental rights, in the constitution.

Ethiopia, *IFAD (International Fund for Agricultural Development)*, available at: <http://www.ruralpovertyportal.org/web/guest/country/home/tags/ethiopia>.

⁷⁹ See “*The Ethiopian Case of Condominium Housing: The Integrated Housing Development Programme*”, UNHABITAT (2010), United Nations Human Settlements Programme: Nairobi; For the detail analysis on the right to housing in Ethiopia, see DG Janka, “The Realization of The Right to Housing in Ethiopia” (October 2007, LL.M Thesis, unpublished, Faculty of Law, University of Pretoria, South Africa).

⁸⁰ FDRE Constitution, 1995, article 10(1).

There are no separate and specific provisions on the rights to health, housing, education, food and clean water; rather these rights are implicitly recognized by the Constitution.⁸¹ Art 41 of the Constitution is the basket upon which most socio-economic rights can be added or impliedly inferred. Janka rightly argues that Art 41(6) and (7) of the Constitution do not give rise to a right based approach rather, they impose duty on the government to ensure the enjoyment of the rights provided for in article 41(1) and (2) recognized in crude terms. Thus, the rights provided in the bill of rights part are crude that it is difficult to identify the rights guaranteed and the extent of protection afforded to them.⁸²

The National Policy Principles and Objectives in chapter ten of the Constitution provides several socio-economic rights which guide the government to consider its policies to aim at providing all Ethiopians access to public health, education, clean water, adequate housing, food and social security to the extent of its available resources.⁸³ The vagueness and openness of the socio-economic rights in the Constitution should be interpreted in a manner conforming to the principles of international human rights instruments. Article 13(2) provides that in interpreting the fundamental rights and freedoms enshrined under the

⁸¹Dejene Girma Janka, 'Economic, Social and Cultural Rights and their Enforcement under the FDRE Constitution', *Jimma University Law Journal* Vol.1, No. 2, (2008), p.74-75.

⁸²SisayAlemahu, 'The Constitutional Protection of Economic and Social Rights in the Federal Democratic Republic of Ethiopia', *Journal of Ethiopian Law*, Vol. 22, No.2, (2008), p.139.

⁸³ FDRE Constitution, 1995, article 85 in which any organ of the government, whether federal or state, in the implementation of the Constitution and other laws of the country, be guided by the National Policy Principles and Objectives stated under the constitution. See also SisayAlemahu, *supra* note 82, p.138.

Constitution, it should be ‘in a manner conforming to the principles of UDHR, International Covenants on Human Rights and international instruments adopted by Ethiopia’. Moreover, the interpretations of the rights should be undertaken in light of the obligation of the Ethiopian state under the ICESCR and the African Charter. Thus, the interpretations applied by the African Commission and the General Comments of the Committee on ICESCR should be taken seriously since Ethiopia is a party to both the African Charter and the ICESCR and they form part of the domestic legal system. Thus, the vagueness and openness of the rights can be solved by applying the General Comments of the Committee on ICESCR and the jurisprudence of the African Commission. Furthermore, the jurisprudence developed by the Indian Supreme Court, which is the integrated approach, similar with the jurisprudences of the African Commission, on the extended interpretation of the right to life and dignity to enforce all socio-economic rights could be used. Thus, the interpretation of the right to dignified life in our Constitution should be supported by such developed jurisprudence.

The Constitution of Ethiopia was adopted prior to (one year before) the adoption of the South African Constitution. Unlike the Constitutions of the Republic of South Africa and India, the Constitution of Ethiopia is silent on the justiciability of socio-economic rights provided under the National Policy Principles and Objectives before the judiciary. Moreover, socio-economic rights are still marginalized rights. The remedy provided

in the Constitution for unlawful legislative and executive decisions contrary to the Constitution is to approach the House of the Federation.⁸⁴

Unlike the 1996 Constitution of South Africa, the 1995 Constitution of Ethiopia does not declare the justiciability of socio-economic rights. There is no clear stand on the justiciability of socio-economic rights provided under the NPPO. The intention of the drafters on the justiciability of socio-economic rights is not clear, and there is no view reflected on the issue in the *travaux préparatoires* of the Constitution.⁸⁵ The non-justiciability of the rights should not be the rationale for crafting socio-economic rights vaguely in the Bill of Rights part than it is in the NPPO. Socio-economic rights enshrined under Chapter III, though vaguely crafted, should be justiciable rights. The incorporation of the rights in the bill of rights is an implied indication of making them justiciable. Furthermore, the adoption of the Optional Protocol to the ICESCR which ensures access to remedies to the victims for the violations of socio-economic rights has implications on the justiciability issue at domestic level. Yehanew boldly argues that the FDRE Constitution protects economic and social rights by incorporating them in the bill of rights as directly justiciable as well as by making pertinent international treaties ratified by Ethiopia part and parcel of the law of the land.⁸⁶ The Committee on Economic, Social and Cultural rights states that:

⁸⁴FDRE Constitution, 1995, article 83 (1) which states that ‘all constitutional disputes shall be decided by the House of Federation.’

