

Justiciability of Socio-Economic Rights in Ethiopia: Exploring Conceptual Foundations and Assessing the FDRE Constitution and Judicial Perspective

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Abstract

Inclusion of bill of rights in domestic legal framework and rendering socio-economic rights justiciable is one of the main mechanisms through which such rights get effective enforcement. The Ethiopian (FDRE) Constitution has recognized socio-economic rights. It empowered ratified international human rights treaties to serve as standards of interpretation for the bill of rights recognized in the Constitution, many of which treat socio-economic rights as justiciable. However, the Ethiopian judiciary is reluctant to apply human rights provisions recognized in the Constitution, including socio-economic rights. It is argued that this is mainly attributed to the confusion existing as to the power of interpreting constitutional norms and their application, and the status of international treaties in domestic arena. The continued but waning debate over justiciability of socio-economic rights across the globe has also contributed its share, though insignificantly. This article, in an attempt to ascertain justiciability of socio-economic rights in the Ethiopian legal system, explores the conceptual foundations, and analyzes the normative provision of the FDRE Constitution and judicial perspective regarding justiciability of socio-economic rights.

Keywords

Justiciability, Socio-Economic Rights, FDRE Constitution, Ethiopia

1. Introduction

Despite significant developments in the understanding of all human rights as indivisible and interdependent and the considerable jurisprudence from different corners of the globe where socio-economic rights are given judicial or quasi ju-

dicial protection, the hitherto conception of socio-economic rights as non-justiciable rights still sustains within the academic and judicial community.

Inclusion of bill of rights in domestic legislations and adopting mechanisms of enforcement through law and policy mechanisms is one of the effective ways of realizing human rights. Justiciability, which is the ability to bring legal action and receive decision from an independent and impartial body, is one of the main mechanisms for enforcement of human rights in general and socio-economic rights in particular. There is a move in recognizing socio-economic rights as justiciable rights by domestic laws, regional and international treaties, as well as through wide jurisprudence flourishing in domestic courts and treaty bodies. Nonetheless, socio-economic rights are still framed by many as a different set of norms with an imprecise and vague nature, leading the judiciary to treat them as non justiciable rights.

Paradoxically, the consequence of this long-standing notion that socio-economic rights are not enforceable has been an absence of any effort on the part of the judiciary in many countries to define principles for their construction. However, the lack of practical elaboration of many of these rights does not justify the claim that, because of some essential or hidden trait, socio-economic rights, and as a whole category, cannot be defined at all. Critics claim that the content of these rights cannot be defined because so little effort has been invested to define their content. The lack of practical elaboration is then used to argue that socio-economic rights are not justiciable (*International Commission of Jurists, 2008: p. 16*).

The Constitution of the Federal Democratic Republic of Ethiopia (hereinafter FDRE Constitution or the Constitution) entrenches the bill of rights in its chapter three where socio-economic rights are placed in an equal footing with civil and political rights. Article 9(4) of the Constitution provides that regional and international treaties ratified by Ethiopia are integral part of the law of the land, where as article 13(2) provides for the ratified human rights treaties to be the interpretation thresholds for the bill of rights in the Constitution. Even if the legal framework for justiciable human rights, including socio-economic rights, exists in Ethiopia, the understanding regarding the issue and judicial practice for the enforcement of the rights indicates lack of activism to ensure effective realization of them.

This piece analyzes issues relating to justiciability of socio-economic rights from theoretical through normative to practical perspectives. It goes on to appraise the place of international human rights treaties and their effect thereof in the Ethiopian legal framework. Furthermore, the effectiveness of constitutional entrenchment of socio-economic rights and judicial practice in ensuring the realization of the rights is assessed.

2. Justiciability of Socio-Economic Rights

2.1. Conceptual Issues of Justiciability of Socio-Economic Rights

The International Commission of Jurists (ICJ) defined justiciability as the ability

to bring an action and claim a remedy before an independent and impartial body for any violation that has occurred or likely to occur (Id: 6). Apparently, courts are bestowed with power and constitutional duty (Nwabueze, 1977: p. 21) to identify and interpret entitlements and duties in a legal instrument and hence ensure the enforcement of them through adjudication of violations of the law (Miamingi, 2009: p. 81). This power granted to the judiciary is indicative of existence of a right, for right holders (personally or through a representative), to bring legal action so as to get their rights enforced whenever the duty bearer fails to comply with his/her duties. Such right to a legal remedy implies the availability of access to an appropriate court or tribunal when violation of a right/rights has occurred or likely to occur, and the consecutive right to have adequate remedy to, as a reparation for the violation (International Commission of Jurists, 2008: p. 6) in the form of preventive measures, injunctions, monetary compensations, administrative measures or criminal punishment (Ibid). Such remedies become particularly important where the matters in consideration are issues of human rights violation, which by their nature are, rights inherent in the dignity of the human person. It is due to this fact that numerous Human Rights instruments expressly provide for a right to remedy in cases where human rights violation occur, as it is one of the crucial means for the effective realization of all human rights (Id, 2008: 7).

Even though Economic Social and Cultural Rights (ESCRs) have been part of international human rights regime at least since the adoption of the UDHR, little effort has been made to provide them precise content and mechanisms of enforcing them compared to civil and political rights. Amongst the neglected issues regarding ESCRs, the issue of justiciability is one (Courtis, 2007: p. 318).

There has been a continued debate regarding justiciability of ESCRs over years. Opponents of justiciability of ESCRs argue that these rights are different from civil and political rights in their nature, and hence not suitable for adjudication. It is inherently difficult, even impossible, to define precisely the content of such rights and are devoid of certainty required for adjudication and hence not justiciable *in toto* (Courtis, 2009: p. 380). Moreover, the vague or uncertain character of them makes such rights impossible to adjudicate as they only set out aspirational and political goals rather than clear guidance on what is required to implement them. It is frequently said, for example, that rights such as the “right to health” or the “right to housing” have no clear meaning, and that they offer no obvious standard by which one can determine whether an act or omission conforms to the right (International Commission of Jurists, 2008: p. 15).

