

***The Right to Housing in Ethiopia
Legal Framework***

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I hereby declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rule of citation

Name.....

Signed.....

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Abbreviations

1. **UDHR** = Universal Declaration of Human Rights.
2. **ICESCR** = International Covenant of Economic, Social and Cultural Rights
3. **CEDAW** = Convention on Elimination of Discrimination Against women.
4. **CRC** = The convention on the Rights of the child
5. **ACHPR** = African charter on Human and people's Rights
6. **FDRE** = Federal Democratic Republic of Ethiopia
7. **TGE** = Transitional Government of Ethiopia.
8. **SERAC** = Social Economic Rights Action Center
9. **APAP** = Action Professional's Association for the people)

Introduction

“Housing forms an indispensable part of ensuring human dignity. “Adequate housing” encompasses more than just the four walls of a room and a roof over one’s head, Housing is essential for normal healthy living. It fulfils deep seated psychological needs for privacy and personal space; physical needs for security and protection from inclement weather, and social needs for basic gathering points where important relationships are forged and natured. In many societies, relationships are forged and nurtured. In many societies, a house also serves an important function as an economic center where essential commercial activities are performed.”¹

“Despite global recognition of the importance of housing to human welfare and survival, it is estimated that over one billion people live in inadequate housing while over 100 million people are homeless.”² Governments claim lack of capacity and resources to the implementation programs and to undertake reforms aimed at creating the conditions for expanding access to housing. The right to adequate housing therefore provides a unique paradigm for monitoring the steps taken by states towards the provision of housing though citizen’s demands and insistence upon the fulfillment of this basic human rights.

Taking all the facts discussed above, the Research paper tries to explore, elaborate and assess the legal framework for the implementation of the right to housing in Ethiopia. The major aim of this paper is to discuss the obligation of Ethiopia related to the right to housing with regard to relevant international, regional and domestic instruments and

¹ [www1.Umn.edu/humanrts/edumat/HRIP/Circle/modules/modules 13. htm](http://www1.Umn.edu/humanrts/edumat/HRIP/Circle/modules/modules%2013.htm).

² ICESCR General Comment No 4 “The Right to Adequate Housing” Page 169

assesses the implementation by government. It also identified actual and potential legal challenges and constraints in the implementation of the right to housing in Ethiopia.

This paper is mainly concerned with finding out workable solutions for the current housing situation. The significance of the study is to show the legal Framework of the right to housing in Ethiopia. Under these to assesses the legal Challenging area of housing and to show mainly the government obligations. So that it may contribute its own share regarding the application of some workable solutions to the existing problem. In addition, the paper might serve as a reference material to researchers who want to conduct further study in this area. It is beyond this paper discussing the entire housing issue but it limited to the elaboration and evaluation of treaties and laws.

This Research paper is classified into three main chapters. The first chapter deals with basic principles of International, Regional and Domestic standards of the right to adequate housing. The second chapter deals with the justiciability of the rights to housing, as part of ESC rights, by looking at international and regional instruments Ethiopia has ratified and the work of their treaty monitoring bodies and the provisions of the country's constitution and some legislations. The last part discusses the legal framework for the protection of the right to housing in Ethiopia, respectively, by analyzing pertinent national laws and documents.

CHAPTER ONE

1. INTERNATIONAL, REGIONAL STANDARDS AND ETHIOPIA CONDITION

Some argue that home ownership is not an innate need, like the need for food or clothing. But people need shelter, and a right to shelter is one of basic human right. In the developing world, people need basic, safe, sound shelter (wall, roof, windows, plumbing, access to clean water).

1.1 International Standards

The right to Adequate Housing is founded and recognized under international law. The right to Adequate Housing also known as the human right to adequate Housing, the right to housing, housing rights, and the right to one's home, the right to shelter, land rights, livelihood right and the right to the city is clearly set out in international instruments.³ Article 25.1 of the Universal Declaration of Human Rights thus Proclaims that:-⁴

“Every one has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social service, and the right to security in the events of unemployment, sickness, disability, Widow hood, old age or other lack of livelihood in circumstances beyond his control.”

The International covenant on Economic, Social and Cultural rights has been ratified or acceded to by more than 108 states. This text contains perhaps the most significant foundation of the right to housing found in

³ “Compilation of Discussion paper on Economic, Social and Cultural Rights” presented by APAP 2005.

⁴ Universal Declaration of Human Right (1949) Article 25(1)

the entire body of legal principles which comprise international human rights law.⁵ Article 11 sub 1 of the covenant declares that.⁶

“States parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate. . . housing and to the continuous improvement of living conditions.”

The human right to Adequate housing, which is thus derived from the right to an Adequate standard of living, is of central importance for the enjoyment of an Economic, Social and Cultural rights.

There are several non-binding Declaration, Resolutions and Recommendations by the UN and its specialized agencies related to housing as a human right.⁷

- ❖ Declaration on social progress and Development (1969) part II article 10
- ❖ Declaration on the Right of Disabled persons (1975) article 9.
- ❖ Vancouver Declaration on Human Settlements (1976) Section III (8)
- ❖ International labour organization. (ILO) Recommendation No 115(1961) Principle 2.
- ❖ Declaration on the Right to Development (1986) Article 8(1)
- ❖ UN Sub-commission on the prevention of Discriminating and protection of minorities resolution 1994/8 an “Children and the Right to Adequate Housing” adopted 23 August 1994.
- ❖ UN commission on Human Settlement resolution 1461 on “The Human Right to Adequate Housing” adopted 5 may 1993.
- ❖ UN commission on Human right resolution 1993/77 on “Forced Evictions” adopted on 10 March 1993.
- ❖ UN General Assembly resolution 46/146 on the “Realization of the Right to a Adequate Housing”, Adopted 7 December 1987 which” reiterates the need to take, at the national and international levels, measures to promote the right of all persons

⁵ “The Human Right to Adequate Housing” Fact Sheet No. 21.

⁶ International covenant on Economic, social and cultural Rights, (1966) Article 11(1)

⁷ Id

to an adequate standard of living for themselves and their families, including adequate housing and calls upon an states and international organizations concerned to pay special attention to the realization of the right to Adequate housing in caring out measures to develop national shelter strategies and settlement improvement programmes with the from work of the Global strategy for shelter to the year 2000.”

Similar provision on the right to adequate housing are contained in the convention on the Elimination of all forms of Racial Discriminating, the convention on the Elimination, of Discrimination Against Women, the Convention on the Right to the Child, the international convention on the Suppression and punishment of the Crime of Apartheids, and the international convention Relating to the status of Refugees.

The right to access to shelter includes the following indivisible, interdependent and inter related human rights:⁸

- ❖ The human right to adequate shelter.
- ❖ The Human right to an adequate standard of living.
- ❖ The Human right to access to safe drinking water and sanitation.
- ❖ The human right to the highest attainable standard of physical and mental health.
- ❖ The human right to a safe and healthy environment.
- ❖ The human right to the child to an environment appropriate for physical and mental development.
- ❖ The human right to access to resources, including energy for cooking, heating, and lighting.
- ❖ The human right of access to basic services, schools, transportation and employment options.
- ❖ The human right to affordability in housing so that other basic needs are not threatened or compromised.

⁸ Id

- ❖ The human right to freedom from discrimination in access to housing and related services based on sex, race or any other status.
- ❖ The human right to choose one's residence, to determine where and how to live and to freedom of movement.
- ❖ The human right to freedom from arbitrary interference with one's privacy, family or home.
- ❖ The human right to security, including legal security of tenure.
- ❖ The human right to protection from forced evictions and the destruction or demolition of one's home including in situation of military occupation, international and civil armed conflict, establishment and construction of alien settlements, population transfer, and development projects.
- ❖ The human right to equal protection of the law and judicial remedies for the redress of violations of the human right to adequate housing.

1.2 Regional Standards

Several regional human rights instruments also guarantee to every individual the right to adequate housing under the charter of the organization of American states (OAS) Article 31(K) "member states agree to dedicate every effort to achieve. . . Adequate housing for all sectors to the population."⁹ The European social charter, the European convention on human right and fundamental freedoms, the European convention on the legal status of migrant workers, the Resolution on shelter for the Homeless in the European community and the Final Act of Helsinki an, contain express provision and references to the right to Adequate housing.