⁸⁵ See generally *Ye Ethiopia HigeMengistGubae Kale Gubae* (Minutes of the Constitutional Assembly), 1994.

⁸⁶SisayAlemahu, *supra* note 82, at 151.

The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.⁸⁷

Moreover, the adoption of the Optional Protocol to the ICESCR which recognizes complaint procedures for the rights enshrined under the ICESCR creates a persuasive value in understanding the justiciability of socio-economic rights.⁸⁸ Thus, the spirit of the Constitution and the notion of socio-economic rights should be interpreted in accordance with the principles (such as the principles of universality, indivisibility, interrelatedness and interdependence of all human rights) and interpretations (General Comments) of ICESCR and the National Policy Principles and Objectives provided under Chapter 10 of the Constitution. Abebe argues that the provisions that deal with the NPPO are directly and indirectly relevant to interpret Chapter 3 of the Constitution and contain provisions germane to human rights particularly to socio-economic rights and environmental rights.⁸⁹ Furthermore, as I reiterate in the above discussion, the fundamental rights and freedoms of the Constitution should be interpreted in the manner conforming to the principles and

⁸⁷ CESCR General Comment No. 9, (1998) para. 10.

⁸⁸ A.K.Abebe, "Human Rights Under the Ethiopian Constitution: A Descriptive Overview" 5(1) *Mizan Law Review* (2011) 41-71, p. 54.

⁸⁹ *Id.*, p. 48.

interpretations followed in interpreting the ICESCR, and the African Charter. Meaning, the goals set forth in the ICESCR and African Charter cannot be achieved more effectively only by means of an international adjudicative mechanism for individual complaints. The interpretations applied by the African Commission in its decisions reveals that the indivisibility and interrelatedness of human rights applies across all generations of human rights. In other words, the violations on socio-economic rights are the violation of the right to dignified way of life.

Moreover, the Constitution guarantees the inviolability and inalienability of rights and freedoms. The incorporation of all generations of human rights without any difference in consequence is the implicit recognition of all the traditional classification of rights and freedoms as indivisible, interdependent and interrelated.⁹⁰ The basis of the integrated approach is the principles of indivisibility, interdependency and interrelatedness of all generations of human rights and freedoms. The violation on the right to food, clean water, health care, or housing mean violation of the right to life. Thus, the right to dignified way of life does not mean the mere existence of a human being in this world without having adequate housing, food, clean water, health care services and social security. Here, I should recite the words of Achebe quoted above that ‘we must have the things (socio-economic rights of the poor) with which to live it well; otherwise we ‘live a slow and weary life which is worse than death’. Therefore, one can conclude that socio-economic rights are justiciable by applying the integrated as well as the violation approaches and should not be beyond the reach of the courts of law in Ethiopia.

⁹⁰ Id, p. 44.

6.1 Institutional Competencies

Unlike the Constitutions of India and the Republic of South of Africa, the 1995 Constitution of Ethiopia does not give the mandate of reviewing unlawful legislative and executive legislations to the regular judicial organ or a Constitutional Court; rather it mandates a quasi-judicial organ-the House of the Federation-to take care of this business.⁹¹ In other words, the judiciary is limited from reviewing the unlawful legislative and executive actions of the other arms of the government.⁹² The mandate of the judiciary is very restrictive in the Constitution. The highest judicial organ in the country is the Federal Supreme Court.⁹³ However, for different reasons, there has been, to date, no case in court (as per the data available to the author at the time of writing this article) where socio-economic rights-the rights to housing, food, water, health

⁹¹ This is inimical to the development of social justice in Ethiopia. This is due to the fact that the political affiliation of the members of the House complicates the interpretation and enforcement of rights and examining the policies of the executive organ whether they are reasonable in addressing the interests of the poor. For the detail story of empowering the House of the Federation to interpret the Constitution; see A. Fisseha, "A New Perspective on Constitutional Review", 10 *Tilburg Foreign Law Rev.*(2002), p. 237-255; see also A. Fisseha 'Federalism and the Adjudication of Constitutional issues: the Ethiopian Experience', 1 *Netherlands International Law Review*(2005).

⁹² Though there is no absolute system of separation of powers, there shall be a strong checks and balances between and among the different arms of the government. The best way to control the legislative and executive organs of the government, the judiciary must be strong enough in power as much as possible. As McMillan notes "The formulation of communal policy is best undertaken in a legislative forum, by elected representatives who participate in public debate, who face periodic re-endorsement by the people, and who embody the widely differing values and aspirations that are intrinsically part of each society. The ongoing application of general legislative rules is best undertaken by the executive arm of government, which is in a position over time to accumulate experience, wisdom, intuition, sagacity and other diverse skills that are essential to good judgment in administering the law. The essence of the judicial function in public law cases is threefold: judges can impartially and skillfully interpret legislative rules; by doing so independently of the other arms of government they can bolster community confidence in the administration of the law; and they can check the misuse of authority by other arms of government." See J. McMillan '*Judicial Restraint and Activism in Administrative Law*' 30 *Federal LR* (2002) 335, at 337.

