

*Addis Ababa  
University*

*(Since 1950)*



**THE RIGHT TO ADEQUATE STANDARD OF LIVING WITH SPECIFIC FOCUS ON  
THE RIGHT TO ADEQUATE HOUSING: THE INSTITUTIONAL AND LEGAL  
FRAMEWORK IN ETHIOPIA**

**BY ARMAYE ASSEFA**

**ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
SCHOOL OF LAW**

**November 2011**

**THE RIGHT TO ADEQUATE STANDARD OF LIVING WITH SPECIFIC FOCUS ON  
THE RIGHT TO ADEQUATE HOUSING: THE INSTITUTIONAL AND LEGAL  
FRAMEWORK IN ETHIOPIA**

**BY ARMAYE ASSEFA**

**A THESIS SUBMITTED TO THE SCHOOL LAW AT ADDIS ABABA UNIVERSITY  
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE  
DEGREE OF LL.M IN HUMAN RIGHTS**

**ADVISOR**

**MIZANIE ABATE (LL.B, LL.M, PhD Candidate)**

**November 2011**

**THE RIGHT TO ADEQUATE STANDARD OF LIVING WITH SPECIFIC FOCUS ON  
THE RIGHT TO ADEQUATE HOUSING: THE INSTITUTIONAL AND LEGAL  
FRAMEWORK IN ETHIOPIA**

**BY ARMAYE ASSEFA**

**A THESIS SUBMITTED TO THE SCHOOL LAW AT ADDIS ABABA UNIVERSITY  
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE  
DEGREE OF LL.M IN HUMAN RIGHTS**

**APPROVED BY BOARD OF EXAMINERS**

<b>NAME</b>	<b>DATE</b>	<b>SIGNATURE</b>
<b>1. MIZANIE ABATE</b>	_____	_____
<b>ADVISOR</b>		
<b>2. _____</b>	_____	_____
<b>CHAIRPERSON</b>		
<b>3. _____</b>	_____	_____
<b>EXAMINER</b>		

## Table of contents

<b>Title</b>	<b>page No</b>
Table of contents-----	i
Declaration -----	iv
Acknowledgments -----	vi
List of abbreviations-----	vii
<b>Chapter One</b>	
<b>General Introduction-----</b>	<b>1</b>
1.1 Background of the study-----	1
1.2 Statement of the problem-----	3
1.3 Objective of the study-----	4
1.4 Research questions-----	5
1.5 Significance of the study-----	5
1.6 Methodology -----	6
1.7 Limitation of the study-----	6
1.8 Overview of chapters-----	6
<b>Chapter Two</b>	
<b>The Right to Adequate Standard of Living in General-----</b>	<b>8</b>
2.1 International standards on the right to adequate standard of living-----	8
2.2 Regional human right instruments pertaining to the right to adequate standard of living-----	9
2.2.1 The African Human Right system-----	9
2.2.2 The Inter- American Human Right system-----	9
2.2.3 The European Human Right system-----	10

2.3 The normative content of the right to adequate standard of living-----	11
2.3.1 The right to adequate food-----	11
2.3.2 The right to adequate housing-----	12
2.3.2.1 Definition and content of the right to adequate housing-----	12
2.3.2.2 Interpretation of the right to adequate housing-----	13
2.3.2.3 Components of the right to adequate housing-----	14
2.3.2.4 State parties' obligation for the implementation of the right to adequate standard of living-----	15
i. Obligation to recognize the right to adequate housing at national level--	16
ii. Obligation to respect the right to adequate housing-----	17
iii. Obligation to protect the right to adequate housing-----	17
iv. Obligation to fulfill the right to adequate housing-----	18
2.3.2.5 Potential violations of the right to adequate housing-----	18
2.3.2.6 Remedies for victims of violation of the right to adequate housing-----	20
2.3.2.6.1 Remedies at national level-----	20
a. Judicial redress-----	20
b. Extra-judicial redress-----	21
2.3.2.6.2 Remedies at regional level-----	21
a. The African Human Rights System-----	21
i. The African Court of Human and Peoples' Right-----	21
ii. The African Commission on Human and Peoples' Right--	22
b. The Inter-American Human Right System-----	22

2.3.2.6.3 Remedies at the international level-----	23
a. The Special Rapporteur on the Right to Adequate Housing-----	23
b. The UN Committee on ESC Rights-----	24
2.3.2.7 Justiciability of the right to adequate housing-----	24
2.3.3 The right to adequate clothing-----	27
2.3.4 The right to water-----	27

### **Chapter Three**

#### **The Right to Adequate Standard of Living under the Ethiopian Legal System-----29**

3.1 Introduction -----	29
3.2 Laws and policies pertaining to the right to adequate standard of living-----	29
3.2.1 Constitution of the Federal Democratic Republic of Ethiopia-----	29
3.2.2 Other laws-----	31
3.2.2.1 Re-enactment of Urban Land Lease Holding, Proclamation No 272/2002----	31
3.2.2.2 Condominium Proclamation, Proclamation No 370/2003-----	31
3.2.2.3 Expropriation of Land Holding for Public Purposes and Payment of Compensation, Proclamation No 455/2005-----	32
3.2.2.4 Re-enactment of Urban Land Lease Holding, Proclamation No 721/201-----	33
3.2.3 Policies-----	34
3.2.4 International instruments ratified by Ethiopia -----	34

### **Chapter Four**

#### **Legal Framework for Redressing Victims of Violation of the Right to Adequate Housing in Ethiopia-----37**

4.1 Enforcement of the right to adequate housing-----	37
4.2 Current status of housing in Ethiopia-----	41
4.3 Remedies for violation of the right to adequate housing-----	43
4.3.1 Judicial remedy-----	43
4.3.2 Institutional remedies-----	45
4.3.2.1 The Ethiopian Human Rights Commission-----	45
4.3.2.2 The Institution of Ombudsman-----	47
 <b>Chapter Five</b>	
<b>Conclusion and recommendations -----</b>	<b>56</b>
5.1 Conclusion-----	56
5.2 Recommendations-----	58
<b>Reference -----</b>	<b>60</b>
 <b>Appendix A</b>	
Interview Guide for Judges at the Federal High Court-----	67
 <b>Appendix B</b>	
Interview Guide for Experts at the FDRE Human Rights Commission-----	68
 <b>Appendix C</b>	
Interview Guide for the Director of the Maladministration Investigation Directorate of the FDRE Institution of Ombudsman-----	69
 <b>Appendix D</b>	
Cases -----	70

### DECLARATION

I, Armaye Assefa hereby declare that this thesis represents my own original work, with citations and quotations where other people's works have been used, which has not been submitted before to any other institution for any other purpose.

Name: Armaye Assefa

Signature \_\_\_\_\_

Date \_\_\_\_\_

I, Mizanie Abate, have read this thesis and approved it for examination.

Advisor: Mizanie Abate

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Acknowledgments**

First and for most, I would like to thank the Almighty God and His Mother St. Marry for giving me the courage and health to finish my thesis.

I am sincerely grateful to my advisor Ato Mizanie Abate, without whose constructive and academic comments the thesis would not have come to an end.

I would like to express my deepest gratitude to Ato Petros W/Senbet, Maladministration Investigation Directorate Director of the Ethiopian Institute of Ombudsman and the Legal experts in the Ethiopian Human Rights Commission.