The African charter an human and peoples rights makes no specific mention of the right to adequate housing. However, other provisions such as the right to life (Article 4) and the right to physical and mental

⁹ Organization of American states (OAS) Article 31(K)

health (Article 16) arguably provides a basis for the assertion of the right to housing.¹⁰

1.3 The Right to housing and Ethiopian Constitution and other laws.

Many national constitutions and municipal laws in an increasing number of states around the world now embody express or implied provisions on the right to Adequate housing.¹¹

In the 1995 Constitution of the Federal Democratic Republic of Ethiopia, the right to housing has not been expressed clearly. However, the right can be derived from the provision of article 41 of the constitution. While it imposes the obligation to allocate ever increasing resources to provide social service, which include housing services, it gives there right to equal access to such services to every Ethiopian national. The obligation to allocate resources, within available means, to provide rehabilitation and assistance to the disabled, the aged, and to orphan children under sub (5) of the same article may also require the state to provide housing service to these group of people. Moreover, article 90(1) say that “To the extension country’s resource permit, policies shall aim to provide an Ethiopians access to public health, education, clean water, housing, food and social security.”¹² That requires that there be a social policy aiming at the provision of access to housing to all Ethiopians as far as the country’s resources permit. It also argued that the realization of same other rights guaranteed by the constitution like the right to life, privacy, health and equality, require that the right to housing be respected.

Article 9(4) of the Constitution provides that all international agreements ratified by Ethiopia are an integral part of the law of the

¹⁰ African charter on human and people’s Right Adopted by the eighteenth assembly of Heads of state and Government, June 1981-Nairobi, Kenya.

¹¹ www1.Umn.edu/humanrts/edumat/IHRIP/Circle/Modules/module13-htm.

¹² FDRE constitution, proclamation No 1/1995.

land.¹³ This means that the relevant provisions of instruments like the ICESCR, IEDAW, CRC and ACHPR, with the standard of reorganization, they give to the right to housing, are part of the laws of Ethiopia. Article 13(2) further requires that the articles of the Constitution guarantying the right to housing be Interpreted in a manner conforming to the relevant principles of the UDHR, and the instruments listed here in before.

1.4 The essence of the right to adequate housing

The right to housing guarantees to all people the right to live in security, peace and dignity.¹⁴ It involves more than the right to access to shelter. Decent, affordable housing can be a key stepping stone to overcoming poverty, on a world wide scale, the needs of humanity are broad; clean water, food security, healthcare, education, employment etc.

The UN estimated that over one billion people live in adequate housing while over 100 million peoples are homeless.¹⁵ This need for housing can slow progress in other area, thus compromising a family's quantity of life, while acknowledging that social, in part, determine adequating. General comments identifies the following 7 aspects that form integral components of the right to housing.¹⁶

a. Legal Security of Tenure: Takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease owner-occupation, emergency housing and informal settlements, including occupation of landlord property, notwithstanding the type of tenure, all persons should posses a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure up on those persons and house holds currently lacking such protection, in genuine consultation with affected persons and groups;

¹³ FDRE constitution, proclamation No 1/1995

¹⁴ "Compilation of Discussion paper on Economic, social and cultural Rights" presented by APAP 2005. page 48

¹⁵ ICESCR General comment No 4 "The right to Adequate Housing". Page 169

¹⁶ ICESCR General comment No 4 "The right to adequate housing." Page 165-166.

b. Availability of Services, materials, facilities and infrastructure:

An adequate house must contain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

c. Affordability: personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by states parties to ensure that the percentage of housing related costs is, in general, commensurate, with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principles of affordability, tenants should be protected by appropriate means against un reasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by states parties to ensure the availability of such materials.

d. Habitability: Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The committee encourages states parties to comprehensively apply the health principles of housing prepared by who which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analysis; i.e inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

e. Accessibility: Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable

access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill victims of natural disasters, people living in disaster prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully in to account the special housing needs to these groups. Within some member states of the Federal Democratic Republic parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right to an to a secure place to live in peace and dignity, including access to land as an entitlement;

f. Location: Adequate housing must be in a location which allows access to employment options, health care services, schools, child-care centers and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands up on the budgets of poor households similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.

g. Cultural Adequacy: The way housing is constructed, the building materials used the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

1.4.1 The right to adequate housing and obligations of states.

State obligations vis-à-vis the right to adequate housing are frequently misunderstood.¹⁷ The complex nature of housing and the growing prominence of human rights within international relations and law, has led certain commentators to equate a recognition of housing rights with the immediate duty of governments to substantively provide a house to any one who requests it to do so. This inaccurate understanding of the meaning of housing rights, however, reflects neither general state practice nor the definitive interpretations given this right. For instance, the final report of the special Rapporteur of the sub-commission in 1995 provides guidance into how the right to adequate housing should be approached by firmly stating that this right should not be taken to imply: ¹⁸

- a) That the state is required to build housing for the entire populations;
- b) That housing is to be provided free of charge by the state to all who request its;
- c) That the state must necessarily fulfill all aspects of this right immediately upon assuming duties to do so;
- d) That the state should exclusively entrust either itself or the unregulated market to ensuring this right to all, or
- e) That this right will manifest itself in precisely the same manner in an circumstances and locations.

Conversely, in determining the legal implications these rights, the Rapporteur notes that recognition of housing rights must be sense and interpreted in the most general sense, to imply:¹⁹

- a) That once such obligations have been formally accepted, the state will endeavor by all appropriate means possible to ensure

¹⁷ www1.Umn.edu/humanrts/edumat/IHRIP/circle/modules/module13.htm.

¹⁸ Id

¹⁹ Id

everyone has access to housing resources adequate for health, well-being and security, consistent with other human rights;

- b) That a claim or demand can be made upon society for the provision of or access to housing resources should a person be homeless, in adequately housed or generally incapable of acquiring the bundle of entitlements implicitly linked with housing rights, and
- c) That the state, directly upon assuming legal obligations, will undertake a series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right in question.

States are generally not obliged to construct houses for everyone who requests. However, under certain circumstances the state is legally required to provide particular persons or groups of persons with housing in an expedient manner.²⁰ The important point, however, is that the primary duty of the states bound by similar legal obligation is to create conditions so that all residents may benefit from and enjoy in full the entitlements implied in the right to housing, within the shortest possible time frame.

The essential elements of the state's obligation to implement all ESC rights (including the right to adequate housing) are enshrined under article 2(1).²¹ In addition, article 2(2) of the covenant prohibits discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

²⁰ "Compilation of Discussion paper on Economic, social and cultural Rights" presented by APAP 2005. page 51

²¹ International covenant on economic social and cultural rights (1966).

1.4.2 Content of Article 11 of the ICESCR the Right to Adequate Housing

The ICESCR in its section adopted a detail General comment in article 11(1) of the covenant dealing with the right to adequate housing.²² The article recognize the right to every one to adequate standard of living for him self and his family, including adequate food, clothing, and housing and to the continuous improvement, of living conditions. The human right to adequate housing, which is derived form, the right to an adequate standard of living is of most important of the enjoyment of an economic, social and cultural rights.

In order to clearly the meaning and scope of the right to housing as expressed in the convenient, in 1991 the committee an economic, social and cultural Rights (CESCR). The body that monitors the international covenant on Economic, social and cultural right issued it General comment.

The right to adequate housing applies to everyone. The phrase “him self and his family” does not refer to “any limitation in the right to housing to individuals, female headed house hold or other groups. Further more, individuals, as well as families, are entitled housing regardless of age, economic status, group or other affiliation or status, and enjoyment of this right must. . . not be subject to any form of discrimination.”²³ The right to adequate housing is thus derived from the right to an adequate standard of living is of central importance for the enjoyment of all economic, social and cultural rights.

The international community frequently reaffirmed the important of full respect of the right to adequate housing, there remain disturbingly large gap between the standards set in article 11(2) of the convenient and the situational prevailing in many part of the world. However, problems are

²² ICESCR General comment No. 4 the right to adequate housing (art, 11 covenant) (Six session 1991) completion of General comment and General recommendations adopted by HRS. treaty bodies UN DOCHR/GEN/1Rev.1/ at 53(1994)

²³ General comment No. 4 the right to adequate housing (Adopted 12 December 1991) by the committee on Economic, social and cultural Rights.

often particularly acute in some worst areas, which confront major resources, and other constraints. Homelessness and inadequate housing problems are yet not solved even in developed countries. The UN estimates that there are over 100 million people homeless world wide and one billion inadequately housed.²⁴ There is a tendency of increasing this number in world wide and the number is increasing in developing countries.

1.4.3 The interrelationship between the right to housing and other rights.

At first glance, it might seem universal that a subject such as housing would constitute an issue of human rights. However, a closer look at international and national laws, as well as the significance of a secure place to live for human dignity, physical and mental health and overall quality of life, begins to reveal some of the human rights implications of housing. The ICESCR noted that “the full enjoyment of other rights. Such as the right to freedom of expression, the right to freedom of association, the right to freedom of residence and the right to participate in public decision making is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence constitutes a very important dimension, in defining the right to adequate housing.”²⁵ The Right to housing is linked to other fundamental human rights and should be seen as referring to not only housing by adequate housing. The right to adequate housing must be viewed in conjunction with other human rights including in the two international covenants and other international instruments.