Proponents of justiciability respond that the difference between both categories of rights merely is of degree and not nature that there is no reason that could keep ESCRs from being subject to judicial adjudication (Courtis, 2007: p. 18). Treating ESCRs as non-justiciable due to their particular nature and impossibility to define their content is like denying the empirical evidence of largely accumulated comparative jurisprudence and case law where judges have entertained and decided alleged violations of ESCRs, and treaty bodies provided authorita-

tive interpretations. Additionally, issues of content and scope of a right do not exclusively relate with ESCRs only. Determining the content of every right regardless of its classification is vulnerable to being labelled as insufficiently precise since legal rules are expressed in broad terms and to a certain extent unavoidably general wording (Hart, 1961). Thus, “classic” rights such as the right to property, freedom of expression, equal treatment or due process face this hurdle to the same extent as ESCRs. Yet, this has never led to the conclusion that these “classic” rights are not rights, or that they are not judicially enforceable. On the contrary, it has resulted in ongoing efforts to specify the content and limits of these rights, through series of mechanisms aimed at defining their meaning including the development of statutory law-making, administrative regulation, case law and jurisprudence (International Commission of Jurists, 2008: p. 15) while ESCRs are sidelined.

It is also argued that when the UDHR is transformed into legally binding instruments, *i.e.* ICCPR and ICESCR, the reason to treat the norms in two different instruments is due to the fundamental difference in their nature and the obligations they lay upon states (Eide, 1995; Henrard, 2009: p. 373). Civil and political rights are supposed to lay negative obligation upon the state to refrain from interference with the already being enjoyed rights and hence need immediate enforcement, where as ESCRs create positive obligations with mere progressive realization (Hunt, 1996: pp. 7-9, 24-31, 53-63; Gutto, 1998: p. 10). Such differences are said to make civil and political rights justiciable and ESCRs not. However, the argument that is taking dominance now suggests that all rights entail some positive and some negative state obligations (Henrard, 2009: pp. 373-374). It is empirical that civil and political rights are increasingly seen as giving rise to positive state obligations as can be seen from different jurisprudences including the jurisprudence of the European Court of Human Rights and the UN treaty bodies, and which suggests that interpretation of civil and political rights by implication involve ESCRs (Ibid). This would further imply that socio-economic rights are also justiciable since they are being subjects of adjudication even if indirectly.

Eide argues that ESCRs have three components that link them to civil and political rights (Eide, 1995: p. 20) hence make them justiciable. Adequate standard of living (UDHR, art 25; CDESCR, art 11; CRC, art 27) is at the heart of social rights, which enjoyment requires, at a minimum, that everyone shall enjoy the necessary subsistence rights including adequate food and nutrition, clothing, housing and other necessary conditions of care. This right is closely related to the rights of families to assistance (CESCR, art 10; CRC, art 27). Moreover, enjoyment of social rights requires the enjoyment of economic rights including property right, right to work (UDHR, art 23; CESCR, art 6) and the right to social security (UDHR, art 22 and 25; CESCR, art 9; CRC, art 26). Therefore, it can be concluded that ESCRs are justiciable rights.

The formulation in the ICESCR that the rights contained in it (*i.e.* ESCRs) are to have “progressive realization” shades some kind of vagueness and condition-

ality upon ESCRs. Yet, the fact that the 1993 World Conference on Human Rights¹ adopting The Vienna Declaration and Programme of Action recognized all human rights to be interdependent and indivisible solved the traditional conception of both categories of rights have different core characteristics.²

The UN Committee on ESCRs reaffirmed this fact in its general comment No. 9 by noting that rigid classification of rights with the effect of making socio-economic rights non justiciable would be arbitrary and against the principle that all rights are indivisible and interdependent.³

Interpretations on ESCRs have continued to show that the “progressive realization” formulation that gives states a margin of appreciation that had not been delimited is being narrowed.⁴ Vienna Convention on the law of treaties provides that states must carry out their obligations in treaties in good faith (Vienna Convention on the law of treaties, art 26) and cannot utilize the progressive norms as a pretext for failing to comply with obligations laid down nor to justify limitations or derogations of ESCRs on such grounds (Leckie, 1998: p. 15). According to this principle, though there is a slow process in clarifying the content of the rights and corresponding obligation they impose, taking a wider conception of margin of appreciation and reluctance to observe and realize socio-economic rights is violation to the agreed terms of the treaty in general (Eide, 1995: p. 9). In fact realization of all human rights will invariably involve a progressive undertaking though the phrase “progressive realization” is utilized in the obligations regime of ICESCR only (Leckie, 1998: p. 14). Moreover, this terminology does not affect the legal nature of the assumed obligation, and does not imply that no immediate obligations exist with regard to ESCRs,⁵ nor hinder

¹The Vienna Declaration and Programme of Action was adopted by representatives of 171 States by consensus after an unprecedented degree of participation by government delegates and the international human rights community where Some 7,000 participants, including academics, treaty bodies, national institutions and representatives of more than 800 non-governmental organizations (NGOs) has participated. The consensus by almost all states of the world can be said to confirm that the document could easily get the status of customary international law. See <http://www.ohchr.org/EN/ABOUTUS/Pages/ViennaWC.aspx>

²Vienna Declaration and Programme of Action under Part I, para 5 provided that:

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

³CESCR General Comment 9, para 10 provides that:

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

⁴See section 2.2 below.

⁵Limburg Principle No. 21 provides that: the obligation “to achieve progressively the full realization of the rights” requires states parties to move as expeditiously as possible towards the realization of the rights. Under no circumstances shall this be interpreted as implying for states the right to defer indefinitely efforts to ensure full realization. On the contrary, all states parties have the obligation to begin immediately to take steps to fulfil their obligations under the covenant.

the determination of violations of ESCRs (CESCR General Comment No. 3, para 9).⁶

ESCRs generally impose three major layers of obligations on states, *i.e.* obligation to respect, obligation to protect and obligation to fulfil (Maastricht Guidelines, 1997, para 6). These concepts offer a framework for understanding the different types of duties of states and therefore the different ways in which justiciability can be applied in practice. They may also more clearly underscore exactly which kinds of duties are less likely to be justiciable (the same can also be said about some duties arising from civil and political rights), but it is not correct to infer from this that no duty related to ESCRs could be judicially enforced (International Commission of Jurists, 2008: p. 12).