⁹³FDRE Constitution, 1995, article 78 (2).

care services, and education-had been a subject of contention in Ethiopia that can be exemplary jurisprudence on socio-economic rights.⁹⁴

The House of the Federation is entrusted with the power of interpreting the Constitution.⁹⁵ In interpreting the Constitution, the House should make clear the justiciability and enforceability of socio-economic rights before the judiciary. The judiciary cannot examine the constitutionality of public policies of the government. The NPPO –the Directive Principles imposed a duty on the state to achieve certain socio-economic goals. They are intended for guidance of the state in the making of policies to end the deprived and impoverished way of life of the citizens. Thus, the House is obliged to assure whether the policies of the state are comprehensive in realizing the socio-economic interests of the impoverished sections of the people and constitute a reasonable effort in progressively achieving the constitutional rights. Furthermore, the House, taking the approaches followed by the African Commission and the Committee on ICESCR, should pronounce and prove that socio-economic rights are justiciable rights and thus any one whose rights are violated can get remedy from the courts.

It should be borne in mind that in dealing with socio-economic rights, the courts are institutionally equipped to make the wide-ranging factual and political enquiries necessary for determining what the minimum-core

⁹⁴ The only available case is the APAP's Court Action against the Environmental Protection Authority on environmental pollution invoking the constitutional right to clean and healthy environment which is the first case ever in the history of Ethiopia in the public interest litigation. Ref No AP/3 APN/045/98, (Federal First Instance Court, instituted on March 15/2006).

⁹⁵ FDRE Constitution, 1995, article 62(1). For the detail story of empowering the House to interpret the Constitution; see A. Fisseha, (2002), supra note 91, p. 237-255.

standards called for and for deciding how public revenues should most effectively be spent in light of the NPPO. In other words, the courts have residual power of interpreting laws and the Constitution. This power emanates from two points of arguments. One relates to the courts' power of interpreting and enforcing laws. The main task of courts' is to interpret and apply the law. Some scholars argue that the House of the Federation is exclusively empowered to interpret the constitutionality of 'any federal and state laws'-the laws made by the legislative organs and thus, with the constitutional duty of courts to enforce the Constitution every small measure of enforcement unavoidably involves some kind of interpretation.⁹⁶ Moreover, Idris argues that 'any petition on the unconstitutionality of an administrative act or a decision or custom is within the judicial jurisdiction of an ordinary court'.⁹⁷ Therefore, Article 13(1) of the Constitution states that 'all...judicial organs at all levels shall have the responsibility and duty to respect and enforce' the fundamental rights and freedoms. Enforcing the fundamental rights and freedoms through courts includes its interpretation. Courts enforce laws in the way they interpret it as long as there are no contradictory and they make acceptable interpretations. In interpreting the fundamental rights and freedoms, sub-article 2 of the above provision stipulates that it should be in conformity with the principles of UDHR, International Human Rights

⁹⁶ See A. Fisseha, 'Constitutional Interpretation: The Respective Role of the Courts and the House of Federation' in *Proceedings of the Symposium on the Role of Courts in the Enforcement of the Constitution* (Ethiopian Civil Service Collage, Addis Ababa, 2001) p. 6-26.

⁹⁷ See I. Idris, (2002) 'Constitutional Adjudication under the 1994 FDRE Constitution' 1(1) *Ethiopian Law Review* 63-71; see also T. Regassa, "Courts and the Human Rights Norms in Ethiopia" in A. Fisseha (ed) *proceedings of the Symposium on the Role of Courts in the Enforcement of the Constitution* (Ethiopian Civil Service Collage, Addis Ababa, 2001).

Covenants and other International instruments adopted by Ethiopia. In other words, the way of interpretations of International and Regional Human Rights Instruments adopted by the respective Committees and Commission should be carefully considered by the House of the Federation and the Ethiopian courts in interpreting the human rights and freedoms of individuals which obviously includes socio-economic rights.

The second reason is related to the first. The Constitution under article 9(4) states that international agreements ratified by the House of Peoples' Representatives become part and parcel of the law of the land. In other words, the judiciary is empowered to respect and enforce those international human rights instruments adopted by Ethiopia. In cases of vagueness and openness of such rights, the court has to adopt the interpretations applied by the concerned body. Thus, concerning the vagueness and openness as well as the justiciability matter of socio-economic rights, the Ethiopia judiciary is required to follow the footsteps of the African Commission as well as the Committee on ICESCR.