1.4.4 Holders of the Right to Housing

The ICESCR categorically stated that the right to housing applies to every one. It clarified that the term “himself and his family” does not

²⁴ ICESCR General comment No. 4. “The right to adequate housing (Article 11(1), 13/12/91

²⁰ www1.umn.edu/humanrts/edmat/IHRIP/circle/modules/module13.htm.

impose any limitation upon the applicability of the right to individuals or to female headed households or other such groups. Thus, the concept of “Family” must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such as factors. In particular, enjoyment of this rights. Must . . . not subject to any form discrimination.²⁶

1.4.5 Scope of the right to housing

The right to housing should not be interpreted in a narrow or restrictive sense, but should be seen as the right to live.²⁷ Some where in security, peace and dignity. It should be ensured to all persons irrespective of income or access to economic resource. The reference in article 11(1) must be read as referring not just to housing, but to adequate housing.²⁸

²⁶ General comment No 4 on the right to adequate housing Adopted on 12 December 1991 by the Committee on Economic, social and cultural rights.

²⁷ Id.

²⁸ International covenant on Economic, social and cultural rights. (1966)

CHAPTER TWO

JUSTICIABILITY OF THE RIGHT TO HOUSING IN ETHIOPIA: INTERNATIONAL AND DOMESTIC PERSPECTIVES

This chapter mainly grapples with the issue of justiciability of ESC right in general and the right to housing in particular. Justiciability to a right implies something about the claim (or petition), about the setting in which it may be resolved, and the consequences of successfully invoking it considering that the claim must be based on the alleged infringement of subjective right (invoked by an individual or collectively), the scope of the right and the related obligations of states becomes relevant. The protection of the rights in domestic legal systems is also discussed. Justiciability or rights does also require the existence of mechanism of “Judicial Review” the claim (or petition) has to be determined by a Judicial body, or quasi-judicial body sharing the main features of court. The Ethiopian constitution is visited in an effort to identify the existence of this mechanism for the protection of the rights to housing. Finally, the issue of standing to litigate cases arising from the violation of the ESC right in Ethiopia is discussed as a factor affecting the justiciability of the right.

2.1 Justiciability of Economic social and cultural Rights

Justiciability normally means two things. First, the ability of apply a certain law to a certain situation. Secondly, the right of a person (or entity) to request that the court make such a ruling. This latter right is often called the right to have standing before the court or other similar body.²⁹ On the other hand some scholars limit that is, “Justiciability” is the capacity of courts or tribunals to enforce the right in question, that

²⁹ <http://www.cohre.org/> Store/attachments/COHRE % 20 Training % 20 THE 20 JUSTICIABILITY % 20. of % 20 Esc % RIGHTS.doc.

justiciability is a jurisdictional issue.³⁰ Institutional approach to justiciability. This approach concentrates on the existence of judicial review procedure and at the international level, makes the existence of an individual communications procedure a “Sin Qua non”. It is equally argued that justiciability relates to the essence, content and scope of the rights concerned the content the right approach.³¹ Justiciability is further taken as a question of whether ESC right are “Capability of being decided by legal principles or by a court of justice.”³² Capability, as used in the last definition, means that the way the provisions which enshrine the rights are carved matters, and hence justiciability is an issue of both jurisdiction and content of rights.

It is important to see whether it is enough that rights can be invoked before a certain judicial or quasi-judicial organs.³³ The organ before which the rights are invoked should really be able to give binding decisions and there is a need for mechanism of enforcement of judgments. It should not be enough that a treaty body or a judicial organ finds the violation of the right (makes recommendations) and stop there³⁴ justiciability should, however, be distinguished from the implementation of a court’s or judicial organ decision. True, judicial organs retains a role to “enforce” the remedy contained in the decision, should the remedy not be implemented. Nevertheless, all rights that have been made justiciability are not enforced. The lack of enforcement at the international level has led same to questions the justiciability of rights at that level. But implementation or enforcement is different from justiciability. In a sentence, a lack of implementation does not negate the

³⁰ Mcrallen, “The justiciability of Economic, Social and cultural rights,” seminar paper presented in the institute for Hunan Rights. ABO Academy university. Turku/Finland. December 2004.

³¹ OJ olawu, implementing Economic, social and cultural Rights in Africa, an integrative Rights, based on Approach to Human Development, Doctriat Thesis, Noter Dame law of School (2004) page 39.

³² Human Right resource center, Ripple in still water: Reflections by Activists on local and National level work on Economic, social’ and cultural right, chapter, available at <[http://: www1.UmN.edu/humanity/edumat/IHRIP/ripple/chapter/. Htm](http://www1.UmN.edu/humanity/edumat/IHRIP/ripple/chapter/.Htm) 1#justiciable.

³³ Justiciability of economic, and Social Rights: Experience from domestic systems By: fons coomans. Antwerpen, Intersentia 2006, page 4.5

³⁴ For instance, the African commission on Human and people’s Rights just passes recommendations for the action which need to be taken by states and its decision lack enforcement mechanism. The newly established African court an Human and people’s Right may help avoid this problem and give ESC Rights the institutional aspect of justiciability when it become Operational.

justiciability of rights-it rather underlines the necessity to make implementation, too, justifiable.

Be that as it may, there are many challenges against judicial enforcement of ESC rights. In the first place, most ESC rights entail positive duties,³⁵ for the enforcement of which, it is argued, courts are not well placed. The basic challenges are based on the domestic Legitimacy of Judicial review, questioning the propriety of deciding on budgetary allocations by unelected judges, and the institutional competence of courts to review policy and budgetary issues. In relation to the latter, it is argued that there may be a range of appropriate policy solutions to realize a particular socio-economic right and judges are not equipped to decide which is most suited.³⁶ There are also problems of defining what must be provided, timing of provision of goods and services/immediately, progressively etc/. Prioritization of the groups to be catered for,³⁷ and deciding the appropriately remedies in each particular case.

However, the argument questioning the legitimacy of courts is based on a rigid and formulistic concept of the doctrine of separation of powers as many civil and political rights such as the right to vote, equality, freedom of speech and a fair trials also involved questions of social policy and have budgetary implementation.³⁸ The CESCR commented in the same connection that putting ESC rights beyond the reach of courts would be incompatible with the principle that all human rights are indivisible and interdependent, and would drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged group in society.³⁹ It is, therefore, now a matter of

³⁵ It should, however be noted that there are negative aspects of ESC rights as can be exemplified by the right against forced eviction.

³⁶ "The Right to adequate Housing and international treaties, specially forced eviction:" APAP seminar paper. Page 8

³⁷ The litigants before the court may not be the social group most in need, but the ones with the sharpest elbows.

³⁸ S.L.Kiebenberg "The protection of Economic, and Social Right in Domestic legal systems" (N.A Eide etal (eds), Economic, Social and cultural Rights: A text book (2001)

³⁹ General comment No 9 page 10

general consequences that there should be judicial or quasi-judicial enforcement of ESC Rights.

Monitoring bodies have worked out mechanisms of enforcing ESC rights by adapted deferent tests of compliance with the obligations imposed by the respective instruments the implementation of which they are established to oversee. The two models of reviewing ESC rights obligations now widely recognized are the minimum core test of the CESCR and the reasonableness test of the South African constitutional court.