My deepest gratitude also goes to my beloved husband Benyam Melakebirhan. Ben I have no words than saying that *you were indispensable...I owe you!*

The continuous encouragement and support of my father Ato Assefa Adela along with the prayer of my great mother W/ro Mulu Bekele had great contribution for the realization of my thesis.

Fitse, my honest gratitude extends to you for teaching me strength.

Last but not least the contribution of my Brothers Abinet, Esatu and sisters, Neway and Nistuh could not be measured

## **List of Abbreviations**

**ACHR-** American Charter on Human Rights

**ACHPR-** African Charter on Human and Peoples' Rights

**APAP-** Action Professionals Association for the People (Ethiopia)

**CEDAW-** Convention on the Elimination of all forms of Discrimination Against Women

**CRC-** Convention on the Right of the Child

**CRPD-** Convention on the Right of Persons living with Disabilities

**ESCR-** Economic, Social and Cultural Rights

**FDRE-** Federal Democratic Republic of Ethiopia

**GC-** General Comment

**GIS-** Geographic Information System

**HPR-** House of Peoples' Representatives

**ICCPR-** International Covenant on Civil and Political Rights

**ICESCR-** International Covenant on Economic, Social and Cultural Rights

**IHDP-** Integrated Housing Development Program

**NGO-** Non-Governmental Organizations

**SERAC-** Social and Economic Right Action Center

**UDHR-** Universal Declaration of Human Rights

**UN-** United Nations





## Chapter one

### General Introduction

#### 1.1 Back ground of the study

It is a common practice to categorize human rights in to Civil and Political rights and Economic, Social and Cultural (ESC) right. There was problem in accepting ESC rights as human right and give them equal attention as that of Civil and Political Rights. However, ESC rights, as one set of human right, could be said inherent to the human kind and are inalienable in a sense that they exist even where not recognized or respected by legislation.<sup>1</sup>

The right to adequate standard of living, which is one aspect of ESC rights, is often referred to as the right to subsistence. This right requires at a minimum level, that every one shall enjoy the necessary subsistence rights; adequate food and nutrition, clothing, housing and water. Every human person should enjoy his/her right to adequate standard of living without engaging in degrading activities such as begging, prostitution or forced labor. It is also clear that recognition and respect of this right is an essential condition for the enjoyment of other rights including civil and political rights.<sup>2</sup>

As stated above, human rights in general and ESC rights in particular are there even where not recognized, which means that every human person is entitled for the same irrespective of existing international or national laws. In spite of this fact, in a world where resources are scarce and conflicts are inevitable, there would always be violation. Hence, in order to redress victims of violation, it is clear that we need laws that bind all parts of the society including leaders. Given this need, therefore, the world came with the first international human right instrument, the Universal Declaration of Human Rights (UDHR). Article 25 of the same sets out some of the elements of ESC rights generally and the right to adequate standard of living in particular and these include: food, housing, water, clothing and other necessary social services.

Again, another issue was raised and the world community was called to adopt a binding international instrument. The adoption of the International Covenant on Economic, Social and

---

<sup>1</sup> A. Sisay , Justicability of the Right to Housing and Health in Ethiopia, the Legal and Policy Frame work, Action Professionals Association for the People, 2006, p. 5.

<sup>2</sup> Iceland Human Rights Center, The Right to Adequate Standard of Living, available at [info@humanrights.is](mailto:info@humanrights.is).

Cultural Rights (ICESCR) is among the strong efforts that give ESC rights a *right* status. The notion of making ESC rights legitimate claims is further strengthened when it is declared that all human rights are universal, indivisible, interdependent and interrelated.<sup>3</sup>

There are also other international and regional human right instruments that recognize and provide for ESC rights in general and the right to adequate standard of living in particular. Among these are article 11 of the Convention on the Rights of the Child (CRC), article 14 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), article 28 of Convention on the Rights of Persons with Disabilities (CRPD) and articles 5 and 14-18 of the African Charter on Human and Peoples' Rights (ACHPR).

Ethiopia is party to all the above international human right instruments. Being a State Party, Ethiopia is obliged to respect, protect and fulfill the right recognized under such ratified international instruments. It is also clear from the FDRE constitution that ratified international human right treaties are part and parcel of domestic laws of the country and interpretation of fundamental human rights should be done by observing the same.<sup>4</sup> Ethiopia has also impliedly recognized the right to adequate standard of living under article 41 of its Constitution.

In spite of such universal and national recognition of the right to adequate standard of living, millions of people are living under poverty line and are unable to enjoy their minimum dietary needs, are inadequately housed and suffer from lack of clean water and sanitation system. When we specifically consider housing problems in the world, the homeless, the inadequately housed and the evicted are more and more numerous in the cities and the countryside.<sup>5</sup>

In Ethiopia, too, despite the effort made by the Ethiopian Government to improve the living conditions of its citizens, most of the country's urban centers are suffering from a host of problems including rising unemployment which is coupled by unstable income source and low income to cover basic needs like food and clothing, deepening poverty, severe housing shortage and the like.<sup>6</sup>

---

<sup>3</sup> Vienna Declaration and Program of Action, World conference on Human Rights, Vienna, 1993, par 5.

<sup>4</sup> Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995 art. 9 (4) and 13 (2).

<sup>5</sup> C. Golay and O.Melik, *The Right to Housing*, p.2, available at [www.unhabitat.org](http://www.unhabitat.org).

<sup>6</sup> *Id.* p. 6.

When we consider the situation of the capital city, Addis Ababa, its inhabitants are currently suffering from a significant shortage of potable/clean water. For example by the year 2003 G.C over 1/3 of the City's demand for clean and safe water remained unreached. And in particular housing conditions in Addis Ababa generally and throughout Ethiopia are among the worst in the world.<sup>7</sup>

Generally speaking, Ethiopia is one of the poorest countries of the world which is manifested by the fact that around 23% of the population is living on less than one dollar and 78% of the population living on less than two dollars per day. This impliedly shows the fact that majority of the population cannot enjoy its right to adequate standard of living due to economical inability to satisfy basic needs. The government also revealed at the end of 2009 the fact that figure of beneficiaries requiring humanitarian assistance increased from 2.4 to 6.4 million.<sup>8</sup>

## **1.2 Statement of the problem**

One of the primary obligations undertaken by the Ethiopian government by ratifying the ICESCR is to ensure that specific rights enshrined in the Covenant are included under the Constitution and other specific domestic legislation. Though the government undertook this obligation, articles 41 and 90 of the FDRE Constitution are not comprehensive and clear as expected. Article 41, which is part of the Bill of rights, is so crude in the sense that it is so difficult to identify elements included under the right to adequate standard of living and the extent of protection afforded to them. Even if one can find terms like food and housing under article 90 of the constitution, it is under the National Policy Principles and Objectives part which are pointers of direction and include rights which are of progressive realization and non-justiciable. There are also no specific and comprehensive legislations and policies which deal with the right to adequate standard of living.

When we consider the practical problem, many people in Ethiopia engage in degrading activities like begging and prostitution to feed themselves and the beloved ones. Moreover, majority of the population of Addis Ababa are inadequately housed and a good number of people are homeless. In spite of the government's effort to build low cost houses for the poor or low income people,

---

<sup>7</sup> Comparison of Urban Upgrading Projects on Development Cooperation in Ethiopia, Ethiopia and its capital, Addis Ababa, UNHABITAT pp 27-30.

<sup>8</sup> Universal Periodic Review, 6<sup>th</sup> session, 30 Nov-11 Dec 2009, par 31.

houses are still not affordable in the city. The same people suffer from lack of clean water and sanitation system.