Furthermore, although there are no sufficient laws adopted for the purpose of better implementation of socio-economic rights, the enforcement of proclamations and regulations is the regular business of courts. Thus, when socio-economic rights are provided in subsequent legislation other than the Constitution, it will be easier for courts to use such legislation and effectively enforce socio-economic rights.

6.2 Lessons for the Ethiopian Judiciary from Foreign Experiences

In the preceding sections, attempt has been made to show the role of judicial activism in the protection and enforcement of socio-economic rights in the Republic of South Africa and India. In both countries, the judiciary meaningfully contributes to the social and economic transformation of their respective societies. The liberal interpretations of the rights by the courts stimulate the legal developments that lead to translate into real changes of the lives of their poor societies. Thus, Ethiopia has a lot to learn from the achievements of South Africa and India in regard for the constitutional protection and enforcement of socio-economic rights.

The Ethiopian judiciary shall take note of the expansive construction of socio-economic rights enshrined in the international human rights instruments and the FDRE Constitution by following the footsteps of the African Commission and the Committee on ICESCR that we have noticed above. Thus, the courts have to be willing to apply the rights so as to protect the violations of socio-economic rights of the long-oppressed people. Though all socio-economic rights could not be won before the courts, the enforcement of the rights before the courts improves the lives of impoverished millions of Ethiopians and contributes to the realization of the dream of full human dignity in the country.

More is expected from all the Federal as well as Regional Courts in general and the Federal Supreme Court, in particular, in addressing the above issues. This is because of the fact that the judicial decisions

rendered by its Cassation Division serves as case law in the country.⁹⁸ Article 2(4) of Proclamation 454/2005 provides that, any interpretation of law made by the federal supreme court in its cassation jurisdiction shall be made binding on federal as well as regional councils at all levels keeping intact the instances of a different legal interpretation on the same legal point and article at some other time in the future. Thus, interpretation of any law in a case by the Cassation Division of the Federal Supreme Court amounts to enacting a law. Moreover, in dealing with socio-economic rights, the Court as well as the House of the Federation is required to apply the approaches adopted by the African Commission as well as the Committee on ICESCR. Therefore, having this mandate, the Court can follow the jurisprudence of not only the Indian and South African Courts but also of other courts that have more developed jurisprudence.

Today, the Ethiopian courts may apply the following two approaches in dealing with socio-economic rights.

6.2.1. The Violations Approach

This approach states that socio-economic rights are considered to be violated when the state fails to fulfill the minimum core obligations of the rights. The concept of ‘ minimum core’ was developed by the United Nations Committee on Economic, Social and Cultural Rights which is charged with monitoring the obligations undertaken by state parties to the

⁹⁸ The introduction of Proclamation No. 454/2005, which is adopted to amend the Federal Courts Proclamation No. 25/96, has the potential to bring judicial activism in Ethiopia, not only in socio-economic issues but also on human rights issues in general.

International Covenant on Economic, Social and Cultural Rights.

According to the Committee:

a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d'être. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligations must also take account of resource constraints applying within the country concerned. Article 2(1) obligates each State party to take the necessary steps to the maximum of its available resources. In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.⁹⁹

⁹⁹CESCR General Comment 3 (1990), para 10; See, e.g., Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, Annex, U.N. Doc. E/CN.4/1987/17 (“States parties are obligated, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all.”); Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2000/13, (“Such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties.”).

The state is required to guarantee the minimum core obligations-the survival needs of its poor people. The State has to manage its limited resources in order to address the interests of the marginalized and disempowered groups of the community. Moreover, its policy should take into consideration the interests of the people who are in need of and take reasonable measures for the realization of the rights in general and to provide relief for the poor people. The court should take into consideration of the ‘minimum core obligation’ and the ‘progressive realization’ of the rights in order to judge whether the state fails to meet the affirmative obligations. Furthermore, in the absence of adequate enjoyment of socio-economic rights, civil and political rights may not be effectively protected. Thus, the courts should also give adequate recognition for the realization of the minimum survival needs of the poor Ethiopians.

6.2.2. The Integrated Approach¹⁰⁰

Articles 83 and 84 of the FDRE Constitution deal with interpreting constitutional disputes and determining the constitutionality of federal or state laws but do not talk about the implementation of the constitutional provisions. Thus, it does not hinder courts from applying constitutional provisions in the adjudication of cases. The court will submit a legal issue to the Council of Constitutional Inquiry only if it believes that there is a

¹⁰⁰ Articles 62 (1), 83 & 84 of the FDRE Constitution stipulates that the power of interpreting the Constitution vested upon the House of Federation. Thus, in interpreting the Constitution, the House and the Council of Constitutional Inquiry should consider the interpretations of the African Charter and ICESCR. Therefore, for the better application and enforcement of socio-economic rights in the Ethiopian context, the House of Federation and the Council of Constitutional Inquiry are recommended to adopt the ‘Integral & Violated Approaches’.