The CESCR is of the view that a minimum core obligation to ensure that satisfaction of, at the very list, minimum essential levels of each of the rights is incumbent upon every state party.⁴⁰ It gave the example that 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.⁴¹ In order for a state party to be able to attribute its failure to meet 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 all effort to satisfy as a mater of priority, those minimum obligations.⁴²

The South African constitution court rejected the idea of directly justiciable “minimum core obligation based mainly on three reasons: that needs and opportunities for enjoyment of the minimum core very and are diverse, that course are not well placed” “to make the wide ranging factual and political enquires” necessary for determine that the

⁴⁰ General comment No. 3 page 10

⁴¹ Ibid

⁴² Ibid, while both general comment No. 14 and 15 of the CESCR define minimum core obligations with respect to the rights they elaborate, it is stated under paragraph 47 or general comment No 14 that “. . . a stat party cannot under any circumstances what so ever, justify its non-compliance with the core obligations. . . which are non-derogable” This is in contradition to the statement in paragraph 10 of General comments No 3 to the effect that a state can some how justify failure to meet minimum core obligation, although the proof is daunting.

minimum core standards should be, and. Impossibility of give every are access to a “core” service immediately.⁴³

The court rather said that it may take minimum core into account in determining whether the measures adopted by the state are reasonable. The constitutional court said;

*“A court considering reasonableness will not enquire whether other more desirable or favorable measures called have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognize that a wide range of possible measures could be adopted by the state to meet its obligations. Many of these would meet there requirement of reasonableness. Once it is shown that the measures do so, this requirement is met.”*⁴⁴

The reasonableness model of review has mainly been Criticized for denying direct individual right to there provision of concrete goods and services (only a right to demand that the state adopted a reasonable program), and throwing the burden on litigants to persuade courts of the unreasonableness of the state’s programs. In comparison, the problems with the minimum core model of review are much more weighty than those of the reasonableness of programs is put on the sate trying to justify its failure rather than on litigants who may in most cases be those most in need and have do not have the means for hiring the service of lawyers and costs of introducing evidence the reasonableness test is a better modern of reviewing ESC rights-obligations.⁴⁵

⁴³ Government of the Republic of South Africa and other V Grootboom and others (also called the Grootboom case), 2000(11) BCLR 1169(CC)pares 26-33, IAC, paves 26-39

⁴⁴ Grootboom, Para. 41

⁴⁵ The conclusion is arrived at based and comparative analysis of the approaches developed by the CESCRR and the South African Constitutional court. It is not meant to rule our the adoption of other effective models of review as the propriety of any model depends on the laws and socio-economic situation obtaining in any specific country, which apparently may be substantially different from the one in south Africa or somewhere.

This writing inquires the justifiability of the right to housing in Ethiopian legal system by looking both at the content and scope of the rights as guaranteed by legal instruments binding the state and the institutional structure available for the enforcement of the same.

2.2 Scope the Rights to Housing and the related obligations of states

The scope and content of the rights to housing by referring to the provisions of the human rights instruments (to which Ethiopia is a party) guarantying them and the elaborations made by the CESCR and other monitoring organs.

Article 25(1) of the UDHR provides that everyone has the rights to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care. The ICESCR, as an instrument adopted to give effect to the principles ensuring in the UDHR. Also guarantees the same rights. It requires the continuous improvement of living conditions under. Its article 11 and adds that states parties recognize the rights to everyone to the enjoyment of the highest attainable standard of physical and mental health (Article 12). Under article 24 and 27 of the CRC, the right to health of children is guaranteed in the same manner with the addition that children shall enjoy a standard of living adequate for their physical, mental, spiritual, moral and social development, CEDAW requires states parties to ensure that women have access to adequate living conditions including in relation to housing. (Article 12 and 14). Article 16 of the ACHPR also provides that every individual shall have the right to enjoy the best attainable of physical and mental health.

In international human rights law, the ICESCR provides for the most comprehensive provisions on the rights to housing. It monitoring body /the CESCR/ has also elaborated contents of the rights and the related obligations of states. The committee's jurisprudence has been developed through state reporting procedures and "abstract" General comments

that are influential.⁴⁶ The rights are discussed by referring to General comments no 3 and 7 on the right to adequate housing including forced evictions, and judgments of relevant monitoring bodies.

2.2.1 The Right to Housing

Deriving from the right to adequate standard of living, the right to housing is a basic right.⁴⁷ The right to the some where in security, peace and dignity rather than some physical roof over one's head. According to the CESCR, housing should have legal security of tenure and essential facilities, and it should have legal security of tenure and essential facilities, and it should be affordable, habitable, accessible, and well located. The right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence, a civil and political rights not qualified by considerations relating to its available resources constitutes a very important dimension in defining of the right to adequate housing.

Many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "Self-help" by affected groups. Realization of the rights to adequate housing will almost invariably required the adoption of a national housing policy strategy that identifies available resources and the most cost effective way of using them, and sets out the most cost effective way of using them, and sets out the responsibilities and time frame for the implementation of the necessary measures. Such strategy should reflect extensive genuine consultation with and participation by, all of those affected, and there should be coordination between ministries and regional and local authorities in its implementation, states should also promote "Enabling

⁴⁶ See the judgment in Social Economic Rights action center (SERAC) and Another V Nigeria (2001) Para 60 (ACHPR2001) and Grootboom. It is also good to note that is progress towards adopting a protocol providing for in individual complaints procedure.

⁴⁷ It is of central importance for the enjoyment of an economics, social and cultural Rights as well as fundamental civil and political rights, Forced eviction, fore example, results in violations of civil and political rights. Such as the right to life, the right to severity of the person, the right to privately.

Strategies”, as Governments can not fully satisfy housing deficits with publicly built housing.

In terms of legislative measures, there should be procedures for preventing planned evictions or demolitions through the issuance of court-ordered injunctions, compensation following an illegal eviction and complaints against illegal actions of landlords. Instances of forced eviction are *Prima facie* incompatible with the requirements of the covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law. The state itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions. In the exceptional circumstances, forced eviction should respect the procedural guarantees to genuine consultation with and adequate and reasonable notice for those affected, according evictions in particularly bad weather or at night, existence of relevant government officials during eviction, and availability of legal remedies.

The right to housing does also derive from other fundamental rights including the right to life and health. Although the right to housing does not exist in black letters in the ACHPR, the African Commission has ‘created’ the right in the *SERAC* case. The Commission argued.

“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. . . under article 16 . . . the right to [properly protected by article 14 of the Charter]. And the protection accorded to the family [under article 18(1)] 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 article 14, 16 and 18(1) reads in to the Charter a right to shelter or housing. . . ”⁴⁸

⁴⁸ *SERAC v Nigeria*, Par 60.

2.2.2 The Tripartite Typology of State Obligations

In relation to the rights to housing, the qualification of progressive realization over a period of time should not be interpreted as depriving states' obligations of all meaningful content. Rather, it means that states have a specific and continuing obligation to move as expeditiously usually and effectively as possible towards the full realization of the rights. Like all human rights, the rights to housing impose three types or levels of obligations on states.⁴⁹ The obligation to respect, protect and fulfill. In turn, the obligation to fulfill contains obligations to facilitate, provide and promote.⁵⁰

The obligation to respect requires states to fulfill from interfering directly or indirectly with the enjoyment of the rights. The obligations to protect requires states to take measures that prevent third parties from interfering with the rights. States, for instance, have duties to adopt legislation or to take other measures ensuring equal access. It also obliges the state to prevent the violation of any individuals' rights to housing by any other individual or non-state actors like land lords, property developers, and landowners, and when as guaranteeing access to legal remedies.⁵¹

Finally the obligation to fulfill requires states to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to housing. This obligation requires state, inter alia, to give sufficient recognition to the right to housing in the national political and legal systems, preferably by way to legislative implementation, and to adopt a national housing policy neither detailed plan for realization the rights.

⁴⁹ "Compliatin of Discussion papers on Economic, Social and cultural rights" presented by APAP 2005.

⁵⁰ "The right to adequate housing and international trites, specifically forced eviction" Seminar Paper by APAP

⁵¹ Scott Lackie "The Right to Housing" in Eide, Krause and Rosas Opcit, 107-123 at 113-114 cited in SERAC part 61.

2.3 The protection of ESC Rights in Domestic Legal System

Domestic legal systems create the most effective forum for the protection of ESC Rights. The primacy of national remedies is mainly because they are accessible to the disadvantaged groups in the society.⁵² Moreover, domestic courts and other institutions can apply the rights on a regular basis to a wide range of factual circumstances arising in the particular country and hence develop the normative content of the rights.⁵³ There are different ways in which the protection of the rights can be ensured at domestic level. This may be done through the entrenchment of ESC rights in the Bill of Rights of a constitution, and enforcement by national institutions other than courts of law.

In relation to entrenchment of ESC rights in the Bill of rights, the existence of the principle of constitutionalism of a state is most effective way of protection. This requires that there be a constitutional provision stating that the constitution is the supreme law of the land and that any law or act inconsistent with it is invalid, provisions guaranteeing ESC rights in the Bill of Rights, and provisions subjecting these rights to review by courts of law or making the rights justiciable. In some countries, ESC rights themselves become core principles of the constitution by forming part of the Directive principle of state-policy (DPSP) which govern the interpretation of the rights enshrined in the Bill of rights.⁵⁴ Constitutions require reference to relevant international human rights instruments in the interpretation of the rights.⁵⁵

It is also good to look at the place of international human rights instruments guaranteeing ESC Rights in domestic legal systems. This depends on whether a state follows the “Monist” and “Dualist” theories of

⁵² This has been confirmed by the CESCR in its General comment No.9 (1998) on the domestic application of the ICESCR, part 4 see also S-Liebenberg “The protection of Economic and social Rights in Domestic legal systems” in A-Eide et al (eds) *Economic, Social and cultural rights, A text book* (2001)

⁵³ *Id* (Liebenberg)

⁵⁴ Where socio-economic Rights are made part of the Bill of Rights of a constitution, they are directly justiciable on the other hand, if they are made part of DPSP such as a legislated duty on the state to adopt a housing scheme, it does not in principle give rise to a directly enforceable right.