The very fact of the country, like any other developing country, shows that there are a good number of victims of violation of the right to adequate standard of living in general and the right to adequate housing in particular. Despite this fact, the existing laws of the country do not clearly recognize these rights and there is also no specific legislation that is aimed at the realization of the rights. Moreover, court cases related to socio-economic rights are often rejected for reasons such as non-justiciability. Progressive realization is also understood as it excludes immediate obligation and poverty is always raised as justification for every violation of the right to adequate standard of living. Judges are often reluctant to apply the FDRE Constitution and international human right instruments ratified by Ethiopia in adjudicating cases.

When we consider awareness of victims, most of them, who are poor and illiterate part of the society, are not aware of their rights and they cannot claim for enjoyment of rights or compensation for damages sustained.

As stated above, it is normal to hear that ESC rights are to be realized progressively and that poverty is a big challenge to fully realize such rights. However, are not there measures that could have been taken by the Ethiopian government to at least meet the minimum core obligations that emanate from undertaking the ICESCR?

### **1.3 Objectives of the study**

The objectives of this thesis are:

- Examine the existing normative, institutional and procedural frame work on the right to adequate standard of living in Ethiopia with special emphasis on the right to adequate housing.
- Discuss about the substantive content of the right to adequate standard of living under international human right instruments.
- Discuss about the direct applicability of the FDRE constitution in adjudicating cases of violation of the right to adequate standard of living.
- Analyze the status of international human right instruments ratified by Ethiopia.

- Examine the recent situation of Ethiopian population in the enjoyment of the right to adequate standard of living in general and the right to adequate housing of Addis Ababa.
- Identify existing institutional and other measures to redress victims of violation of the right to adequate housing in Ethiopia.
- Make assessment on how far the Ethiopian government went in realizing its obligation emanating from the ICESCR.
- Suggest on the way forward for protection of the right to adequate standard of living in general and the right to adequate housing in particular.

#### **1.4 Research questions**

This thesis aims at answering the following basic questions:

- Has Ethiopia adopted adequate and reasonable measures to realize the right to adequate standard of living?
- What are the normative contents of the right to adequate standard of living?
- What are the obligations that emanate from recognizing the right to adequate standard of living and who are duty bearers of the same?
- Can courts of Ethiopia directly apply provisions of the FDRE Constitution and other international human right instruments ratified by Ethiopia?
- What is the role of the Ethiopian Human Rights Commission and the Institute of Ombudsman in the realization of the right to adequate standard of living and in redressing victims of violation of this right?

#### **1.5 Significance of the study**

This thesis is one of the original works in the Ethiopian context. Consequently it has its own significance in that it would help new researchers and academicians to do further studies. Besides, the research would also give recommendation for the legislative and policy makers. It would also increase awareness of Ethiopians about their right to adequate standard of living.

## **1.6 Methodology**

To attain the objectives listed above and to address the research questions, different methods would be used. The approach to be followed in this research is qualitative one in which different data collection mechanisms would be used.

Critical examination of laws, prior studies and different articles on the area is one of the methods to be used. Furthermore, to critically analyze the institutional and procedural framework on the right to adequate standard of living in Ethiopia, selected judges from the Federal High Court would be interviewed. The other area of focus is the Ethiopian Human Rights Commission and the Institute of Ombudsman where interview with concerned persons would be conducted.

## **1.7 Limitation of the study**

Because of time and other limitations, all the components of the right to adequate standard of living in Ethiopian would not be discussed. Therefore, after discussing about the right to adequate standard of living under international and regional human right system discussion about the right under the Ethiopian legal system would follow and there; all specific issues and cases would be directly related with the right to adequate housing.

As to the practical assessment of the institutional and procedural framework in Ethiopia, due consideration will be given to the Ethiopian Human Rights Commission, the Institute of Ombudsman and the judiciary.

## **1.8 Overview of chapters**

The first chapter is wholly devoted to introducing the study. Under this part background of the study, statement of the problem, objective of the study, research questions, limitation, significance and methodology of the research are duly dealt with.

The second chapter of this research is allotted to deal with the general overview of the right to adequate standard of living. Under this chapter, international and regional standards and the normative content of the same right are explored.

Under chapter three, the right to adequate standard of living in general and the right to adequate housing in particular under the Ethiopian legal system are presented. Here also laws, policies and international human rights instruments ratified by Ethiopia are analyzed.

The fourth chapter is about the legal framework for redressing victims of violation of the right to adequate housing in Ethiopia. This chapter again deals with existing domestic remedies of violation. Finally, under chapter five, brief conclusion and list of recommendations are included.

## Chapter two

### The Right to Adequate Standard of Living in General

#### 2.1 International Standards on the Right to Adequate Standard of Living

UDHR is the first international human rights instrument to embrace the right to adequate standard of living. Pursuant to article 25 of the UDHR, *everyone has a right to a standard of living adequate for the health and well being of himself and his family*. This article sets out some elements of the right to adequate standard of living, which are; food, housing, water, clothing and other necessary social services.<sup>9</sup> Although there are claims that the rights recognized in the UDHR have the status of customary international law, there is no consensus which rights do exactly acquire such status. In fact, originally, UDHR was not meant to be a binding text. It is with this understanding that the UN General Assembly of the UN came up with two separate legally binding instruments: the ICCPR and ICESCR.<sup>10</sup>

As a guiding and binding text, article 11 of the ICESCR provides that *state parties to the present covenant recognize the right of every one to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions*. The Committee on ESC rights issued several General Comments for the purpose of explaining the normative content of the right to adequate standard of living and elaborating criteria for the full realization of the right. These General Comments also serve interpretation purposes because there are diverse controversies regarding the meaning, content and implementation of ESC rights in general and the right to adequate standard of living in particular.<sup>11</sup>

Among the General Comments, GC No 4 is the first one and about the right to adequate housing. The other one is GC No 12 which is about the right to food. Under this GC, the Committee has elaborated the elements of the right to food, obligations of State Parties, violation, remedies and accountability and implementation at the national level.<sup>12</sup> The other related General Comment is

---

<sup>9</sup> Economic, Social and Cultural Rights, A Text Book 2<sup>nd</sup> ed., edited by Asbjorn Eide, Catarina Krause and Allan Rosas, Martinus Nijhoff Publisher, Boston/ London, 2001, p. 150.

<sup>10</sup> S. Manisuli, Economic, Social and Cultural Rights in International Law, Hart publishing, USA, 2009, pp 3

<sup>11</sup> Iceland Human Rights Center, supra note No. 2.

<sup>12</sup> Id.

GC No 15 on the right to water. Under this General Comment, the Committee has concluded that the right to water falls within the category of guarantees essential for securing an adequate standard of living<sup>13</sup>.

Apart from the documents mentioned above, the right to adequate standard of living is recognized in other human rights instruments that deal with rights of specific groups. Article 27 of the Convention on the Right of the Child (CRC) provides that *State Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development*. The Convention on Elimination of Discrimination Against Women (CEDAW), on its part, under its article 14, provides that “*state parties to the present covenant shall take all appropriate measures to eliminate discrimination against women in rural areas...to ensure...the right to enjoy adequate living conditions*”. Likewise, article 28 of Convention on the Right of Persons with Disabilities (CRPD) also provides for the right to adequate standard of living and social protection for people who live with disabilities. Other human rights instruments adopted for specific purposes include Convention related with the status of refugees and Geneva Conventions. Articles 21 and 23 of the Refugee Convention provides for the right to housing and social security respectively of refugees. Some aspects of the right to adequate standard of living are also clear from article 54/2 of the first Additional Protocol to the Geneva Conventions. Accordingly, right to food, water and housing of civilian population is protected.