The obligation to respect imposes on states the duty not to interfere with the enjoyment of socio-economic rights by law or through conduct. The obligation to protect, on the other hand, lays duty on states to take pro-active role and safeguard enjoyment of socio-economic rights from interference by third parties through legislative, administrative and other means. The obligation to fulfil is the most controversial one imposing duty on states to assist individuals and groups to have access to socio-economic rights and/or to directly provide socio-economic services, at the cost of state with the resource at its disposal, for those that lack access to such rights (Maastricht Guidelines, 1997, paras 6 & 7). The ICESCR provided for obligations of states that would be required to be fulfilled unlike the formulation of progressive realization, one being observance of the “minimum core obligation” to ensure the satisfaction of socio-economic rights (CESCR General Comment No. 3, para 10). This obligation requires states to ensure the realization of essential food stuff, primary health care, basic shelter and housing, and most basic forms of education.⁷ Then the formulation “progressive” does not indicate the progressive realization of all the contents of the covenant, rather step by step realization of all its contents taking resource constraint into account.

Another issue often raised as a challenge to justiciability of ESCRs is the issue of separation of powers principle. It is argued that making ESCRs justiciable implying the involvement of the judiciary is against this democratic principle be-

⁶See Committee on ESCRs General Comment No. 3, para 9 where The Committee on Economic, Social and Cultural Rights has asserted that: the fact that realization over time, or in other words “progressively” is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights, on the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant, which is to establish clear obligations for States parties in respect of the full realization of the rights in question.

⁷See, the committee’s observance that:

*...minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.*

cause courts are institutionally incompetent and ill suited for entertaining matters related with socio-economic rights that require development and implementation of policies and programs that make this rights reality, which are kinds of tasks that mainly correspond to the political branches of governments, not the judiciary (Courtis, 2007: p. 319). The polycentric nature of ESCRs makes them inevitably unconformable to judicial decision making and hence drags courts into roaming in the political terrain at the cost of democratic principles (Miamingi, 2009: p. 82).

Courtis argued that courts may not be the best actors to perform acts of monitoring policies aimed at the realization of socio-economic rights to which political and especially technical bodies are well equipped. However, he continues, even though courts basically deal with narrowly defined factual cases and not necessarily best forum to evaluate the empirical indicators necessary to comprehend full picture of variables that characterise complex policy issues in areas of health, education, social security or housing, this is not a decisive argument against justiciability of ESCRs (Courtis, 2007: p. 319). It is also argued that subjecting ESCRs for adjudication does not pose greater responsibility on courts than the already existing responsibility they shoulder with regard to civil and political rights (Miamingi, 2009: p. 83).

For Courtis what matters is the pre requisites needed to adjudicate ESCRs, like clear rules of adjudication on the bases of which the legality of norm or factual situation can be assessed, identification of right holders and duty bearers, adequate judicial procedures, regular functioning of an independent and impartial judiciary, and strategic consideration of length and cost of judicial proceeding, compatibility of litigation with other strategies aimed at realization of ESCRs and confrontational nature of the litigation that could interrupt negotiations with political organs of the government who are, eventually, to be in charge of the services necessary to satisfy ESCRs (Courtis, 2007: p. 320). These conditions could best serve adjudication of socio-economic rights but their poor framing or absence do not imply the non justiciable nature of ESCRs.

2.2. Development in the Jurisprudence of Justiciability of ESCRs

Treaty bodies, domestic and international courts and tribunals have been defining the contents of ESCRs, thereby enabling the development of justiciability of ESCRs move forward. In addition to this move, some instruments have come up with legal framework where socio-economic rights stand on equal footing with civil and political rights that are generally deemed to be justiciable. Under this section, the author will try to assess some of the developments and vast jurisprudence on various issues surrounding ESCRs that aided in solving problems posed against justiciability of socio-economic rights and thereby enable courts to guarantee ESCRs.

1) Normative formulation of justiciable ESCRs

The African Charter on Human and Peoples' Right has brought a new, and

perhaps difficult, normative framework in the enforcement of ESCRs by providing them without “claw back clauses”⁸ and laying obligations not subject to “progressive realization” requirement, which obliges state parties to assume obligations of immediate effect (Ibe, 2007: p. 229). Thus, Ethiopia as state party to the Charter is under such obligations as are laid down in the Charter.

Under the African charter, ESCRs enjoy the same kind of treatment and legal protection as other rights in it. Unlike the ICESCR, the African Charter specifically provides for justiciability of ESCRs before the African Commission on Human and Peoples’ Rights (ACHPR, Art 45).⁹ This is a manifestation of justiciability of ESCRs in Ethiopia, that it could be liable for violation before the African Commission if cases were brought against it.

In *SERAC & Another v Nigeria* (SERAC & Another v Nigeria, 2001) the Centre for Economic and Social Rights and Social and Economic Rights Action Centre (SERAC) jointly submitted a petition to the African Commission with respect to ESCRs violations, viz. the rights to health and clean environment, housing, and food including right to life, in Nigeria’s oil-rich Delta area. The African Commission found Nigeria in violation of these rights and made several recommendations. One thing worth mentioning here about this case is that, the right to housing is not an expressly protected right by the African Charter. Yet, the African Commission held that the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health (ACHPR, Art 16), the right to property (ACHPR, Art 14), and the protection accorded to the family (ACHPR, Art 18), forbids the wanton destruction of shelter because when housing is destroyed, property, health and family life are adversely affected. This clearly indicates how such a right (the right to housing) is interpreted and treated as a justiciable right.

In *Malawi African Association and Others v Mauritania*, the African Commission reaffirmed the interconnectedness and indivisibility of all human rights, meaning that acts amounting to violation of ESCRs may result in violation of civil and political rights (Ibe, 2007: p. 228). The communication examines, *inter alia*, allegations that black Mauritians were enslaved, routinely evicted or displaced from their lands, which were then confiscated by the government along with their livestock. The African Commission found that the health of prisoners deteriorated due to insufficient food, blankets and inadequate hygiene and therefore held the government of Mauritania in violation of article 16 on right to health that have direct implication on the right to life.

The African Charter is criticized for its conceptual vagueness and non inclusion of all ESCRs, which leaves limited guidance to states for the proper implementation of ESCRs. What makes this worse is the non justiciability of ESCRs in

⁸A claw-back clause is a clause that permits, in normal circumstance, breach of an obligation for a specified number of reasons. It is similar to derogation clauses provided by the civil and political rights regime.