need for constitutional interpretation in deciding the case.¹⁰¹ In the absence of a ‘constitutional dispute’, the mandate of the Council of Constitutional Inquiry and the House of Federation to interpret the Constitution, does not exclude courts from enforcing constitutional provisions on fundamental rights and freedoms.¹⁰² Therefore, if the court believes that the constitutional provision in question is clear, it can apply it without referral to the Council.¹⁰³ Article 13 (1) of the Constitution states the duty of the judiciary to enforce the rights enshrined in the Constitution definitely extends to applying the provisions in specific cases.¹⁰⁴

In applying the constitutional provisions for a case at hand, courts can apply the integrated approach adopted by the African Commission. In other words, the interpretations of the African Charter on socio-economic rights by the African Commission can be a basis for a full-fledged enforcement of the rights in Ethiopia. In addition, the indivisibility, interdependence and interrelatedness of civil and political rights and economic, social and cultural rights lend a great power to the courts so as to enforce complaints on socio-economic rights. The right to life is not

¹⁰¹Sisay Alemahu Yeshanew, The justiciability of Human Rights in the Federal Democratic Republic of Ethiopia. Available at: <http://ssrn.com/abstract=1530825> (accessed on 15 November, 2013), p. 7; for the better analysis on the judicial referral of constitutional disputes, see generally Takele Soboka, ‘Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to theory’, *Ethiopian Constitutional Law Series*, Vol.III, Faculty of Law (2010).

¹⁰² Ibid, p. 6-7. Article 3 (1) of the Federal Courts Proclamation which provides that, ‘federal courts shall have jurisdiction over cases arising under the Constitution, federal laws and international treaties’, shows the possibility of applying constitutional provisions in the adjudication of cases. See Federal Courts Proclamation, 15 February 1996, Article 3 (1), Proclamation 25, Negarit Gazette, 2nd Year, No. 13.

¹⁰³ Ibid.

¹⁰⁴ Id., p. 7.

only fundamental right but also basic right of an individual. The right to life which is the most basic human rights of all is a necessary prerequisite for the exercise and enjoyment of all fundamental human rights.¹⁰⁵ Without life, protection of any other right becomes meaningless.¹⁰⁶ The right to life does not only mean imposing an obligation on the state to refrain from arbitrarily depriving it but also imposes an obligation to guarantee the basic prerequisites that make life meaningful. Mengistu on his side pointed out that:

*if deprivation of the lives of millions of people through lack of access to survival requirements is not a right to life issue, we can only say that the concept and notion of the right to life in its restricted and narrow sense does not apply to more than a billion people around the globe.*¹⁰⁷

The Indian Supreme Court applied the liberal interpretation of the right to life so as to enforce the rights listed under the directive principles of state policy. The right to life, for the Indian Supreme Court, does not mean the person's mere animal existence but the right to live in a reasonable comfort and decency since it is basic and most fundamental of all the other rights. The right to life means to live with human dignity with minimum sustenance. Socio-economic rights make a man's life complete and worth living and thus form part of the right to life.¹⁰⁸

¹⁰⁵ F. Menghistu, 'The Satisfaction of Survival Requirements' 63-81, in 'THE RIGHT TO LIFE IN INTERNATIONAL LAW', (B. Ramcharan (ed.), (1985), at 63; see also Pieterse, supra note 76, at 372.

¹⁰⁶Pieterse, supra note 76, at 372.

¹⁰⁷Mengistu, supra note, at 105, at 63.

¹⁰⁸seeDeshata&Deshata, supra note 70, at 68-73.

In the Makwanyane case, the Constitutional Court of South Africa illustrates the right to life in the following way:

*The right to life was included in the constitution not simply to enshrine the right to existence. It is not life as a mere organic matter that the constitution cherishes, but the right to humane life: the right to live as a human being, to be part of a broader community, to share in the experience of humanity. This concept of human life is at the centre of our constitutional values.*¹⁰⁹

This implies that the right to life constitutes living conditions not only that permit for mere physical existence, but also what is needed to make such existence humane and dignified.

When we analyze the above approaches in the Ethiopian context, Article 13(2) of the Constitution requires that, in interpreting the Fundamental Rights and Freedoms specified in the Bill of Rights, the principles of UDHR and international human rights instruments and international instruments adopted by Ethiopia should be taken in to account. The broad interpretation of the right to life under international human rights instruments should be taken in to account when the right to life is interpreted in Ethiopia. The innovative efforts of the Supreme Court of India that have contributed for the application of the integrated approach to enforce socio-economic rights will help our judiciary in recognizing

¹⁰⁹S v Makwanyane 1995 (3) SA 391 (CC), Para 326.

socio-economic dimensions of the right to life-with a colorful and liberal interpretation of the right.