## **2.2 Regional Human Right Instruments pertaining to the right to Adequate Standard of Living**

### **2.2.1 The African Human Rights System**

The basic human right instrument at the African level is the African Charter on Human and Peoples' Right (ACHPR). This charter does not expressly recognize the right to adequate standard of living. The right to adequate standard of living including adequate food, drinking water, clothing and housing are among missing rights in the system. Though such rights are not expressly recognized under the Charter, they are not outside the scope of the human rights

---

<sup>13</sup> General Comment No. 15 on the Right to Water, adopted in 2002, UN doc. HRI/GEN/1/Rev.7 para 3.

Commission. Most of the decisions of the Commission show the implied existence of the missing rights.<sup>14</sup>

Implied existence of these rights, can for example, be observed from the *Social and Economic Rights Action Center Vs. Nigeria* (communication No 155/96 SERAC case), where the Commission found violation of the rights to housing and food, neither of which are expressly recognized by the African Charter.<sup>15</sup>

### **2.2.2 The Inter-American Human Rights System**

In the Inter-American Human rights system, the American Charter on Human Rights (ACHR) deals primarily with civil and political rights and there is specific article which deals with the right to adequate standard of living. Article 26, which is general one, imposes obligation on states to continuously improve conditions of living. Furthermore, article 12 (1) of the Protocol of San Salvador provides that *everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development.*<sup>16</sup>

### **2.2.3 The European Human Rights System**

The European Social Charter which was adopted in 1961 and revised in 1996 clearly sets out socio economic rights. Articles 25 and 31 of the same provides for protection of rights to housing and social protection which are components of the right to adequate standard of living.<sup>17</sup> Some of the ESCRs are designed to protect the most vulnerable members of society, namely the rights to health, social security, social and medical assistance, protection for the disabled, protection against poverty and social exclusion, and housing.<sup>18</sup>

The European Committee of Social Rights is established to give an authoritative interpretation of the Charter. In *European Roma Rights Center v. Greece*,<sup>19</sup> the Committee, after noting that right to housing permits the exercise of many other civil, political, economic and social rights, recalled

---

<sup>14</sup> F. Viljoen, *International Human Rights Law in Africa*, Oxford University press, 2007, p. 237.

<sup>15</sup> *Social and Economic Rights Centers Action Vs Nigeria*, communication No 155/96 (SERAC case).

<sup>16</sup> Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, San Salvador, adopted in 1988 and came in to force 1999, article 12(1).

<sup>17</sup> European Social Charter, adopted in 1961 and revised in 1996 (Strasbourg) articles 25 and 31.

<sup>18</sup> Id 3.V. 1996, part I.

<sup>19</sup> *European Roma Rights Center v. Greece*, Decision on the Merits, 8 December 2004, Complaint No. 15/2003.

that in order to satisfy their obligations under it, states have to promote the provision of an adequate supply of housing for individuals and families.

## **2.3 The Normative Content of the Right to Adequate Standard of Living**

### **2.3.1. The Right to adequate food**

The Committee on ESC rights (Committee) in its General Comment No 12 has given interpretation of the right to adequate food. This right is said to be realized when “every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or the means for its procurement.” Though the right to food imposes obligation of progressive nature, state parties have core obligation to take necessary actions to mitigate and alleviate hunger.<sup>20</sup> State parties are also expected or obliged to take necessary actions even in times of natural or other disasters. The right to food and the inherent dignity of human person are inseparable and without food it is not possible to fulfill other rights.<sup>21</sup>

The requirement of the adequacy of food is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions or context of a nation. To say food is adequate, there are certain elements that must be fulfilled. Hence, the Committee on ESC rights under its General Comment No 12 came up with certain components of the right to food and related elements of adequacy.<sup>22</sup>

The first element of adequacy is availability of food. This refers to the availability of food in quantity and quality which is sufficient to satisfy the dietary needs of individuals. Dietary needs imply to those dietary needs which are necessary for physical and mental growth and physical activity and which contains a mix or diversity of nutrients. It also implies either a possibility to feed oneself from productive land or the existence of well functioning food distribution system.<sup>23</sup>

Food safety is the second element and according to paragraph 10 of General Comment No 12, state parties should ensure that food is free from adverse substances. States should establish a range of active measures by both public and private means to prevent contamination of food

---

<sup>20</sup> H. Jayawickrama, *The Judicial Application of Human rights, National, Regional and International Jurisprudence*, Cambridge University press, 2002, p.872.

<sup>21</sup> General Comment No. 12 on the Right to Adequate Food , adopted in 1999, UN doc E/C.12/1999/5, para 1.

<sup>22</sup> *Id.*, para 4.

<sup>23</sup> Eide, *supra* note No 9, p. 134.

stuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages; care must also be taken to identify and avoid naturally occurring toxins.

Acceptability, which is the third element of adequacy, implies that food should be acceptable within a given culture and in effect, people should not have to eat food which is contrary to their religious beliefs and culture.<sup>24</sup>

The last element is accessibility which has two aspects, economic and physical accessibility. The former aspect refers that personal or family costs associated with food must be sustainable and do not interfere with the enjoyment of other human rights. In A.Eide's expression, food is not the only need of concern; therefore, any form of food procurement is only feasible when the available resources are sufficient to cover other basic human needs. The approach must be "food security" not "food first".<sup>25</sup>

Furthermore, social vulnerable groups, such as landless persons and other particularly impoverished parts of the population may need attention through special program.

The close reading of paragraph 13 of General Comment No 12 tells us that physical accessibility implies that adequate food must be accessible to everyone. The term "everyone" is interpreted to include every citizen of a state for whom the latter is responsible, including physically vulnerable individuals, such as infants and young children, elderly people, the physical disabled, terminally ill and other people who are specially disadvantaged groups such as landless indigenous people.

### **2.3.2 The right to adequate housing**

#### **2.3.2.1 Definition and content of the right to adequate housing**

The right to adequate housing was recognized for the first time at the international level by the UDHR. Pursuant to article 25 of the same, everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family including the right to adequate housing.<sup>26</sup> Article 11 of the ICESCR is the other part which comprehensively provides for the right to adequate housing. General Comment No 4 is also one of the important instruments that is

---

<sup>24</sup> Eide, supra note No 9, p.135.

<sup>25</sup> Ibid.

<sup>26</sup> Id p.133

aimed at elaborating the components, types of obligation and enforcement mechanisms of the right to adequate housing.

There are also other related international instruments which recognize this right. Among these is the International Convention on Elimination of All forms of Racial Discrimination. Pursuant to the Convention *to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of every one, without distinction as to race, color or national or ethnic origin, to equality before the law, notability in the enjoyment of ...the right to housing* <sup>27</sup>

The Convention on the Rights of the Child (CRC) is also among the international instruments that provide for the right to adequate housing. Pursuant to article 27/3 of the CRC:

*[S]tate parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.*

The last important international human right instrument is the Convention on Elimination of All forms of Discrimination Against Women (CEDAW). This convention entails obligation on state parties to eliminate discrimination against women in rural areas in order to ensure... adequate living conditions, particularly in relation to **housing**, sanitation, electricity and water supply... <sup>28</sup>

### **2.3.2.2 Interpretation of the right to adequate housing**

The right to housing is usually misinterpreted and in turn deliberately violated by organs of government who are, as a matter of fact, entrusted with protecting the right. Though government officials do not often deny the existence or the concept of the right to adequate housing, it is very frequent for many governments to interpret this right in a very restrictive way and even the meanings given are usually inconsistent with the normative content of the right under

---

<sup>27</sup> Convention on Elimination of all Forms of Racial discrimination, Article 5 (e) (iii).