⁹Art 45 of the African Charter describes the functions of the African Commission to include ensuring the protection of human and peoples’ rights under conditions laid down in the Charter.

a number of jurisdictions in Africa, and the provision of a pre requisite of exhausting domestically available remedies before exercising the right of audience before the African Commission except in cases where these remedies are either unavailable or politically inexpedient (Id: 229-230). This makes it evident that the African Commission has a lot to do in clarifying the contents of the Charter, and perhaps, the African Court of Human rights may provide an impetus to the works of the Commission.

The phenomenon of ESCRs being formulated in a stronger, less conditional, less intrinsically progressive way is also observable in several of the United Nations human rights conventions, such as the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), as well as other regional conventions. In a regional sense, the progressive nature of state obligations in relation to the rights included in the European Social Charter is much less explicit (Henrard, 2009: p. 374).¹⁰ These developments evidence the growing consensus of putting ESCRs on a firm ground so as to give them real effect than leaving them, as some opt to describe them, “aspirations” or “pious wishes”.

2) “*Minimum core obligations*” and “*duties of immediate effect*” approach

The Committee on ESCRs provided that a state could be held liable for violation of its treaty obligations if it fails to satisfy “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights” (Maastricht Guidelines, 1997, guideline 9) even though full realization of the rights may depend upon the availability of adequate financial and material resources. Thus, resource scarcity does not relieve states of such minimum obligations in respect of the implementation of ESCRs (Id, guideline 10). Accordingly, it is apparent that notwithstanding the relative wealth of a given state, all states party to, at least, ICESCR have accepted the duty that under all circumstances, including periods characterized by resource scarcity, to observe minimum core obligations. This means that the often heard argument that resource limitation authorise governments to ignore certain obligations on this basis alone is groundless (Dankwa et al., 1997: pp. 9-10). In many cases, minimum core obligations can be observed without the utilisation of major resource diversions (Ibid). This implies that essentially cost-free measures can be undertaken by States resulting in greater enjoyment of certain ESCRs. This could easily enable one to distinguish between the state’s inability and unwillingness to comply with relevant legal obligations. As state party to the ICESCR, Ethiopia is also obliged to follow this approach in addition to other means of implementation.

Experiences of German and Swiss courts are worth noting with regard to the “minimum core obligations approach”. The German Federal Constitutional Court and Federal Administrative Court have provided examples of the “mini-

¹⁰In the case of the European Social Charter, the explicit acknowledgement of the progressive nature of the related state obligations is the exception rather than the rule, like in Articles 2(1), 3 and 4.

imum core obligation” of rights, which are derived from the constitutional principles of the welfare (or social) state and the concept of human dignity. It is decided that these constitutional principles can be translated into positive State obligations to provide an “existential minimum” or “vital minimum”, comprising access to food, housing and social assistance to persons in need (*International Commission of Jurists, 2008: p. 25*). Likewise, Swiss Federal Court decided that Swiss courts can enforce implied constitutional right to a “minimum level of subsistence” to all persons within the Swiss boundary (*Ibid*).

The ICESCRs has indentified some duties, such as the duty to take steps or adopt measures directed towards the full realization of the rights contained in the ICESCR; and the prohibition of discrimination, as having immediate effect. The duties may include taking appropriate legislative, judicial, administrative, financial, educational and social measures (*CESCR General Comment No. 3, paras. 3, 4, 5 and 7*). They oust “programmatic” perception of ESCRs and give a leeway to assess violations of state action and inaction. Their imposition of some directly operative obligations implies that non observance of these duties can be justiciable (*International Commission of Jurists, 2008: p. 27*). Consequently, any state action that discriminates between individuals or groups with illegitimate grounds such as sex, race, religion or other status, or deliberate exercise of barriers against enjoyment of ESCRs or failure to take steps to effectively realize ESCRs could result in violation of the duties of immediate effect, which is justiciable.

In this regard judicial protection against forced eviction is a good example. The right to housing, in addition to progressive positive duties of making housing accessible to those in need, includes negative duty of the state to refrain from forcefully evicting persons for legally unjustified reasons. Even where justified, eviction is prohibited without due compliance with procedural guarantees. In *ASK v. Bangladesh*¹¹ the Supreme Court of Bangladesh held that before carrying out a massive eviction from an informal settlement, the government should develop a plan for resettlement, allow evictions to occur gradually and take into consideration the ability of those being evicted to find alternative accommodation by giving fair notice before eviction.

3) *Employing “Reasonableness”, “Appropriateness”, “Proportionality” and Similar Standards*

Constitutional and human rights norms impose obligations on political branches of the government to respect and ensure the realization of the norms. Even though they provide certain margin of discretion to these organs to take measures that they deem necessary to ensure the realization of the rights, the action or inaction of the organs (legislative or executive) may result in violation of the normative framework provided. In such cases, courts may come into picture to assess the measures taken by employing different tests such as tests of reasonableness, appropriateness or proportionality.

¹¹*Ain o Salish Kendra (ASK) v. Government and Bangladesh & Ors* 19 BLD (1999) 488, July 29, 2001.

The use of these tests is a common feature of constitutional review by courts, irrespective of the differences between and among diverse legal traditions. Similar formulas are employed by international human rights courts and bodies to assess the compatibility of legislative measures undertaken by the state with the rights enshrined by human rights instruments (Courtis, 2007: p. 391). The tests are applied as a mechanism of assessing the compatibility of goals to be achieved and the means employed to achieve the goals through judicial review (Ibid). Such tests were common place in review of civil and political rights, yet, they work for ESCRs too.

The famous *Grootboom* decision,¹² issued by the South African Constitutional Court in 2001, employed such analysis when it assessed the constitutional compatibility of a housing policy implemented by the government. Entertaining the appeal by a group of homeless people who had recently been evicted from their informal settlements by a local authority, even if the plight of the particular group of claimants was resolved by settlement, the Constitutional court assessed the constitutional question underlined in the case—whether or not, more generally, the state was obliged to provide temporary shelter to homeless people. Relying on the constitutional right of everyone to have access to adequate housing, the Court held that the state had to put in place a comprehensive and workable plan in order to meet its housing rights obligations. The Court established that, in order to ascertain compliance with these obligations, three elements must be considered by the authorities: (1) the need to take reasonable legislative and other measures; (2) the need to achieve the progressive realisation of the right; and (3) the requirement to use available resources. Regarding the “reasonableness” of the measures adopted, the Constitutional Court said that the state had a legal duty, at least, to have in place a plan of action to deal with the plight of “absolutely homeless” people such as the *Grootboom* community. An examination of the state’s housing policy at the time revealed that it focused on providing long-term, fully adequate, low-cost housing and indeed took no account of the basic need of homeless people for temporary shelter. The Court declared the state’s housing policy as unreasonable, and thus unconstitutional, to the extent that it failed to make adequate provision for homeless persons.