Moreover, the Government of Ethiopia is required to guarantee the minimum core obligations-the survival needs of its poor people to the extent of its available resources which includes resources from international assistances. Thus, it has to manage its limited resources in order to address the interests of the marginalized and disempowered groups of the community. Moreover, the policy of the state should consider the NPPO and the interests of the people who are in need of and take reasonable measures for the realization of the rights in general and to provide relief for the poor people. In this case, the courts should take into consideration of the policies of the state whether it is guided by the NPPO and realizing the ‘minimum core obligations’ and the ‘progressive realization’ of the rights in order to judge whether the state fails to meet the affirmative obligations. Darge argues that the objectives enunciated in chapter ten did not take away the power of the Court, hence, at least some socio-economic rights tacitly guaranteed in the ‘National policy principles and objectives’ can be made justiciable indirectly.¹¹⁰ Furthermore, in the absence of adequate enjoyment of socio-economic rights, civil and political rights may not be effectively protected. Thus, our courts can also refer to civil rights that are directly pertaining to socio-economic rights, for example, the right to health, food and clean water may be interlinked with the right to life because they are basic necessities for a life to continue. Therefore, the courts shall apply both

¹¹⁰AmsaluDarge, *The Integrated Approach: A Quest For Enhancing Justiciability Of Socio-Economic Rights Under The Ethiopian Constitution*, (December 2010, Unpublished, LL.M. Thesis, School of Law, AAU).p. 98.

the ‘violated approach’ and the liberal and expansive interpretation of the right to life for the better protection of socio-economic rights of the marginalized people and for the realization of socio-economic rights in the future Ethiopia.

7. Challenges to and Prospects for Justiciability of Socio-Economic Rights in Ethiopia

The fundamental rights and freedoms enshrined under Chapter III of the Constitution are justiciable rights. Though vaguely crafted as part of the fundamental rights and freedoms, socio-economic rights are presumed to be justiciable rights. However, the listing of the rights in the NPPO-as Directive Principles of State Policy-creates confusion among legal scholars and even among the federal judges as to the justiciability of socio-economic rights enshrined as the fundamental rights in the Constitution.¹¹¹ Furthermore, in the current situation, all courts of the country are not equally well-equipped to adjudicate the complaints on the violations of socio-economic rights invoking the rights enshrined in the Constitution. Thus, the limitations in adjudicating socio-economic rights revolve around problems of attitude as well as the institutional legitimacy and normative frameworks of the country.

Socio-economic rights were not considered legal rights in relation to their applicability.¹¹² They are legally negligible and unenforceable rights

¹¹¹ See, AmareTesfaye, “Justiciability of Socio-economic Rights in the Federal Democratic Republic of Ethiopia” (December 2010, Unpublished, LL.M. Thesis, School of Law, AAU).

¹¹² Interviews with two Federal High Court judges, and one other former Federal High Court Judge, October 3 and 4, 2010.

before the judiciary.¹¹³ The implementation of the rights is considered as by the goodwill of the political institutions rather than by the judiciary.¹¹⁴ However, the courts should take cognizance of the indivisibility of all human rights and the changing circumstances in adjudicating socio-economic rights in the international arena and in some countries which have strong and developed judiciary and jurisprudence.

The attitude on the inclusion of socio-economic rights in the NPPO is considered to preclude the judiciary from enforcing the rights and the judiciary is not constitutionally empowered to examine the reasonableness of the state's policies.¹¹⁵ However, it should be changed with the change of laws and practices on socio-economic rights in the international arena. Otherwise, this will continue to be a setback to a full-fledged enforcement of socio-economic rights and examining the state's programs on socio-economic rights; whether the policies are targeted towards the goals stipulated under the NPPO; and whether the measures taken by the government is reasonable in realizing the rights. The

¹¹³Ibid.

¹¹⁴Ibid.

¹¹⁵ Ibid; see SisayBogaleKibret, Competence and Legitimacy of Ethiopian Courts on the Adjudication of Socio-Economic Rights: Appraisals on Challenges and Prospects, December 2010, Unpublished, LL.M. Thesis, School of Law, AAU), p. 72-73. Kibret further states that according to Ato MenberetsehayTadesse and few others socio-economic rights are not justiciable and are not appropriate to the judiciary hence are not capable of appearing before courts pursuant to art 37 of the FDRE Constitution. For them the judiciary should not be taken as solution for socio-economic aspects of individuals. On the other side most of the judges (10 out of 13) believe that courts are appropriate fora for the enforcement of socio-economic rights. Judges on this side have the stand that the rights are perfectly justiciable and what lacks according to them is a committed judiciary that can properly apply the rights under consideration. They also noted that the legal environments and practical challenges shall be considered for proper application. However, most of the interviewed judges concluded that socio-economic rights do not actually get the protections they deserve under the constitution and other international human rights instruments which Ethiopia ratifies.

judiciary must strive to do what is expected of it sharing the experiences of its counterpart that have developed jurisprudence.