<sup>28</sup> Convention on Elimination of All forms of Discrimination Against women, Article 14 (2) (h).

international human rights law.<sup>29</sup> To get rid of this problem, the Committee on ESC rights opined that the right to adequate housing should not be interpreted in a narrow or restrictive sense which equates it with the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live in security, peace and dignity.<sup>30</sup> According to the Committee's view, there are two significant principles that must be followed by all state parties and human rights organizations while interpreting the right to adequate housing. These are; the universality of the right to adequate housing in the sense that it is an entitlement for all human kind around the world, and that it must not be interpreted narrowly.<sup>31</sup> The other area of emphasis of the Committee is that, governments, while proceeding to realize the right to adequate housing, should not favor advantaged social groups at the expense of disadvantaged and low income groups.<sup>32</sup>

### **2.3.2.3 Components of the right to adequate housing**

General Comment No 4 and 7 are meant to elaborate and interpret the right to adequate housing as one element of the right to adequate standard of living. According to these General Comments, there are around six elements of the right to housing. These are:

- i. *Security of tenure*: this element is the primary and essential element of the right to adequate housing. Irrespective of the type of tenure, be it public or private, permanent or temporary or informal settlement, everybody should possess a degree of security of tenure. A secured tenure entitles individuals to legal protection against forced and/or arbitrary eviction, harassment and other threats. Security of tenure is a key element for all residents, especially women. Therefore, a house is adequate when it is at least legally secured.
- ii. *Affordability*: this element requires that the amount a person or family pays for housing must not be so high that it compromises the enjoyment and satisfaction of other basic

---

<sup>29</sup> S. Lekie, *The Justiciability of Housing Rights*, p.10, available at <http://www.uu.nl/faculty/leg/nl/organisatie/departementen/departementrechtsgeleerdheid/organisatie/onderdelen/studiecentrummensrechten/publicaties/simspecials/18/Documents/18-07.pdf>.

<sup>30</sup> General Comment No 4 on the Right to Adequate Housing, adopted in 1991, UN document E/1992/23, para 7.

<sup>31</sup> *Ibid.*

<sup>32</sup> GC No. 4, *Supra* Note No 30, para 7.

needs. Adequate houses must be affordable in a way that individuals can live in an adequate house and attain and satisfy their basic needs at the same time.

- iii. *Habitability*: according to this component, a house is adequate when its habitants are ensured with adequate space and are protected against cold, damp, heat, rain, wind or other threats.
- iv. *Availability of services, materials, facilities and infrastructure*: if a house is to be said adequate; then, there are certain facilities that must be fulfilled. These facilities include: safe drinking water, energy for cooking, heating, lighting, sanitation and washing facilities, means of food storage, site drainage and emergency services.
- v. *Accessibility*: housing must be accessible to everyone including disadvantaged groups.
- vi. *Location*: an adequate house should be located in a place where it can allow habitants access to employment, health care services, schools, child care centers and other social facilities.
- vii. *Cultural adequacy*; the right to adequate housing includes the right to reside in a house that is considered culturally adequate. A housing policy should allow for expression of cultural identity.<sup>33</sup>

The close reading of General Comment No 4 gives us the idea that the right does not simply oblige state parties to provide homes for those who cannot afford to have housing by personal effort. It also imposes many legislative and regulatory obligations on governments.<sup>34</sup>

#### **2.3.2.4 State Parties' Obligation for the implementation of the Right to Adequate Housing**

By the time state parties ratify the ICESCR, they are in turn recognizing the right to adequate housing. And this in effect implies legal obligation for governments. State parties could discharge this obligation either by incorporating the right to housing in national or domestic legislations or by directly applying international human right instruments recognizing the same right.<sup>35</sup>

---

<sup>33</sup> GC No 4, supra note 30, para 8 (a-g).

<sup>34</sup> Id. paras 1 and 16.

<sup>35</sup> C. Golay and O.Melik, the Right to Housing, supra note No 5 p. 16.

**i. Obligation to recognize the right to adequate housing at national level**

State parties, after ratifying the ICESCR, are expected to immediately incorporate the right to adequate housing in to their national legislation. Without such inclusions, it would not be possible to protect the right to adequate housing. Though there are some legal systems where ratified international instruments can be made directly applicable, most courts of nations are reluctant to directly apply such international instruments.<sup>36</sup>

Though it is not always possible to cite the right to adequate housing before national courts, nations have different mechanisms for recognizing the right at national level. The first one is that the right to adequate housing can be recognized as a basic human right in domestic constitutions of nations. Here, since the right is recognized as a basic right, victims of violation can allege such violations and get legal redress for the damage he/she sustained.<sup>37</sup> The other way of recognition of the right is as a principle, a goal or a social or political goal. In this way of recognition, governments are duty bound to improve access to housing to its population through its policies and programs. The disadvantage of such recognition is that victims of violation of the right cannot get judicial redress at times of violation because the rights are nor practically rights but aspiration goals. However, if a country is party to the ICESCR, it is committed to incorporate the right to adequate housing in to its national legislation; thus, allowing people to claim this right before national courts.<sup>38</sup> The third way of recognizing the right to adequate housing is by making it integral part of other basic human right recognized by the constitution. It is usual to include the right to life in domestic constitutions and one can make the right to adequate housing as integral part of the right to life, which is already recognized as a basic human right. By so doing, violation of the right to adequate housing can be established to be violation of the right to life of a person.<sup>39</sup>

Even without recognition of the right to adequate housing by domestic constitutions, the right to housing could be realized through the recognition of ICESCR because all most every nation of

---

<sup>36</sup> C. Golay and O.Melik, the Right to Housing, supra note No 5 .p 16

<sup>37</sup>General Comment No 3, The nature of States parties' obligations (art. 2, para 1, of the ICESCR, adopted in 1991, document E/1991/23,paras 5 and 6.

<sup>38</sup> C. Golay and O.Melik, the Right to Housing supra note No 5 p. 17.

<sup>39</sup> Id., p 16.

the world have ratified this instrument. However, due to lack of knowledge or awareness, judges are reluctant to directly apply the Covenant.<sup>40</sup>

Finally the right to adequate housing can be recognized by ordinary legislations or national laws specifically devoted to protecting and promoting this right.<sup>41</sup>

**ii. The obligation to respect the right to adequate housing**

This obligation implies that governments must refrain from any measure that would hinder the exercise of the right to adequate housing. It is a negative commitment and requires the government to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the right to adequate housing. Under this aspect of obligation, state parties are obliged to refrain from doing acts that would compromise the enjoyment of this right.<sup>42</sup>

**iii. The obligation to protect the right to adequate housing**

This obligation requires that governments should protect people from infringement of their right by third parties other than the government. Under this obligation, governments are expected to prohibit third parties from committing acts that go against enjoyment of the right to adequate housing. For example, governments should enact laws that protect the population from forced and arbitrary eviction.<sup>43</sup>

This obligation requires governments to act in many positive ways including, creation of bodies to investigate violations of rights and establishing effective procedures for redressing victims of violation. These established procedures must enable victims to bring their claims before courts of law and get restitution or compensation for damages sustained. Furthermore, governments are also responsible to avoid discrimination by powerful individuals or business enterprises. No person shall be refused housing because of his/her sex, nationality, color or for other ground of discrimination.<sup>44</sup>

---

<sup>40</sup> Id., pp. 17-18.