In similar vein, many jurisdictions, including the same court mentioned above, have given substance to ESCRs enshrined in constitutional law, including healthcare and pension provision, by adopting the tests of “reasonableness”, “adequateness” and “proportionality” (International Commission of Jurists, 2008: p. 34; Courtis, 2007).

4) *Integration approach*

The indivisibility and interrelatedness of human rights norms gave rise to this approach. In jurisdictions where ESCRs are deemed to be not justiciable, court may resort to such innovative way of giving meaning to ESCRs and their realization through interpreting them by closely relating them with duties arising from

¹²Constitutional Court of South Africa, *The Government of the Republic of South Africa and others v. Irene Grootboom and others*, 2001 (1) SA 46 (CC), October 4, 2000.

civil and political rights. Though this strategy may have limitations in cases of duties that may not relate to civil and political rights, it can serve as one way of realizing ESCRs.

In *Paschim Banga Khet Majoor Samity and others v. State of West Bengal and another*¹³, the Indian Supreme Court ruling on the basis of the constitutional right to life, decided that it encompasses access to primary health care, at least in cases of emergency. Similarly, the court in numerous cases interpreted the ESCRs, such as right to education (Ibe, 2007: p. 234) and right to food (Ibid), as stemming from the fundamental right to life as provided under article 21 of the Indian Constitution.

This approach was furthered by the Colombian Constitutional Court in dealing with matters regarding ESC rights by deciding that ESC rights were justiciable when connected with a fundamental right enshrined by the Constitution. That Court has asserted in numerous cases, for example, that failure to provide access to health care services may entail a violation of the right to life (International Commission of Jurists, 2008: p. 66). The Inter-American Court of Human Rights has followed a similar path. Within its broad interpretation of the right to life, which includes not only negative obligations, but also positive obligations, the Inter-American Court has found, in a number of cases, that failure to provide severely marginalised populations with access to basic health care services amounts to a violation of the right to life under the American Convention on Human Rights (Ibid).

The above mentioned approaches used by courts to entertain ESCRs are some, but not exhaustive. Judicial activism may be exercised in a variety of forms subject to the court exercising it. What the writer tried to show is that there has been continuous and consistent development in treating ESCRs as justiciable rights.

3. International Human Rights Instruments and the FDRE Constitution

Article 9(4) of the Constitution of the Federal Democratic Republic of Ethiopia (the Constitution) provides that all international treaties ratified by Ethiopia are integral part of the law of the land (FDRE Constitution, 1995). According to this, provisions of international human rights instruments that are ratified by Ethiopia automatically serve as normative standards of the country like any other domestically enacted laws. However, the issues of ratification and the status of international treaties in general and the human rights treaties in particular in the countries hierarchy of laws is controversial and have sustained academic debate.

3.1. Definite Time When Treaties Become Integral Part of the Law of the Land

As mentioned herein above, before international treaties make up integral part of the law of the land, they have to be ratified first. The Constitution provides

¹³Supreme Court of India, *Paschim BangaKhet Majoor Samity and others v. State of West Bengal and another* (1996) 4 SCC 37, AIR 1996 Supreme Court 2426, June 5, 1996.

that the House of Peoples Representatives (HPR), which is the highest legislature in the country, is authorized to ratify treaties that have been signed by the executive branch of the government (FDRE Constitution, Art 55(2)). Furthermore, article 71(2) of the Constitution provides that the President of the country shall proclaim international agreements approved by the House of Peoples' Representatives in the Negarit Gazeta, which is the official gazette used to publicize laws.

There is no consensus as to the exact point of time when treaties are to have been said ratified so as to treat them as integral part of the law of the land. Here the contention is on the conditions sufficient for a treaty to undergo regarding formalities of ratification. On the one hand, it is argued that once a treaty is signed by the executive and then ratified by the HPR as provided in the Constitution, the treaty gets immediate effect as forming integral part of the law of the land (Mesele, 2002: p. 15). Further condition of proclaiming the treaty by the president in the Negarit Gazeta is only formality requirement that could assist easy reference for courts and the public, but not condition precedent for the treaty to be considered as integral part of the law of the land and hence have effect.

On the other hand, it is argued that all the formality requirements, including ratification by the HPR and publicity by Negarit Gazeta, should be fulfilled for a treaty to have been said ratified. This argument is further supported by articles 2(2) and 2(3) of Federal Negarit Gazette Establishment Proclamation (Proclamation 3/1995) which provides that all laws of the federal government shall be published in the Federal Negarit Gazette and all federal or regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of laws published in the Gazette. It has been argued, based on these provisions, that ratified international treaties should be published in the official gazette for their provisions to be enforced at the domestic level (Mesele, 2002). By a *contrario* reading of the provisions, it is argued that there is no obligation to observe international treaty norms unless they are publicized in the Negarit Gazeta.

The writer supports the previous argument due to the fact that customary principles of good faith and *pacta sunt servanda* impose duty on state parties to an international treaty to observe their international obligation assumed wilfully (Vienna Convention on the Law of Treaties, art. 26). According to this principle, a State party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform its treaty obligation (Id, art. 27). Even if treaties, *inter alia* international human rights treaties to which Ethiopia is party to, are merely ratified by the HPR, which is the authoritative organ of the government to ratify treaties, but not publicized in the gazette, they still have force as any law of the land from the day they are ratified by the parliament (HPR). Non fulfilment of formality requirement of publicity in the Negarit Gazeta cannot be raised as a justification to ignore observance of treaties since publicity is a requirement merely provided in the domestic law.