⁵⁵ The constitution of Ethiopia (Article 13(2)) and (South Africa Article 233) are examples.

international laws. According to the further, national laws and international laws are of the same judicial reality and one can talk only of hierarchy of these branches of laws.⁵⁶ As per the Dualist school of thought, however, the rules of the systems of international law and municipal law exist separately, and here if a country wants to incorporate a certain international law the law has to get the ratification of the law-making organ.⁵⁷ Therefore, while an international human rights instrument becomes part of the law of the land as a matter of course for countries following monist theory, there is a need for ratification of instruments through the decision of the law-making organ of a state under Dualist theory. There is also a further dimension of the Dualist theory that requires the forming incorporation other ratified international instrument in domestic law.

Ordinary legislations have the advantage of putting forth the detailed contents of the rights and making it possible for court and other national institutions to enforce them directly. Making ESC rights justiciable by way of national legislation will indeed address most of the concerns often realized about their justifiability legislation tends to be more precisely formulated than constitution standards and international treaties, thus overcoming the argument that vagueness implies non-justiciability. Adoption of national policies governing the different aspects of ESC rights does also have the effect of direct and easy implication by the responsible organ of state. National legislations and policies have the advantages of defining the precise and detailed content of the rights, prescribing responsibilities and functions of the different levels of government, establishing coherent and coordinated institutional structure for the implementation of the rights providing concrete remedies to redress violation of the right etc.

Effective national institutions like Human Rights Commission and ombudsman shall provide easily accessible administrative forum for the implementation of ESC rights that enjoy constitutional and/or legislative protection.

⁵⁶ Shaw, (1996) international law, 100 one of the founding factors of the monist theory, Kelsen; held the view that international law is superior or more basic than municipal law., (4th ed) Cambridge press.

⁵⁷ Ibid.

2.3.1 Protection of ESC Rights in Ethiopia

While the FDRE Constitution enshrines the principle of constitutional supremacy and guarantees some ESC rights, there is a debate as to whether it supplements the protection with judicial review under its article 9 which provides: “The constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this constitution shall be of no effect.” Under its article 13(1) it puts strong responsibility and duty on all Federal and states legislative, executive and judicial organs at all levels to respect and enforce fundamental rights and freedoms. The principles of constitutional supremacy is, therefore, guaranteed.

The constitution, under its chapter providing for fundamental rights and freedoms, has provisions entitled “economic, social and cultural rights” (Article 41)

1. Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory.
2. Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession.
3. Every Ethiopian national has the right to equal access to publicly funded social service.
4. The state has the obligation to allocate an ever increasing resources to provide to the public health, education and other social service.
5. the state shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian.

Under the “Social Objectives” Article 90(1) Provides that policies shall aim to provide all Ethiopian access to public health and education, clean water, housing, food and social security to the extent the country’s resources permit. While article 41 provides for direct

protection of the right Article 90 extends indirect protection.⁵⁸ The constitution does also guarantee ESC Rights in its other provision⁵⁹. It is evident from the list of provision of the constitution that the rights to housing are guaranteed, through not in black letters and directly.⁶⁰

The protection in the above mentioned article of the Constitution is further strengthened by article 13(2) which provides. “The fundamental rights and freedoms shall be interpreted in a manner to the principles of the universal Declaration of Human rights, international covenants on Human Rights and international instruments adopted by Ethiopia”. This means that the ESC rights enshrined in the Constitution, shall be interpreted in line with the provision of instruments like the ICESCR, CEDAW, CRC and the elaborations made by there respective monitoring bodies. In relation to the rights under consideration this article makes the General comments of the CESCR extremely relevant at least as for as the scope of ESC rights are concerned.

Coming to judicial review, by imposing the responsibility of respecting and entering the fundamental rights and freedoms (including the guaranteed ESC rights) on the judiciary, article 13(1) of the constitution has given.

A justifiable dimension to the rights. Only may therefore argue that the constitution extends protections through judicial review. Article 37(1) further provides that everyone has the right to bring a justifiable matter to and to obtain a decision or judgment by a court of law or any other competent body with judicial power.

However, while article 83(1) of the constitution, entitled “interpretation of the constitution” provides that all constitutional disputes shall be decided by the House of federation, article 84 indicated that the latter

⁵⁸ Id

⁵⁹ Article 14 and 15 guarantee an inviolable and inalienable right to life which would be devoid of much breath without protection of the rights to food, shelter, health care and other necessities of life Article 25 prohibits any form of discrimination a principle that should be applied in the implantation of ESC rights as well. Article 35 guarantees the right to equality of women in general, which extends the right to enjoyments of ESC rights, and the rights of these group of people in reaction to work, health, education etc, Article 36 provides for the rights of children relating to work education, health and well beings Article 40 protects the economic right to property.

⁶⁰ Id

exercises this power upon the recommendations of the constitutional inquiry committee that it is necessary to interpret the constitution. This article has served as source for the insistence, in practice, of the courts of the country against directly applying constitutional provisions, courts refer all cases in which constitutional provisions are invoked to the constitutional inquiry committee.

It is submitted that the position the courts of the country that they have no power to entertain and decide cases in which constitutional provisions are invoked is wrong and hence should be changed. In the first place, the duty of the judiciary to enforce the rights enshrined in the constitution definitely extends to applying the provisions. While this provision of Article 13(2) makes the rights justifiable, article 37(1) gives the right to bringing justiciable matters before judicial organs and get decision there, on the other hand, the mandates of “interpretation’ given to the house of Federation should be understood as applying to situations where courts find some provisions of the constitution vague or difficult to apply to cases under their consideration. Therefore, argue that the FDRE constitution provides for judicial reviews.

It can be discerned from the above that there exists the principle of Constitutional supremacy coupled with judicial review in the FDRE Constitution and it can be argued that the right to housing entrenched, in the Bill of Rights; there are also legislation and policies protecting the right.

A Human Rights Commission and an ombudsman have also been established. Article 6 of the proclamation establishing the former states that it has the power and duties to ensure that the human rights and freedoms recognized by the Constitution are respected by all citizens, organs of state, political organization’s and other associations, as well as by their representative officials and ensure that laws, regulations and directives as well as a government decision and orders do not contravene the human rights of citizens guaranteed by the

Constitution.⁶¹ According to article 6(11) of proclamation No 211/2000 the institution of the ombudsman shall have powers and duties to ensure that directives and decision given be executive organs do not contravene the constitutions shall have over the country, they called offer an easily accessible and speedy administrative remedy to violations to human rights.⁶²

2.3.2 The Status of International Human Rights Treaties within the Ethiopian legal System

The FDRE constitution provides that all international agreements ratified by Ethiopia are an integral part of the law of the land (article 9(4)). Accordingly, international treaties and conventions have to be ratified by the house of people representatives (The law making organ of the state) to become an integral part of the law of the land. This requirements is very much in the with the Dualist theory. Ratification of an international human rights instruments makes it part of the law of Ethiopian. The provision of art 13(2) of the constitution further fortify the enforceable position of ratified international instruments governing ESC rights within the laws of the country.

The requirements of interpretation in accordance with the international instruments may also be an indication that these instruments are hierarchically parallel or above the constitution. However, considering that international instruments get ratified by the organ that issues legislations and that the constitution is the supreme law of the land (Article 9(1)). International human rights treaties are hierarchically bellow the constitution and have a status equal to legislations.

While the international instruments protection the right to housing have been ratified and hence made part of the law of Ethiopia, Their full texts have not been published on the official Gazett of the county. This

⁶¹ Proclamation No 210/2000. Ethiopian Hunan Commission Establishment proclamation, It is also worth noting that article 1(5) of the proclamation defines “Human Rights” including fundamental rights and freedoms recognized under the constitution and those enshrined in the international agreements ratified by the country.

⁶² Article 9 of both proclamation No 210/2000 and 211/2000.

has been one of the causes for the failure of litigants as well as courts to refer to these instruments in practice and the belief among members of the judicial that the rights in ratified international treaties which are not otherwise clearly guaranteed in domestic laws are not Justiciability.⁶³ In Article 2(3) of proclamation No 3/1995 courts take Judicial notice of laws. Published on the Negarit Gazette. There is a tendency based on this law that courts take judicial notice only of legal texts or provisions published on this Gazette. Although one may possible argue that the publication on the official Gazette that ascertain international treaty is ratified by the state is a good as publishing the full text of such instrument, there is insistence on the need to publish the full text for enforcement purpose.⁶⁴ True, the publication of the full text of these instruments would make a substantial contribution towards the enforcement of the rights they protect.