<sup>41</sup> Id., pp. 16.

<sup>42</sup> S. Lekie, the Justiciability of Housing Rights supra note No 29, p. 17.

<sup>43</sup> C. Golay and O.Melik, the Right to Housing, supra note No 5, p. 20.

<sup>44</sup> Id., pp. 20-21.

#### **iv. Obligation to fulfill the right to adequate housing**

The obligation to implement is comprised of both the obligation to facilitate and the obligation to provide adequate housing. When we say obligation to facilitate, governments are expected to act in positive way in helping its population enjoy their right to adequate housing. Governments, for example, build low cost housing for those who cannot fully afford expensive housing by their own personal effort.<sup>45</sup> On the other hand, the obligation to provide requires governments to guarantee temporary housing to all those in a situation of extreme instability. Generally speaking, the obligation to implement requires governments to adopt necessary legislative and strategic measures to ensure the availability and accessibility of adequate housing to everyone including the most disadvantaged groups of the society.<sup>46</sup>

In relation to state parties' obligation, one should not forget the relationship of realization of ESC rights in general and availability of resources in a country. It is a general fact that many nations of the world are poor that they cannot afford to fully realize ESC rights or even meet the minimum core obligation. In such situations, nations should appeal to international cooperation as a remedy. This in turn reflects that the rich countries have the obligation to respond by the mere fact that they are parties to the ICESCR.<sup>47</sup> The obligation of the international community could basically be of three types. The first one is that the international community should refrain from any coercive measures designed to force a state to infringe its housing right obligations. The other is that the international community is duty bound to providing financial or other assistance to states affected by natural or manmade disaster, resulting in the destruction of homes and settlements. Moreover, they should respond to object violations of housing rights carried out in any state.<sup>48</sup>

#### **2.3.2.5 Potential violations of the right to adequate housing**

The Special Rapporteur on the right to adequate housing, in his works, provides for list of housing right violations. Most of the acts which could be considered to constitute violation include:

---

<sup>45</sup> Id., p.21.

<sup>46</sup> C. Golay and O.Melik, the Right to Housing supra note No 5, p. 21.

<sup>47</sup> Ibid.

<sup>48</sup> S. Lekie, the Justiciability of Housing Rights supra note 29, pp.19-20.

- Carrying out, sponsoring, tolerating or supporting the practice of forced evictions.
- Destroying homes or dwelling as a punitive measure.
- Actively denying basic services such as water, heating or electricity, to sectors of society, despite a proven ability to provide these.
- Acts of racial or other forms of discrimination in the housing sphere.
- Adoption of legislation or policies clearly inconsistent with housing rights obligation. And when this result in homelessness, greater level of inadequate housing and inability of persons to pay for housing.
- Repealing legislation consistent with and in support of housing rights unless replaced with equally or more consistent laws.
- Overtly prioritizing the housing interests of high income groups when significant portions of society live without their housing rights having been achieved.
- Constructing or allowing the building of homes upon unsafe or polluted sites threatening the lives and health of future occupants.
- Harassing, intimidating or preventing non-governmental and community-based organizations concerned with housing rights from operating freely.<sup>49</sup>

Furthermore, according to the Special Rapporteur, omissions could also constitute violations of housing right obligations and example of such are:

- Failing to reform legislation inconsistent with the ICESCR.
- Failing to enforce legislation inherent in the fulfillment and recognition of housing rights.
- Failing to intervene in the housing market especially concerning rent levels, rent control and rent subsidies.
- Failing to provide infrastructure, basic service such as water and electricity.
- Failing to submit reports as required under articles 16 and 17 of the ICESCR.<sup>50</sup>

---

<sup>49</sup> Working Paper and First Progress Report of the UN Special Rapporteur on Promoting the Realization of the Right to Adequate Housing/CN.4/Sub.2/1992/15 and E/CN.4/Sub.2/1993/15. Para 143.

<sup>50</sup> Id. Para 144.

### **2.3.2.6 Remedies for victims of violation of the right to adequate housing**

Though the right to adequate housing is recognized under many international and regional human right instruments, it does not mean that all nations would discharge their obligation. States may in one way or another violate the right in which case individuals should have remedies. There is a saying that buttresses this position. *Ubi jus, ibi remedium*: where there is a right, there is a remedy. The right to have access to either judicial or quasi judicial remedies is included under various international human right instruments including the Universal Declaration of Human Rights.<sup>51</sup> The remedies mostly include right to restitution, adequate compensation, and/or guarantee of no future violation. These alternatives can be claimed and granted separately or cumulatively depending on the case.<sup>52</sup>

The specific remedies available for violation of the right to housing depend on the mechanisms available at national, regional and international level.<sup>53</sup>

#### **2.3.2.6.1 Remedies at national level**

There are two types of redress mechanisms at the national level: judicial and extra-judicial mechanisms, such as national human right institutions.

##### **a. Judicial redress**

In instances where the right to adequate housing is recognized as fundamental constitutional right or as one element of such fundamental right, it is, at least in principle, possible to invoke such right and claim redress before a regular court of law or other competent organ. However, the practice is somehow different and ignorance of human rights by local officials and judges makes the possibility of getting judicial redress challenging.<sup>54</sup>

Though courts of many countries are reluctant to consider cases related with the right to adequate housing, there are still countries where victims have redress opportunities, such as South Africa (*Government of the Republic of South Africa and Others v. Grootboom and Others*) and India,

---

<sup>51</sup> Black's Law Dictionary 6<sup>th</sup> edition (1990), p. 1120.

<sup>52</sup>C. Golay and O.Melik, the Right to Housing supra note No 5, p. 26.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

where courts order immediate aid for victims, revision of the national housing policy and increment of budget allocation.<sup>55</sup>

#### **b. Extra-judicial redress**

Institutional mechanisms, if they are available, can play a significant role in the protection of the right to adequate housing.

The two mostly used extra judicial mechanisms available at national levels of many countries are national human right commissions and ombudsman's office. Despite the existence of national human rights institutions in majority of state of the world, they have different mandates depending on the legal system of the country they exist. Some, for example, have broad mandate which allow them to monitor government policies and their effect on the right to adequate housing and at the same time to protect victims of violations through legal and mediation with public officials. However, some have only a mandate limited to the defense of civil and political rights.<sup>56</sup>

### **2.3.2.6.2 Remedies at regional level**

#### **a. The African Human Rights system**

##### **i. The African Court of Human and Peoples' right**

The ACHPR is among the major human right instruments in which the right to adequate housing is impliedly recognized. The African Court of Human and Peoples' Right, which is created in 1998 by nations of Africa through the adoption of the Protocol to the ACHPR, is a mechanism to protect human rights in general and right to adequate housing in particular.<sup>57</sup> And it is the only judicial mechanism at the regional level for redress of violation of the right to adequate housing.

Though the court has not yet heard any case, it has potentially significant role in the protection of the right to adequate housing.<sup>58</sup> However, this mechanism is not without conditions. In order to get redress there are two cumulative conditions that must be fulfilled. The first one is exhaustion

---

<sup>55</sup>Id., pp. 27-28.