The Negarit Gazeta Establishment Proclamation provides for "Federal Laws", legislated by the HPR, to be publicized in the gazette to accord judicial notice. Several interviewed judges asserted that this proclamation prohibits them from

applying international treaties unless such are translated into official language and publicized in *Negarit Gazeta* (Mesele, 2002: p. 38). The assertion that judicial notice is to be taken only for laws that are translated into official language and publicized in *Negarit Gazeta* is unwarranted. International treaties must not be categorized as “Federal Laws” since Federal Courts Establishment Proclamation defining the jurisdiction of federal courts and the substantive laws they apply, refer to international treaties as a different set of laws than federal laws (Proclamation 25/1996).¹⁴ This means that ratified treaties are not part of the federal laws that must be published in the *Negarit Gazette* in accordance with article 2(2) of the Establishment Proclamation. One may go on to argue based on this that international treaties ratified by Ethiopia may be applied by federal courts irrespective of their publication in the official gazette as they are different sets of rules than domestic legislations.

While the converse reading of article 71(2) of the Constitution implies that the promulgation of ratified treaties in the *Negarit Gazeta* is a formality requirement that must be met, it should not affect their applicability. There is an additional argument, based still on article 2(3) of the Establishment Proclamation that courts take judicial notice *only* of legal texts or provisions published in the official gazette. This is also a slanted argument as the law requires only that judicial notice be taken of laws published in the gazette (Yeshanew, 2008: p. 81). This does not necessarily imply that the laws that courts may take judicial notice of and apply are only those of which the texts are published in the Gazette.

As a matter of fact, empirical evidences support the argument that publicity in *Negarit Gazeta* is a mere formality and not mandatory condition precedent for a treaty to be recognized as ratified and then make integral part of the law of the land. For example, proclamations providing that a treaty is ratified or acceded to in the official gazette do not exist in relation to some of the major international human rights treaties, such as ICESCR and ICCPR (Ibid) though these instruments are expressly provided in the Constitution as authoritative instruments for interpretation of constitutionally entrenched bill of rights. On the other hand there are ratification proclamations for other treaties, such as the CRC and ACHPR. This mixed approach evidences that publicity in a gazette is surely a mere formal requirement.

This brings to the conclusion that even if ratification and publication of the full text of international human rights instruments in a domestic gazette has substantial contribution for the realization of the rights and assist litigants and courts with easy reference of treaty provisions, for all the strong reasons provided the writer contends that the moment the HPR ratifies the treaties, they come into effect without awaiting further formal procedures.

3.2. Status of International Human Rights Instruments

A critical evaluation of the dominant literature on the status of international

¹⁴See Federal Courts Proclamation, Proclamation 25/1996, Federal *NegaritGazeta* 2nd Year 13, 15 February 1996. Articles 3(1) & 6(1) (a) also state that federal courts shall settle cases or disputes submitted to them on the basis of federal laws and international treaties.

human rights instruments under the Ethiopian constitutional framework reveals a converging opinion regarding the place of ratified treaties in the hierarchy of laws (Bulto, 2003: p. 1). There exist two tiered dimension that emerged regarding the status of treaties (Ibid).

The first dimension bases its argument on article 9(1) of the supremacy clause of the constitution, which provides that “*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*”. Consequently, treaties are subordinate to and below the Constitution in the hierarchy of laws. Based on this assertion the status of treaties compared to the overall laws is determined by looking at their formal source, which is the HPR that ratified them. The simple fact that the HPR with treaty ratifying powers is also entrusted with power of enacting proclamations led to the conclusion that treaties and proclamations share equal status in the hierarchy of laws.

This argument can be challenged with a simple fact that if treaties and proclamations share parity of status, rules of interpretation, inter alia, *lex posterior derogate lex priori* (latter law prevails over the earlier law) would apply and then the legislature could effectively rule out obligations arising from ratified treaties by enacting a post ratification proclamation that goes against the treaty. As it has been discussed above, this is not the way international treaties are to be treated and is conspicuously impossible due to the principles of good faith and *pacta sunt servanda*.

The other dimension prefers the cumulative reading of article 9(4) of the constitution that makes ratified treaties integral part of the law of the land, and article 13(2) of same that obliges constitutionally entrenched bill of rights to “be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia”. The inclusion of the interpretative clause under article 13(2) led many scholars to the conclusion that international human rights instruments adopted (and not just ratified) have a status higher than, or at least equal to, Chapter 3 of Constitution itself (Idris, 2000: p. 113). Accordingly, interpretation of any provision of constitutional bill of rights, if contradicts with international human rights norms, international treaty norms enjoy prevalence over constitutional norms since the constitution abdicates its supremacy as far as human rights norms is concerned. This conclusion leads to the belief that regarding international treaties, at least Human Rights ones, Ethiopia can be described as, what is classically called a “monist” country.¹⁵

4. Justiciability of Socio-Economic Rights in Ethiopia

The 1994 FDRE Constitution devotes one third of its provisions to fundamental

¹⁵Monists argue that international law and domestic law together form a unified legal system, often characterized by the primacy of international norms. They further argue that municipal courts shall apply international law directly without the need for any act of adoption by the courts or transformation by the legislature. The monist-dualist divide involves a wide discussion and cannot be covered here.

rights and freedoms. In addition to that, there are provisions that deal with national policy principles and objectives that serve as either guarantees or have direct relevance to the interpretation of fundamental rights (FDRE Constitution, arts 88-92). The Constitution classifies fundamental rights and freedoms as human and democratic rights. Given the fact that human rights are interrelated and indivisible, this classification would not bring any substantial difference in the application of the rights.

The Constitution expresses the importance accorded to these rights by putting a standard that interpretation of the human rights provisions specified in it shall conform to the principles of international and regional human rights instruments adopted by Ethiopia (FDRE Constitution, art 13(2)) and imposing extra stringent amendment requirements than the other provisions in it (FDRE Constitution, art 105). Moreover, it impliedly recognized the interrelatedness and indivisibility of all human rights by incorporating them on equal footing without any difference in consequence (Abebe, 2011: p. 44).

To determine justiciability of socio-economic rights in Ethiopia it is necessary to critically analyze the interpretation of the constitutionally entrenched bill of rights and judicial jurisprudence regarding application of human rights in general and socio-economic rights in particular.

4.1. Interpretation Bill of Rights in the Constitution

Many federal systems mandated the power to interpret constitutional norms either to their ordinary courts or separate constitutional courts making it a purely legal matter (Gauri & Brinks, 2008). Accordingly, these courts not only have the power to interpret the constitution, but are also and even more importantly entitled to decide on the conformity of the laws with the constitution. The trend is different with Ethiopian constitutional interpretation. According to articles 62 and 83 of the Constitution, the House of Federation (HoF) is empowered to interpret the constitution and decide constitutional disputes making it a political matter though the HoF is to be advised by Council of Constitutional Inquiry, which is composed of legal experts of higher standing headed by the Chief Justice of the Federal Supreme Court that examines the issues and recommends the House (FDRE constitution, art 84).