Furthermore, the judiciary must encourage persons to lodge complaints on socio-economic rights without the need to show vested interest. The FDRE Constitution (art 37) and the Civil Procedure Code (arts 33 and 38) do not really allow the *public interest litigation*. Thus, the courts are strictly applying the stringent rules provided under the civil procedure code of 1965.¹¹⁶ The FDRE Constitution under article 37 gives the right to an individual or group of persons to bring a justiciable matter to a judicial or quasi-judicial body. However, it requires the person to be a member of the affected group or an association representing the interests of its members. Even where the person is interested in the case, s/he needs to be authorized by the people on whose behalf she takes the case. In the same fashion, the civil procedure code requires the representation in civil cases.¹¹⁷

In India, Public Interest Litigation (PIL) was initiated and devised by the judges of the Supreme Court so as to enable any public spirited person to easily access the judiciary representing the vast majority of impoverished, deprived and underprivileged sections of the society to

¹¹⁶ The Civil Procedure Code of Ethiopia, 1965, articles 33 and 38, both of them requires the complainant to show vested interest in a case. Art 33 (2) of the same code states that 'No person may be a plaintiff unless he has a vested interest in the subject-matter of the suit'. Article 38 (1) states that 'Where several persons have the same interest in a suit, one or more of such persons may sue or be sued or may be authorized by the court to defend on behalf or for the benefit of all persons so interested on satisfying the court that all persons so interested agree to be so represented'.

¹¹⁷ Ibid.

achieve social justice.¹¹⁸ In Ethiopia, this kind of trend should be developed by the judiciary, different associations and legal experts. Any Ethiopian who seeks to defend the general interests and rights of the society-including socio-economic rights-and who fulfills the requirements specified under article 10 of the Federal Courts' Advocates Licensing and Registration Proclamation can render advocacy service.¹¹⁹ However, there is no developed jurisprudence on public interest litigation except the APAP's Court action against the Federal Environmental Protection Authority. This was allowed due to the availability of the public interest litigation under article 11(1) of the Environmental pollution control proclamation No. 300/2002. In other cases, the public spirited persons are required to show vested interest to institute a court case. Therefore, any public spirited person who needs to institute court action for the violations of the socio-economic rights of the vast majority of Ethiopians could not be allowed to do so by the judiciary.

¹¹⁸ For general discussion on the PIL in India, see U. Baxi, *'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India'*, in J. Kapur, (ed.) "SUPREME COURT ON PUBLIC INTEREST LITIGATION" Vol. I, (1998), (Delhi); S. Muralidhar, *'Judicial Enforcement of Economic and Social Rights: the Indian Scenario'*, 237 in F. Coomans (ed.), *'Justiciability of Economic and Social Rights: Experiences from Domestic Systems'*, ((2006), Intersentia, Antwerp-Oxford).

¹¹⁹ Article 10 of the Federal Courts Advocates Licensing and Registration Proclamation no. 2000 provides that any Ethiopian who defends the general interests and rights of society will be issued with a Federal Court Special Advocacy License, provided that the person should be holder of a degree in law from a legally-recognized educational institution, know the basic Ethiopian laws and have five years working experience. See also The Ethiopian Human Rights Commission Establishing Proclamation, 2000, Proclamation No. 210, NegaritGazeta, 6th Year, No. 40 and the Institution of the Ombudsman Establishing Proclamation, 2000, Proclamation No. 211, NegaritGazeta, 6th Year, No. Article 22 (1); the Environmental Pollution Control Proclamation, 2002, Article 11, Proclamation No. 300, NegaritGazeta, 9th Year, No. 12 (stipulates that, any person, without a need to show a vested interest, can lodge a complaint to the Environmental Authority or the relevant Regional Environmental Agency against any person causing actual or potential damage to the environment. This right is extended up to bringing the case to the relevant court).

Thus, this trend should be changed by the active roles of the judiciary and lawyers who are concerned for the better protection of the rights of marginalized and impoverished groups of the peoples. Furthermore, the vast majority of impoverished and deprived sections of the community have a right to legal aid. This right will at least be guaranteed in our country when the rules and attitudes on public interest litigation is changed and widely practiced equally by the judiciary as well as lawyers of the country. Therefore, in matters of public interest litigation, the court shall not deny standing to genuine and *bond fide* litigant even when s/he has no personal interest in the matter where the judiciary can provide an effective remedy. Thus, this enlightened approach will enable civil society groups to take up the cases of vulnerable and marginalized groups and individuals.

Concerning the institutional legitimacy of judicial review,¹²⁰ the judiciary does not have the last word with respect to constitutional matters. This power is vested upon the upper house-the House of the Federation. Thus the judiciary does not have the power to reverse, modify or nullifying legislation. This will hinder the judiciary for the full-fledged enforcement of socio-economic rights. However, courts are not excluded from enforcing constitutional provisions as long as it does not constitute 'constitutional dispute'. Thus, the judiciary, to the maximum of its efforts, must endeavor to enforce the claims on violations of socio-economic rights of the vast majority of impoverished Ethiopians so as to make the lives of these communities meaningful and dignified.