<sup>56</sup>C. Golay and O.Melik, the Right to Housing supra note No 5, p. 29.

<sup>57</sup> Protocol to the African Charter on Human and Peoples' Right on the Establishment of an African Court on Human and Peoples' Right, enacted in 1998 and came in to force in 2004, article 3 .

<sup>58</sup> C. Golay and O.Melik, the Right to Housing supra note 5, p. 30.

of local remedies which means victims or their representatives must exhaust domestic possibilities of redress. Though exhaustion of local remedies is provided as a condition, in most African states, domestic mechanisms are either inexistent or paralyzed for different reasons. When this is the case, victims or representatives can bring their claims directly to the court. And the second one is that the African country accused of the violation must be a state party to the protocol that established the court.<sup>59</sup>

## **ii. The African Commission on Human and Peoples' Right**

The Commission is established with the aim of monitoring the respect of African human right treaties.<sup>60</sup> All state parties to the African human right treaties must submit reports to the Commission on the measures that they have taken to realize the right to adequate housing of their population.<sup>61</sup> In different instances, the Commission can receive complaints from individuals or NGOs concerning the right to adequate housing. After considering the violation, the Commission prepares a report and sends recommendation to the nation concerned. Though it has dealt with issues of right to adequate housing, the Commission's recommendations are not binding on state parties, which means that enforcement of recommendations depend on the political will of governments. Some states may even be reluctant to enforce recommendation but, since they are afraid of the *Naming and Shaming* of the Commission nations would often enforce recommendations.<sup>62</sup>

### **b. The Inter-American human right system**

In the Inter-American human rights system, there are two institutions: a Human Rights Commission and a Court. These bodies are given with a mandate of overseeing respect by state parties of the American Convention on Human Rights and the Protocol of San Salvador. One of the monitoring mechanisms is report of state parties. Accordingly, state parties are required to submit report to the Commission on the measures that they have taken to realize the human right of their population including the right to adequate housing. However, neither the Commission

---

<sup>59</sup>Establishment Protocol, supra note 57, article 6(2).

<sup>60</sup> African Charter On Human and Peoples' Right, adopted in 1981 and came in to force in 1986 , articles 30 and 45.

<sup>61</sup> Id., article 62.

<sup>62</sup>Id., article 45(1) (a).

nor the Court may receive individual or collective complaints regarding violation of the right to adequate housing.<sup>63</sup>

### **c. The European human rights system**

The European Social Charter is the basic human right instrument pertinent to the right to adequate housing. The Charter uses the European Committee of Social Rights to monitor the realization of rights by state parties. There is also a reporting mechanism that helps the Committee to observe measures taken by state parties to realize the right to adequate housing.<sup>64</sup>

Though there is a court of human rights in the region, there is no mechanism that accommodates complaints of victims of violation of the right to adequate housing unless violation of civil and political rights is proven.<sup>65</sup>

#### **2.3.2.6.1 Remedies at international level**

There are basically two mechanisms of protection of the right to adequate housing at the international level. These are the Committee on ESC rights and the UN Special Rapporteur on the right to adequate housing.

##### **a. The Special Rapporteur on the Right to Adequate Housing**

This is a mechanism established by the UN Human Rights Commission and mandated to submit reports to the recent Human Rights Council regarding the realization and violation of the right to adequate housing throughout the world. Most of the works of this organ is related to promotion of the right to adequate housing.<sup>66</sup>

The Special Rapporteur uses three mechanisms of promotion of this right, annual report, missions conducted in the field in order to verify the respect of the right and urgent appeals sent to governments in specific cases of violation. What is clear from this is the fact that these

---

<sup>63</sup> C. Golay and O.Melik, the Right to Housing supra note 5, p. 32.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> C. Lilian, Eviction in South Africa, Relevant International and National Standards, August 2008, Community Law Centre, University of the Western Cape, p.15.

mechanisms are neither judicial nor quasi judicial. Moreover, almost in all instances the Rapporteur relies on works and reports of NGOs and Civil Society Organizations.<sup>67</sup>

#### **b. The UN Committee on ESC Rights**

The Committee, with 18 independent experts, is established in the year 1985 with a mandate to receive reports of state parties to the ICESCR. Accordingly, state parties are duty bound to report about the measures they have taken for the realization of the right to adequate housing. Here also the role of Civil Society organizations is vital and they can make parallel reports and even take part in the discussion of the Committee and concerned state parties. At the end of the process (i.e. discussion of the report with a delegate of a country), the Committee gives final observation or recommendation.<sup>68</sup> In December 2008, the UN General Assembly adopted an individual complaints mechanism for violations of socio-economic rights.<sup>69</sup> A nation that ratifies the Optional-Protocol to the ICESCR may be forced to answer to an international body for violations of the ICESCR. However, those nations that wish to avoid adjudication of ESC rights violations would decline signing the protocol and individuals of such nations cannot access the UN Committee on ESC rights.<sup>70</sup>

#### **2.3.2.7 Justiciability of the right to adequate housing**

ESC rights in general and the right to adequate housing in particular are often objected for being not justiciable which means that they are incapable of being adjudicated with in courts. This objection contains three elements. The first objection is related with the idea that ESC rights do not give rise to legal obligations on states.<sup>71</sup> However, this objection cannot avoid the obligations which emanate from ratifying the ICESCR. Consequently, state parties have three major legal obligations to realize the right to adequate housing.<sup>72</sup>

The second objection is that courts are not competent or legitimate to adjudicate claims of right to adequate housing. The reasons given for such kind of argument are; that rights and obligations of this right are vague, ESC issues in general are complex and the right itself lacks sensible and

---

<sup>67</sup>C. Golay and O.Melik , the Right to Housing supra note 5, p. 34.

<sup>68</sup> C. Lilian, supra note 66, p.12.

<sup>69</sup>The Optional Protocol on ESCRs, General Assembly, Resolution A/RES/63/117, 10 December 2008.

<sup>70</sup> M. Brennan, To Adjudicate and Enforce Socio-Economic Rights, Vol. 9, No. 1, p. 75.

<sup>71</sup> The Optional Protocol, supra note 66, paras 24-25.

<sup>72</sup> M. Ssenyonjo, supra note 10, p. 24 and the SERAC case, supra note 15.

enforceable remedies.<sup>73</sup> However, making ESC rights non-justiciable because of complexity would also make many civil and political rights non justiciable because one can site many civil and political rights which are general and complex such as the right to self determination.

The right to adequate housing is interrelated with many areas of life and its realization would directly affect the same and this notion leads us to the position that many core components of this right are justiciable.<sup>74</sup>

Furthermore, pursuant to GC No 4, which is meant to elaborate and interpret the right to adequate housing, many components of the right are made justiciable and in fact victims of violation can claim judicial redress.

Among these are:

- a. *...compensation following an illegal eviction.*
- b. *...legal appeals aimed at preventing planned eviction.*
- c. *...allegation of any form of discrimination in the allocation and availability of access to adequate housing.*
- d. *Class action suits in situations involving significantly increased number of homelessness...*
- e. *Complaints relating to the issue of tenure security*
- f. *Housing affordability....according to the Committee housing affordability should be understood in a way that 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. Therefore, allegations related with unreasonable rent levels, non availability of building materials and so forth are justiciable.*
- g. *...allegations related with availability/provision of services such as water, electricity garbage removal, roads, lighting and so forth.*
- h. *...Complaints relating to inadequate and deficient housing.*
- i. *...allegations related with peaceful enjoyment of possession.*<sup>75</sup>

---

<sup>73</sup> The Optional Protocol, supra note 66, par 25.