ESCRs are incorporated in the Constitution under the crudely formulated provisions of article 41. Without elaborating these rights, the provision generally requires creation of equal opportunities to freely chosen means of livelihood and the allocation of ever increasing resources for health, education and other social services. Even if it is argued that the “other social services” terminology is meant to include other specific socio-economic rights as provided in international and regional human rights instruments in accordance with the interpretation clause of the constitution, lack of interpretation by the HoF for this particular provision increases the ambivalence regarding justiciability of this group of rights (Yeshanew, 2008: p. 4). Additionally, though they can be categorized under ESCRs,

outside of article 41 specific provisions are devoted to certain rights, viz. Marital, Personal and Family Rights (FDRE Constitution, art 34), Rights of Women including ESCRs (FDRE Constitution, art 35), Rights of Children (FDRE Constitution, art 36), linguistic, cultural and preservation of history rights of nations, nationalities and peoples (FDRE Constitution, art 39), Right to Property (FDRE Constitution, art 40), Rights of Labour (FDRE Constitution, art 42), Right to Development (FDRE Constitution, art 43), and Environmental Rights (FDRE Constitution, art 44).

Unlike some jurisdictions that embody socio-economic rights provisions as Directive Principles of State Policy (DPSPs) in their constitutions and making such rights not justiciable by barring courts from enforcing them, their inclusion under article 41 and articles 34, 35, 36, 39, 40, 42, 43 and 44 of the Ethiopian constitution is in the same footing with civil and political rights. This makes the socio-economic rights under the same chapter with civil and political rights justiciable rights (Mesele, 2002: p. 28).

In addition to article 41 and the provisions on specific socio-economic rights, the Constitution provides for economic, social and cultural objectives and principles that the state has to observe in the formulation of national policies under Chapter Ten, which take the form of DPSPs. These principles, even though are not enforceable, affect interpretation of the rights incorporated under fundamental rights and freedoms and strengthen the enforcement of the rights provided by article 41 and other specific provisions on ESCRs. Hence, it can be argued that the DPSPs in the Constitution are not meant to hamper justiciability of the rights, rather the duplication is indicative of emphasized attention to socio-economic rights and hence the DPSPs to strengthen the justiciable rights. Consequently, article 90(1) of the Constitution that provides for formulation of policies aiming at provision of all citizens with access to health, education, clean water, housing, food and social security can be taken as interpretative tool for the crudely formulated article 41, which enjoys same treatment with civil and political rights. This is supported by the interpretation clause of article 13(2) because numerous international and regional human rights instruments ratified by Ethiopia have recognized such distinctive rights expressly in the instrument or impliedly dug out through interpretation.

4.2. Judicial Approach to Guaranteeing Socio-Economic Rights

Article 13(1) of the Constitution imposes duty on all federal and state legislative, executive and judicial organs to respect and enforce fundamental rights and freedoms. S.A. Yeshanew argues that the duty of the judiciary to enforce rights is an expression of justiciability of the fundamental rights and freedoms provided by the Constitution, including socio-economic rights (Yeshanew, 2008: p. 5). Thus, in accordance with article 37(1) of the Constitution that provides for the right to bring justiciable matter to courts of law or other competent bodies with judicial power and obtain decision or judgment, everyone has the right to bring

issues involving socio-economic rights to courts of law and obtain judgment.

However, judicial practice shows that Ethiopian courts generally tend to avoid adjudicating cases based on constitutional provisions in general and provisions on human rights in particular where such provisions are invoked as relevant (Ibid). This emanates from the belief that since the constitution mandates the power of interpreting the constitution and constitutional disputes to the HoF with the recommendation of the Council of Constitutional Inquiry, courts are generally ousted from applying constitutionally entrenched norms (Id, 7).¹⁶ Cumulative reading of articles 83 and 84 of the constitution with articles 6, 17 and 21 of the Council of Constitutional Inquiry Proclamation clearly indicate that the mandate of HoF is to decide on “constitutional disputes”, which is about constitutionality of laws or decisions contested and necessitate interpretation of constitutional provisions (Proclamation 250/2001; Proclamation 251/2001). Therefore, this cannot be a ground to determine whether constitutional provisions may be applied by courts.

Courts can actually apply constitutionally entrenched rights and provisions of international and regional human rights instruments, including socio-economic rights, on the basis of article 13 of the constitution unless the applicable provisions are contested to be unconstitutional and necessitate constitutional interpretation. Constitutional duty of the judiciary to enforce the rights enshrined in the constitution obviously extends to applying them in cases they are referred to. This fact is further strengthened by article 3(1) of the Federal Courts Proclamation that provides for federal courts the jurisdiction to entertain cases arising under the Constitution, federal laws and international treaties (Proclamation 25/1996).

One thing worth mentioning here is that even in cases where “constitutional disputes” arise, courts still retain the power to decide on the cases. What they do is they submit the legal issue that they believe is in need of interpretation to the Council of Constitutional Inquiry while the case is pending and, resume and decide the case based on the interpretation referred back to them by the Council through the HoF (Proclamation No. 250/2001, art 21). Consequently, courts can apply constitutional provisions without any need for interpretation from HoF if they believe the provisions are clear.

Even if a close look at the Constitution and other laws indicates the possibility that the judiciary has the right to apply clear provision of the Constitution on human rights, the courts’ practice does not as such affirms such fact. In *Coalition for Unity and Democracy (CUD) v Prime Minister Meles Zenawi Asres*, (CUD v Meles Zenawi Asres, 2005) the trend of directly referring cases involving constitutional provisions without first ascertaining whether the provisions are

¹⁶In a workshop (Training of Judges, organised by the Federal Supreme Court in co-operation with USAID, Summer 2001, Adama, Ethiopia) most judges of the Oromiya Regional State took the position that articles 83 and 84 of the Constitution in effect debar them from directly applying constitutional provisions, especially when the constitutionality of a law or decision is in issue. The writer has interviewed considerable number of judges of the SNNPR in 2018 on the same matter and overwhelming number of the interviewees hold similar opinion.

clear or not is observed. In this case the plaintiff (CUD), which is an opposition political party, contested the decision of the Prime Minister of Ethiopia that banned assembly and demonstration in Addis Ababa and its surrounding area for a month after the May 2005 election basing constitutional and other legislative provision including articles 13(1) and 37 of the Constitution claiming human rights of the Constitution are justiciable. The Federal First Instance Court to which the case is brought framed the issue as whether the decision of the Prime Minister is unconstitutional, and referred the matter to the Council of Constitutional Inquiry invoking articles 17 and 21 of Proclamation 250/2001 without considering if the case arises “constitutional dispute” or involves clear provisions that the court could directly apply.