⁶³ Interview with, Ato Filphos Aynalem Federal High Court Judge. Addis Zemen Gazett Megabit 10,2000 page 13

⁶⁴ One of the reasons is that is only upon publication of the law/treaty on the official Gazetter that it can be deemed to have been known by the public/the publicity function of the Gazette/ counter arguments is that publication. Which is required for the benefit of the public, showed not serve as a reason to bar the public from enjoying their rights in the international instruments impose state obligations rather than individual responsibilities.

CHAPTER THREE

THE RIGHT TO HOUSING IN ETHIOPIA LEGAL FRAMWORK

This chapter to discuss the legal framework laid down for the realization of the right to housing in Ethiopia-while the scope of the right has been defined in the preceding chapter, it is good to note from the very out set that the right to hosing is very much tied up with the ownership or possession of land. Ethiopia has adopted different domestic legal instruments that deal with the right to housing and possession of land. The discussion will begin with a fairly detailed discussion of the constitutional provisions relevant to the right to housing and follow on with the presentation of pertinent ordinary legislations applying at national level. The relevant provisions of the constitutions of states have also been referred to.

3.1 Constitution of the FDRE

In the 1995 constitution of Ethiopia, the right to housing has not been expressly enmeshed in all its aspects. However, the right can be derived from the provisions of article 41 of the constitution. While it imposes the obligation to allocate ever increasing resources to provide social services, which include housing services, it gives the right to equal access to such services to every Ethiopian national.

The obligation to allocate resources, within available means, to provide rehabilitation and assistance to the disabled, the aged, and to orphan children under sub (5) of the same article may also require the state to provide housing services to these group of people. Moreover, article 90(1) requires that there be a social policy aiming at the provision of access to housing to all Ethiopians so far as the country's resources permit. It is also argued that the relegation of some other rights guaranteed by the

constitution, like the right to life, privacy, health and equality require that the right to housing be respected.⁶⁵

Article 9(4) of the constitution provides that all international agreements ratified by Ethiopia are an integral part of the law of the land. This means that the relevant provisions of instruments like the ICESCR, CEDAW, CRC and the ACHPR, with the standard of recognition they give to the right to housing are part of the law of Ethiopia. Article 13(2) further requires that the article of the constitution guarantying the right to housing be interpreted in a manner conforming to the relevant principles of the UDHR and the instruments listed here in before. This makes the elaboration made on the right to housing by the monitoring bodies of these instruments extremely relevant and hence the scope of the right and obligations of state defined under chapter 2 of states' obligations applicable in Ethiopia.

As stated earlier, the right to housing is very much related to the possession and ownership of land and the right to property as a whole. The right to property is one of the right that are recognized by the FDRE constricton. Pursuant to Article 40(3) the constitution, ownership of rural and urban land as well as natural resources is vested in the state and in the peoples of Ethiopia. The second alinea of the same article also provides for the common ownership of land by the Nations, Nationalities and peoples of Ethiopia and that it will not be subject to sale or other means of exchange. Hence, in the Ethiopia context, one can only speak of possession of land by individuals.⁶⁶

3.2 National and Federal Legislations

This legislations adopted both before and after the advert of federalism. We mainly deal with proclamations those detailed and specific laws adopted by the parliament of the country, and Directives issued there

⁶⁵ S.Liebenberg "The protection of Economic, and social Rights in Domestic Legal Systems" in A. Eide etal (eds) Economic, Social and cultural rights: A text book (2001)

⁶⁶ The term ownership land constitutes three things: uses (use of the land), fractures (using the fruits of the land) and abuses (alienation of the land). In the Ethiopian context the third element is missing. Hence one can only talk of possession right of land of individuals. See Article 1205 of the civil code of Ethiopia.

under. There are proclamations having to do with the right to housing dating as far back as 1975 that are still applicable. As the proclamations considered under this section cut across time, it would be good to take note the following basic points before we proceed to discuss their contents.

1. Under the pre 1974 imperial government, urban land and houses were the property of the feudal leaders. Following the 1974 Revolution the Derg government proclaimed for the government ownership of Urban land and extra Urban houses.⁶⁷
2. In 1992, the country adopted a market economic policy. Since then the existing government has started to introduce a more market oriented approach to urban land and housing. This can be observed from the economic policy that the Transitional Government of Ethiopia adopted in 1992. Art 8 of the Economic Policy of the TGE is devoted for urban land and housing construction policy. While sub article 4 of this article defined the role of government with respect to Urban land and housing, Sub article 2 pointed out the need to expand the role and participation of private investors in the area of urban development, housing and construction sector. In order to implement the economic policy thus adopted, the government has enacted land lease law in 1993 (proclamation No 30/1993) that introduced leasing of land for residential purpose for a maximum period of 99 years.
3. With the adoption of the new constitution in 1995, the county espouses a federal structure of government where states as well as the federal government has the power to enact legislations within their respective jurisdictions. It should, however, be noted that proclamations adopted before 1995 apply at both federal and regional levels provided that they cover issues which are not covered by other specific legislation adopted latter. Under the new constitution, to power to enact specific laws on utilization of land and other natural

⁶⁷ Proclamation 31/1975 provides for the public ownership of rural lands while proclamation 47/1975 provides for the government ownership of urban lands and extra Urban houses.

resources in given to the Federal House of people Representations under article 55(2) (a). On the other hand, the power to administer such land and natural resources in line with the federal laws is vested on the respective states.⁶⁸ As a result, the states have the power to issue legislations that would help in the implementation of the Federal laws.

3.2.1 Proclamations No 47/1975 and No 59/1975

In 1975, Government of Ethiopia adopted a proclamation providing for the expropriation of Urban lands and extra houses proclamation No 47/1975 and another one establishing an organ for the administration of rented houses (Proclamation No. 59/1975).

Some of the reasons for enacting proclamation 47/1975 as envisaged in the preamble, were to lighten the burden of paying high house rents of the broad urban dwelling masses, to make available to them urban land for construction of both dwelling and business houses there by improving standard of living, and the necessity to provide help to those people in urban areas who cannot afford to house shelters of their own and to eliminate the exploitations of the many by few. As yet, this proclamation has never been expressly repealed pursuant to article 11 of the proclamation, any person or family is allowed to own only a single dwelling house in any Urban area. Extra houses would duly be expropriated by the government and fair compensation would be paid for the owners.⁶⁹ The proclamation eliminated private sector rental by prohibiting individuals from obtaining income through urban land or house rental.

The administration of Urban dwelling and business houses the monthly rent of which is more than Birr 100 was put under a now defunct ministry called the Ministry of public works and housing.⁷⁰ Based on this provision, a proclamation establishing the Agency of the administration of Rented houses proclamation No 59/1975 was

⁶⁸ Article 52/2/d of the 1995 FDRE constitution.

⁶⁹ Article 18 of proclamation 47/75

⁷⁰ Article 20/5/b of proclamation 47/1975

promulgated. The purposes for the establishment of the Agency, as described under article 5 of the proclamation, include taking over and maintaining all urban houses acquired in any manner by the government, study housing rent schedules which conforms with the Standard of living of the people, and to sell or exchange houses under its control and to buy, build and lease houses as may be necessary. The establishment of this agency is in line with the promulgation of Government ownership of urban lands and extra house proclamation as it was established as per the requirements set under art 20/5 of the same proclamation.

Since private sector rental was prohibited article 22 of Government ownership of Urban Lands and extra House proclamation No 47/1975 established the cooperative societies of Urban dwellers as a substitute mechanism of filling the laeunae (gap) in the provision of housing services. The other thing that was achieved by Government ownership of urban lands and Extra House proclamation was a substantial reduction on the amount of rent paid by the lessee. The reduction ranges from 15% to 50% with the foremost reduction going to the low income household,⁷¹ thereby trying to make houses affordable to everyone, this is one of the positive effects of the proclamation.

3.2.2 Agency for the Administration of rented houses Establishment (Amendment) Pro.No 133/1998

Following the adoption of a Federal structure, a new proclamation, Agency for the Administration of rented Houses Establishment /Amendment/ proclamations No 133/1998, was issued. This proclamation provides for the establishment of an autonomous federal agency, Agency for the Administration of Rental Houses, having juridical personality,⁷² Recently the agency has adopted as new Directive dealing with the manner of renting houses administered by the Agency.