¹²⁰ For a detail discussion on the vested rights of courts' judicial review; see T. Regassa, (2001) *supra* note 97.

The establishment of the Ethiopian Human Rights Commission is a major progress for the protection and promotion of human rights in Ethiopia which is the core mission of the Commission.¹²¹ As a national human rights institution, there is similarity on the mandates of the Commission and the activities that should be undertaken by the National Human Rights Institutions listed under the General Comment of the Committee on ICESCR.¹²² The General Comment states that it is essential to give due attention to ESCRs in all of the relevant activities of NHRIs. The major activities include:

- a) *the promotion of educational and informational programmes designed to enhance awareness and understanding of economic, social and cultural rights both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labor movement;*
- b) *The scrutinizing of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the ICESCR;*
- c) *The provision of technical advice or by undertaking surveys in relation to economic, social and cultural rights, including when requested by public authorities or other appropriate agencies;*

¹²¹ Proclamation No. 210/2000, Ethiopian Human Rights Commission Establishment Proclamation, Negarit Gazette 6th Year, no 40, Addis Ababa 4th July, 2000. The powers and duties of the Commission are listed under article 6 of the establishment proclamation.

¹²² *The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights*, General Comment No. 10, U.N. ESCOR, Comm. on Econ., Soc. & Cult. Rts. 19th Sess., U.N. Doc. E/C.12/1998/25 (1998).

d) The identification of benchmarks at the national level against which the realization of ICESCR obligations can be measured;

e) conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realized, either within the country as a whole or in areas or in relation to communities that are particularly vulnerable;

f) Monitoring compliance with specific rights and providing reports to the public authorities and civil society; and

g) Examining complaints alleging violations of applicable economic, social and cultural rights standards within the state.

The Commission is also empowered to undertake investigations on violations of human rights upon complaints or by its own initiation.¹²³

Thus, it can address the violations of socio-economic rights of the mass impoverished people.

8. Conclusion and Recommendations

The justiciability and judicial enforcement of socio-economic rights have been changed through time. The Committee on ICESCR is empowered to receive communications on violations of socio-economic rights. The African Commission on Human and Peoples' Rights applied the integrated and the violations approach in enforcing socio-economic

¹²³Proclamation No. 210/2000, article 6(4).

rights. The Constitutional Court of South Africa rectifies the violations of socio-economic rights. The Indian Supreme Court, though there is an express provision that excludes the court from enforcing socio-economic rights, through applying the integrated approach, enforces the socio-economic rights.

A sizeable number of the Ethiopian population live in poverty and is suffering from tremendous socio-economic hardships. Furthermore, economic, social and cultural rights are vaguely incorporated under the recent Constitution. Moreover, the Constitution provides policy guidelines that the state should follow to reduce or if possible to eliminate the destitute lives of the people. However, socio-economic rights enshrined in the FDRE constitution are phrased in a way that the rights could not be enforced before the judiciary. This problem should be resolved by adopting the approaches followed by the Committee on ICESCR and the African Commission. Furthermore, in India, though the rights are expressly unenforceable before the courts, the Indian Supreme Court integrated socio-economic rights in to the right to dignified life. The constitutional and political development of India with regard to the relationship between fundamental rights and freedoms-Bill of Rights- and Directive Principles of State Policy offers interesting lessons for Ethiopia. To sum up, the innovative efforts of the Supreme Court of India have contributed to the application of the integrated approach to enforce socio-economic rights. The Court has recognized socio-economic dimensions of the right to life-with a colorful and liberal interpretation of the right. Thus, the judiciary has given teeth to socio-economic rights

listed under the directive principles of state policy.¹²⁴ Thus, our judiciary has to learn much from the experiences of India and other countries so as to make the life of our impoverished, deprived and marginalized people meaningful.

Moreover, the deprived and impoverished sections of the people do not know the scope of their rights and the obligations of the state. During the violations of their rights, they do not believe that their rights are violated. They only expect remedies from the government that satisfy their interests rather than taking the matters to the attention of the judiciary. Therefore, awareness creation on the fundamental constitutional rights of the mass, the obligations of the state under the constitution and international human rights instruments and the impacts of enforcing them should be undertaken by the legal experts, including judges and lawyers and other stakeholder institutions such as Ethiopian Bar Association and Ethiopian Women Lawyers' Association. Finally, much is also expected from the Ethiopian Human Rights Commission to ensure the implementation of the constitutionally guaranteed rights of the citizens. Socio-economic rights have been given less attention by the government. The Commission, which is Government Human Rights Commission, must give equal attention in addressing the violations of civil and political rights and socio-economic rights. The role of the Commission in addressing the violations of any human right must be different from that of other governmental institutions. Much is expected from the Commission; it can contribute a lot to the realization of socio-economic rights, which is fundamental to fully exercise civil and political rights.

¹²⁴ M. Pieterse, *supra* note 76, at 375.