The court, in fact, expressed that it also referred the issue whether there is a need for constitutional interpretation to the Council, which the Council has never considered and simply entertained the matter reaching at a decision that the directive issued by the Prime Minister was not unconstitutional (Yeshanew, 2008). The writer argues that, since courts are required to refer only those cases that they deem are in need of interpretation (Proclamation 250/2001; Proclamation 251/2001), they have to first exercise their power of ascertaining the clarity or otherwise of the provisions invoked before referring the matter to the Council. In so doing they have to apply and decide based on the provisions that are clear without any need to refer the matter to the Council.

There are, however, instances where Ethiopian Courts have entertained cases invoking the human rights provisions of the Constitution and provisions of international instruments. For instance, in *Dr Negaso Gidada v the House of Peoples’ Representatives and the House of Federation (Dr Negaso Gidada v HPR, 2006)*, affirming the right of the appellant to freedom of opinion and expression and his right to vote and be elected, the Federal High Court expressing that as per article 9(4) of the Constitution they are integral part of the law of the land and as per article 13(2) they are standards of interpretation, it invoked articles 18 and 19 of the UDHR and ICCPR. This practice has the effect of liberating many members of the judiciary from the outdated belief they have developed that human rights in ratified treaties, if not precisely provided in domestic laws, are not justiciable (Yeshanew, 2006).

In *Miss Tsedale Demissie v Mr Kifle Demissie (Tsedale Demissie v Kifle Demissie, 2006)* the Federal Supreme Court Cassation Division has rendered a landmark decision regarding application of constitutionally entrenched human rights and human rights incorporated in international treaties by all levels of courts in the country. The case involves a dispute between a father and maternal aunt of a minor as to his guardianship and administration of inheritance he received from his deceased mother. Reversing the decision of all three levels of courts that decided the matter based on the “stronger blood” test, the Cassation Division of the Federal Supreme Court decides in favour of the aunt citing articles 3(1) of the Convention on the Rights of the Child (CRC) and 36(2) of the

Constitution that deal with the best interest of the child. The importance of this decision lies in the fact that all levels of courts, be it Federal or Regional, are duty bound to apply the interpretations of Cassation Division as per article 4 of Proclamation No. 454/2005 as a precedent (*Proclamation 454/2005*). Thus, it evidences that courts not only are expected to apply interpretation precedent in this particular decision, but also seen a green light to apply human rights provisions in the Constitution and international treaties in a similar manner as the Cassation Division.

In *G. Agri POC PLC and Mr Getahun Asfaw v Ethiopian Revenues and Customs Authority* (*G. Agri POC PLC & Getahun Asfaw v ERCA, 2012*) the same division reaffirmed its previous position and in fact went on further to assert that courts are duty bound to apply provisions of international treaties ratified by Ethiopia and to conform interpretation of rights recognized in the constitution other domestic laws with interpretation of rights in the treaties. In this case the Cassation Division has overturned judgment of criminal conviction and punishment by two other level courts against the applicant for failure to pay taxes. It has cited article 11 of the International Covenant on Civil and Political Rights (ICCPR) for this purpose and noted that in accordance with article 13(2) of the Constitution, any law of the country that has a bearing on human rights, shall be construed in a manner confirming to international human rights treaties. Though the treaty the Court has referred to in this case is a civil and political rights one, the Court's affirmation of article 13(2) that international human rights treaties ratified by Ethiopia serve has a benchmark to interpret human rights provision of domestic laws including the Constitution, it can be concluded, in accordance with human rights treaties providing for justiciable socio-economic rights that are ratified by Ethiopia, including the ACHPR, ESCRs are justiciable before Ethiopian courts.

To sum up, the existing jurisprudence on justiciability of human rights in Ethiopia though mainly focussed on civil and political rights, its implication to socio-economic rights is a direct one since both categories of rights are entrenched in the Constitution in a same footing. The reluctance of members of the judiciary to accept ESCRs as justiciable does not prove the fact that they are not justiciable. The existence of constitutional legal framework that treats socio-economic rights in a similar way with civil and political rights and Ethiopia's ratification of major human rights treaties, including the African Charter on Human and Peoples' Rights that came up with justiciable socio-economic rights; and the result thereof of the treaties as an interpretation threshold for domestically recognized bill of rights prove that ESCRs are indeed justiciable in the Ethiopian legal system. Moreover, the Constitution's formulation of the states obligation to "allocate ever increasing resources" under article 41(4) shall be construed in a manner conforming to proactive roles of states and shall be evaluated based on state's minimum core obligations and duties of immediate effect, reasonableness, appropriateness and proportionality of measures taken

and other similar standards.

5. Conclusion

Socio-economic rights have been recognized in many constitutions and various regional and international human rights instruments. Due to the purely rhetorical value ascribed to these rights, and to the lack of attention paid to their interpretation by the judiciary and legal academics, fewer concepts have been developed that would help to understand rights such as the right to education, the right to an adequate standard of health, the right to adequate housing or the right to food. Lack of or little effort to elaborate these rights is then being a point to justify non-justiciability of the rights.

Though the judiciary is reluctant to apply constitutional provisions in cases that involve them, the FDRE Constitution has entrenched justiciable human rights, including socio-economic rights under article 41. It further recognized norms relating to such rights as provided in regional and international human rights instruments as authoritative bases for interpreting constitutionally included rights in its article 13(2). The recent land mark decision by the Cassation Bench of the Federal Supreme Court has also laid ground for the application of constitutionally entrenched rights and rights in ratified treaties by courts at all levels. Therefore, even if the constitution bestows the power of interpreting the constitution (in case of constitutional disputes) to the HoF, courts are at liberty, in fact at duty, to apply clear provisions of the Constitution by supporting them with interpretations of rights in human rights treaties ratified by Ethiopia.

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