⁷¹ Article 20/4 of Government ownership of Urban Lands and Extra House Proclamation No 47/75

⁷² Article 2/1 of Government ownership of Urban lands and Extra House proclamation No 47/75

The reason behind the issuance of the Directive, as envisaged in the preamble, is to have a transparent, equitable and accountable system for the rental of houses. This would have substantial importance for the realization of the right to housing. Pursuance to article 3 of the Directive, the Agency rents houses only government offices and enterprises. It will be the government office or the enterprise that will sign the contract with the agency and the agency will pass on the house to its employees. Since the contract is to be signed by the agency and the office, it is the office that will pay the rent. The office with which the agency signs the contract will be determined on a lot basis.⁷³ If the office that won the lot fails to sign the contract within five working days following the issuance of the lot, it will be considered that the office does not want the house and another lot will be drawn. The Directive also provides for the list of officials who will be entitled to get a house from the agency free of charge.⁷⁴ This means that one needs to be a government official of a certain level or at least an employee of a government office or enterprise to get the houses rented by the agency.

The Directive also deals with another method of renting houses, i.e auction. The provision of houses on the basis of allocation has a discriminatory effect and it also against the objective of the establishment of the Agency. The main reason for the issuance of the Government Ownership of Urban Lands and Extra House proclamation, which. Is the source of the mandate for the mandate for the establishment of the Agency, was to see to it that houses are distributed to those who cannot afford. The system of auction is against this objective as it is only the houses who can participate in the auction.

The Other thing that is dealt with by the Directive is the prohibition of changing dwelling houses to business place and vice versa. Article 10 of the Directive prohibits a lessee from changing a dwelling house in to business place whereas the article that follows prohibits changing of

⁷³ Article 3/2 of the Directive

⁷⁴ Article 4 of the Directive deals provides a list of government officials that will be given house administered by the agency for free.

business place in to dwelling houses. The reason given for the first prohibition is the shortage of dwelling houses in the city. Changing of residential places in to business places affects the right to housing of individuals as it creates shortage of residential places in the city. The fact that the Directive considers shortage of residential places in the city and prohibits changing of residential places in to business place should be appreciated as it has an effect on the protection of right to housing of individuals. On the other hand, there is no reason provided for the second prohibition. The amount of charged for business houses and dwelling houses is different, the former being a bit higher. If the agency allows the lessee to change the business abode into dwelling house, there will be a change in the amount of rent to be paid and this will be a change in the amount of rent to be paid and this will decrease the income of the agency. This seems to be the reason behind the prohibition against changing a business place in to a dwelling house.

The above shows that the agency's primary objective is profit making is profit making rather than trying to lessen the problem of shortage of houses faced by the dwellers, and that it works on discriminatory principles. Firstly, a person who is not a government employee will not be eligible to get rental houses from the agency because basically the agency rents the houses for government offices and enterprises. Secondly, those houses that are rented by auction are very limited in number and are mainly situated at a place which is relatively expensive than other areas in the city.

All these grounds, coupled with the prohibition on changing business places to dwelling houses will lead one to conclude that the main of the agency has changed in to profit making rather than trying to lessen the shortage of dwelling houses in the city. Again, to the extent that the majority of the people in need of housing services fall outside the bracket that agency caters for i.e, government employees and officials, it works on discriminatory rules. The mandates of the agency and the actions it undertakes are, therefore, in contradiction with the purpose of

its establishment as well as Government ownership of urban lands and Extra Houses proclamation 47/75, which authorized its establishment.

3.2.3 Urban Land Lease Holding proclamation No 272/2002

The House of Peoples Representatives, as a law-making organ of the Federal government enacted the urban land lease Holding Proclamation in 2002. Economic as well as social forces are said to have played role in the adoption of this law. The proclamation is applicable to urban land held by the permit system or by household system or by other means prior thereto as well as to an urban land permitted after the adoption of the lease proclamation.⁷⁵

There are four methods of lease permit system provided for in the proclamation. Lease hold permit may be issued either by auction, or through negotiation.⁷⁶ It may also be issued in conformity with plan guidelines where such a plan exists or, where it does not exist, in conformity with the law which Regional or city government makes⁷⁷ as well as according to the decision of Regional or city government.⁷⁸

The period of lease varies depending on the level of urban development and sector of development or the type of service. In any case, the maximum period allowed for housing is 99 years.⁷⁹ However, this period may be renewed as per the agreement to be reached unless the urban land is wanted on the basis of public interest.⁸⁰ The length of the period of lease in line with the requirements of security of tenure. As regards the manner of determination of rate of lease payment, article 8 of the proclamation gives the discretion for Regional and city Governments to issue, regulations. On the other hand, it implies that Region or city government may permit Urban land without lease payment for development activities, social service rendering institutions, Low-cost

⁷⁵ Article 3/1 of the Lease proclamation No 272/2002.

⁷⁶ Article 4/11b of the lease proclamation No 272/2002.

⁷⁷ Article 4/1/a of the lease proclamation No 272/2002.

⁷⁸ Article 4/1/C of the Lease proclamation No 272/20002

⁷⁹ Article 6/1/a/1 of the lease proclamation no 272/2002.

⁸⁰ Article 7/1 of the lease proclamation.

housing, private dwelling houses and similar undertakings.⁸¹ This offers to adopt a pro-poor approach in giving land for purpose of building dwelling houses which is important for realizing the right to housing. On the other hand, making land available on the basis of lease, especially in a situation where the lease rate is high, has a negative impact on the availability as well as affordability of house for individuals. In such a case, it would be only the haves who would enjoy the right to housing.

The proclamation, under article 16(3), envisages the establishment of urban land clearance Appeals commission whose mandate is to see claims relating to a clearance order or a warning notice. The Commission is established to see appeals (claims) lodged before it in disagreement with the decision of the works and urban Development Bureau of the Administration in connection with clearing land and determining compensation. The commission is required to examine the appeal and render its decision within two months from the date of the lodging of the appeal.⁸² The decision which the commission delivers upon disputes of law and fact will be final. However, appeal in relation to the amount of compensation may be lodged before the High court having jurisdiction over the place.⁸³

Some of the constituent elements of the right to housing include availability of procedure for legal appears aimed at preventing planned evictions as well as legal procedures seeking compensation following eviction.

3.2.2.8 Condominium Proclamation No 370/2003

Considering the problems of shortage of dwelling houses faced by urban dwellers especially in Addis Ababa and Dire Dawa, the government has promulgated a condominium proclamation. As described in its preamble, the reasons behind the promulgation of this proclamation include narrowing down the imbalance between the

⁸¹ Article 8/2 of the lease proclamation 272/2002.

⁸² Article 8/2 of the lease proclamation 272/2002.

⁸³ Article 1814 of condominium proclamation 370/2002.

demand for and supply of housing, to maintain the beauty of the Urban areas and improve the Supply of housing by making large number of people benefit. The application of the condominium proclamation is limited to the cities of Addis Ababa and Dire Dawa.⁸⁴ Though it is not the only reason, Supply of houses is the reason for the adoption of the condominium proclamation. The purpose is to make house available to everyone irrespective of the financial status of individuals. The first round distribution of condominium house in Addis Ababa has not, however, lived up to this objective as preferences were in many cases given to those who could pay the full or substation amount of their prices.

The proclamation basically provides for the manner of registration of condominiums, the rights conferred upon unit owners and also deals with the formation of unit owner's Association. A unit owner, that is the person who owns a part of the building consisting one or more rooms, is entitled to ownership right on the unit, and the unit may be subject to any legal transaction.⁸⁵ The term 'any transaction' implies the sale or rental of the unit by the owners.⁸⁶ Moreover, the law also recognize the rights of the unit owners of form an association with a view to obtaining mutual benefit other than securing profits.

The law also recognizes the establishment of cooperative for the purpose of building condominiums.⁸⁷ In such cases, the formation of association proceeds the ownership right to be conferred. The management committee of the cooperative is the body responsible for the registration of the building up on completion of construction.

Around 2005, the Government has started building low cost condominium houses which are to be transferred to individuals on a basis of sole. The building to these houses was meant to address the housing demand of the inhabitants, especially the low income section of

⁸⁴ Article 3 of condominium proclamation 370/2003.

⁸⁵ Article 8/1 and 2 condominium proclamation 370/2003.

⁸⁶ Article 21 of the proclamation talks about a situation where by the owner /declaring/ may conclude a contract of sale of a unit before or after the registration of the building. Article 22, on the other hand envisages a scenario where by the unit owner may lease the unit.

⁸⁷ Article 39 of condominium proclamation 370/2003

the population. Although the condominium proclamation allows the transfer of the unit by the unit owners either on sale or rental, the contract signed in selling the already built houses has a provision prohibiting the trimerster of the unit prior to lapse of five years. The insertion of this close in the contract is aimed at providing houses only for those who really need it and preclude a situation where those with the financial capacity may buy the houses and sale those for night prices then originally set. It should, however, be underlined that it is difficult to say that the price set by the government for those houses has been affordable for the poor.

3.2.5 Expropriation of Landholdings for public purposes and payment of compensation proclamation no 455/2005

The right to housing of individuals entails the prohibition on the government as well as landlords from coming forceful eviction. All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. However, evictions may be carried out in connection with development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programs, the clearing of land for agricultural purposes, unbbried speculation in land, or the holding of major sporting events. In such instances, the eviction has to be accompanied with payment of the appropriate compensation.

In this connection, the Federal government has issued a proclamation in 2005.⁸⁸ The proclamation provides a wereda or urban administration the power to expropriate rural or urban landholdings for public purposes. However, the expropriation will be conducted up on payment of commensurate compensation.⁸⁹ Moreover, there is an obligation on the wereda or urban administration to duly notify the landholder about the

⁸⁸ Expropriation of Landholding for public purpose and payment of compensation proclamation no 455/2005.

⁸⁹ Article, 3/1 of Expropriation of landholdings for public purposes and payment of compensation proclamation no 455/2005

eviction in written.⁹⁰ In relation to the issue of compensation, the basis of compensation is that the landholder will be entitled for payment of compensation of the property situated on the land and for permanent improvements made on the land. The amount of compensation for property situated on the expropriated land will be determined on the basis of replacement cost, while the amount for the improvements to land will be equal to the value of capital and labour spent.

On the land, In addition to this, the cost of removal transportation and erection will also be paid as compensation for a property that could be relocated and continue its service as before.⁹¹ Plus, there will be a displacement compensation to be paid for the landholder. When the land to be expropriated is located in urban areas, in addition to the compensation, substitute land, the urban administration will also be given to the landholder.⁹² When the land to be expropriated is located in urban areas, in addition to the compensation, substitute land, the urban Administration will also be given to the landholder.⁹³

Many of the factors that need to be taken in to consideration towards making the amount of compensation commensurate are envisaged by the proclamation. The requirements of providing adequate notification prior to eviction and effecting payment of commensurate compensation for the land and house thus expropriated are in line with the guarantees required by the right to housing in exceptional situations of eviction.

3.2.6 Agency for Government Houses Establishment

Proclamation No 555/2007

In 2007, the House of people Representative adopted a proclamation, Agency for Government Houses Establishment proclamation 555/2007.

⁹⁰ The notice has to contain the date of eviction as well as the amount of compensation to be paid tube land holder. Article 4/1

⁹¹ Article 7/1-7/5 of Expropriation of landholdings for public purposes and payment of compensation proclamation No 455/2005

⁹² If the land taken is in the rural area, the displacement compensation will be equivalent to ten times the average annual income secured during the five years preceding the expropriation of the land. Article 8/1-3 in relation to the payment of compensation for rural landholders.

⁹³ Article 8/4 when the urban land lease holding is expropriated prior to its expire date the lease holder will be provided with a similar plot of land to use to for the remaining lease period or even for a language period. If the holder does not want to take the land, he can take the remaining rent payment. See article 8/6

Some of the reasons for an acting Agency for Government houses establishment proclamation is mentioned in the preamble, that is, it is necessary to improve the administration as well as the preservation and maintenance of Government Houses; the office for the sale of Government owned houses has earlier been amalgamated with the Agency for Rented houses. Under these proclamation to mention objectives some of these are.⁹⁴ To utilize government owned dwelling houses in accordance with the policy to be issued by the Government, to apply modern management systems and there by administer government houses in economical, efficient and effective manner; to collect rent from Government Houses; where it is demand necessary to engage in real estate development to alleviate shortage of houses to the extent required for government uses; to privatize government houses following lawful and efficient procedures and to play all awareness to former owners to nationalized houses in accordance with the law.

In the proclamation 555/2007, to mention the powers and Duties of the Agency.⁹⁵ Under these law some of powers and duties are, rent out Government houses under its control and collect the rent there of; carry out necessary maintenance and repair works to preserve Government houses; study and implement the rate of rent for the Agency's houses; where necessary, construct houses to be used for government services; pay appropriate compensation to former owners from the proceeds of the sale of Government Houses in accordance will Article 18 of proclamations 47/1975 and the decision of the Government and undertake such other duties necessary for the implementation of its objectives.

Under Agency for Government houses Establishment proclamation 555/507, articles are mostly a positive effect in the implantation of the right to housing the positive effect of the governments, to enact laws and lay down polices, these are very important thing to solve housing problem. In the proclamation, mention "to Utilize government owned dwelling house in accordance with the policy to be issued by the Government."⁹⁶

⁹⁴ Article 5 "Agency for Government Houses Establishment proclamation No 555/2007",

⁹⁵ Article 6 "Agency for Government Houses Establishment proclamation No 555/2007,"

⁹⁶ Article 5/1 "Agency for Government Houses Establishment proclamation No 555/2007."

Conclusion

Human Rights are universal, interdependent, and inalienable. It would therefore be wrong to protect and promote one group of rights while denying protection to the other groups of rights. Even after their recognition in international human rights instruments, ESC rights have been relegated to a minor position for differing reasons. It is, for example, argued that socio-economic rights are too general and vague to be considered for immediate implementation. However, there is no human right that could be considered lacking some justifiable dimensions. In relation to ESC rights at least claims relating to the state's obligations to respect and protect are always justifiable. The fact that human rights are indivisible and interdependent required states to protect, respect and promote all human rights irrespective of the state's economic, political and cultural backgrounds and development.

Ethiopia has ratified the various international human rights instruments which govern socio-economic rights including the right to housing, such as ICESCR, CEDAW and CRC. Under these treaties, the state has the obligation to take legislative measures with a view to realize the rights enshrined therein. The constitution of 1995 and various domestic legislations adopted by the federal legislative organ /House of People's Representatives/ as well as the state councils do also extend protection to the rights to housing.

In the protection of ESC rights, the domestic legal systems take primacy because of their accessibility to the disadvantaged section of the society. The ideal way of protection of ESC rights does exist in Ethiopia, at least as a matter of law. While such rights including the rights to housing are entrenched in the Bill of Rights /through not in clear terms in relation to the right to housing/. This is supplemented by the existence of judicial review mechanism. The fact that ratified international treaties are part

of the law of the land adds to the protection extended to the right in the Ethiopian legal system. There are also quasi-judicial and administrative mechanisms of realizing the right to housing.

There are, however, considerable number of lacunae (gap) in the laws. In some respects, especially in relation to the right to housing, the various laws adopted shows the preference and emphasis given to investment at the cost of rights. It is undeniable that investment could play a great role in the development of the country. However, the development this accrued should not be at the expense of the right to individuals. There has to be a mechanism by which respect for the rights and investment could supplement each other and go hand in hand. The government should take in to account the right to individuals while designing and adopting laws. In some areas the necessary legislative are not yet taken.

The right to an effective remedy in cases of violation of the rights to housing also been fairly addressed. In many instances, the legislations adopted provide for a mechanism by which the grievances of individuals may be addressed either by court or by a quasi-judicial organ. It is good that the law recognizes the need for giving a chance for individuals to bring their complaints to a certain organ. However, the right to housing are like other rights, are fundamental for all human beings and need to get the proper attention from regular courts. Limiting the available remedies to administrative or quasi judicial organs may indicate that the weight given to such claims is little, there should be a mechanism where be the regular courts would have greater contribution in respect or right to housing.

Recommendations

- ❖ The rights to housing should be guaranteed in more clearer terms in the Bill of Rights of the Constitution.
- ❖ Courts and other quasi-judicial organs of Ethiopia should exercise judicial power and enforce human rights guaranteed by the constitution and should not refer all cases, in which constitutional provisions are invoked to the constitutional inquiry committee/the House of Federation.
- ❖ The full text of international and regional treaties by Ethiopia should be published on the Negarit Gazzette.
- ❖ Urban Land Lease Holding Proclamation No 272/2002 should be amended to allow appeals against the decisions of urban land clearance Appeals. Commission at least on point of law.
- ❖ The price of condominium houses and their mode of distribution should be brought in line with the objective of making house available to every one irrespective of financial status.
- ❖ The Law providing for a method of renting government owned houses with preference to officials and employees of the government by auction/Agency for the Administration or Rented House Establishment (Amendment) proclamation No 133/1998) should be amended in such a way as to make its renting methods participatory to those who are not officials/employees of government to those who have low income.
- ❖ The Government should adopt a housing policy which identifies the responsible organ and the time framework for the implantation of the right to housing as soon as possible.
- ❖ The prioritization of those who can pay the whole price for government built houses at one go should be excluded from the requirements of selling such houses.
- ❖ Laws and policies providing for legal eviction should also clearly envisage alternative housing or shelter for those who have been residing in the houses wanted for public purposes.

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