<sup>74</sup> S. Lekie, the Justiciability of Housing Right supra note 29, p. 38.

<sup>75</sup> GC No 4, supra note 30, para 17.

One of the biggest problems in relation to justiciability of the right to adequate housing is lack of recognition of the right under domestic laws of nations. These domestic laws could be either constitutions or ordinary laws of states. Even when the right to adequate housing is recognized as is the case in several national constitutions,, the inclusion of the right does not necessarily guarantee the practical realization of the same.<sup>76</sup> In many countries, it remains difficult to base legal complaints concerning housing right before a court of law exclusively on constitutional provisions. And also many courts are reluctant to entertain complaints dealing with internationally recognized ESC rights especially the right to adequate housing. It is only in few countries reference is made regularly to the ICESCR in judicial proceedings.<sup>77</sup>

Though the right to adequate housing is recognized under many international human rights instruments and many national constitutions, it is often misinterpreted, sometimes purposely ignored and infringed by those who are meant to realize the right. Many governments also use the terminology of article 2 of the ICESCR as a cover for their weakness to discharge their treaty obligations. However, the Committee has made clear that *even when available resources are verifiably inadequate, states must nonetheless strive to ensure the widest possible enjoyment of the relevant rights under prevailing circumstances and demonstrate that every effort has been made to use all resources that are at its disposition in an effect to satisfy, as matter of priority, the minimum responsibilities.*<sup>78</sup>

The other area of controversy is again the term used by the same article which is ‘progressive realization’. This term, as the first one, is used as a defense for those governments who do not take measures for the realization of the right to adequate housing. Despite this fact, the Committee asserted that state parties should move as expeditiously and effectively as possible towards the full realization of the right. Hence governments could be responsible for not taking appropriate steps as of time and/or also for deliberate retrogressive measures taken against the right to adequate housing.<sup>79</sup>

---

<sup>76</sup> Report of the UN Special Rapporteur on adequate housing, Miloon Kothari, 3 March 2005, E/CN.4/2005/48. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/G05/117/55/PDF/G0511755.pdf>.

<sup>77</sup> M. Christophor, *Litigating Socio-Economic Rights in South Africa, A Choice between Corrective and Distributive Justice*, Pretoria University Law Press, 2009, p. 14.

<sup>78</sup> GC No 3, supra note No 37, para 11.

<sup>79</sup> *Id.*, para 9.

Furthermore, states have core minimum obligations to ensure that, at the very least, the minimum essential levels of the right to adequate housing have been satisfied in order to be considered to be in compliance with their international obligations. Therefore, if significant number of individuals are deprived of basic shelter and housing in a certain state, then such state has failed to discharge its core minimum obligation pertaining to the right to adequate housing.<sup>80</sup>

The other related issue is that, in addition to obligation to provide adequate housing for those who cannot do such by their personal efforts, state parties are also expected to facilitate and create economic, social and political conditions encouraging for those who have self initiatives and potential.<sup>81</sup>

### **2.3.3 The right to adequate clothing**

Unlike the other elements of the right to adequate standard of living, the right to adequate clothing is directly related to culture, religion and belief of a person or community at large. Because of the variations in cultural and religious clothing needs and wants, the Committee developed no separate General Comment to elaborate this right. However, it has addressed the issue in several General Comments. Under General Comment No 6, it posited that adequate and appropriate clothing for elderly persons is one of the basic rights of these people. General Comment No 5 also provides for the importance of adequate clothing for disabled persons with special clothing needs to enable them participate in ordinary social life.

### **2.3.4. The right to water**

The right to water is impliedly recognized in article 11 (1) of the ICESCR because without equitable access to clear water the right to adequate standard of living is not attainable. This right is also directly related with the right to health, because realization of the latter requires availability and affordability of safe drinking water. General Comment No 15 is fully allotted to elaborate and interpret the right to water.

---

<sup>80</sup> Assessment of the Realization of the Right to Housing in Kenya(2009-2010), Economic, Social and Cultural Rights Centre, Nairobi, 2011, p. 15.

<sup>81</sup>Id., p.17.

When we consider the normative content of the right to water, the right contains both freedom and entitlements. And irrespective of the context of a nation, the following three factors must be duly considered to conclude that right to water is realized.<sup>82</sup>

- i. *Availability*: according to this principle, people are entitled to a sufficient and continuous supply of water for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of cloths, food preparation, personal and household hygiene.
- ii. *Quality*: this requires that people are entitled to water of adequate quality. Water for personal and domestic use must be safe and free from micro-organisms, chemical substances and radiological hazards. Furthermore, water should be of an acceptable color, odor and taste for personal and domestic use.
- iii. *Accessibility*: this principle requires that water and water facilities and services have to be accessible to everyone, without discrimination, within the jurisdiction of the state party.

Accessibility has four dimensions:

- *Physical accessibility*: water and water facilities must be within safe physical reach for all sections of the population. Furthermore, physical security should not be threatened during access to water facilities.
- *Economic accessibility*: financial costs to realize the right to water must not compromise the enjoyment of other human rights. Thus, water and water facilities must be affordable for all.
- *Nondiscrimination*: this principle again requires that the right to water is enjoyed without discrimination of any kind and equally between men and women.
- *Information accessibility*: accessibility includes the right to seek, receive and impart information concerning water issues.

---

<sup>82</sup> General Comment No. 15 on the Right to Water, para 12 and K. Jeff, *An Activists Manual on the International Covenant on Economic, Social and Cultural Rights*, Law and Society Trust, March 2003, p.99.

## Chapter Three

# The Right to Adequate Standard of Living under the Ethiopian Legal System

### 3.1 Introduction

As has been discussed in the previous chapters, socio-economic rights in general and the right to adequate standard of living in particular is enshrined in many international human right instruments. Ethiopia has ratified almost all major human right instruments. The FDRE Constitution provides that all international instruments ratified by Ethiopia are integral part of the law of the land.<sup>83</sup> Moreover, the Constitution requires the interpretation of the Bill of rights of the Constitution in light of the principles of the UDHR, international covenants on human rights and international instruments ratified by Ethiopia.<sup>84</sup>

Apart from the international human rights instruments, the right to adequate standard of living is reflected in domestic laws and policies of Ethiopia. This chapter primarily reviews these laws and policies.

### 3.2 Laws and policies pertaining to the right to adequate standard of living

#### 3.2.1 The FDRE Constitution

The Ethiopian constitution, which is the supreme law of the land, has recognized a number of socio-economic rights under chapter three which deals with fundamental freedoms and rights. Unlike the civil and political rights which are dealt in different articles, socio-economic rights are categorized under one heading “economic, social and cultural rights”. One of the important articles which are related to socio-economic rights is article 41. It provides that:

*(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*

---

<sup>83</sup> FDRE Constitution, supra note 4, article 9(4).

<sup>84</sup> Id., article 13(2).

*funded social services. (4) The state has the obligation to allocate ever increasing resources to provide to the public health, education and other social services. (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.*

The title of article 41, “economic, social and cultural rights” seems to include all elements of this category as one may expect. The provisions are, however, more of general and lack clarity. When we specifically consider the right to adequate standard of living, we can infer the rights to housing, to social security, to safe and potable water, and to food from the open-ended phrase *...and other social services*.

Article 43(1) also provides that “the peoples of Ethiopia as a whole, and each Nation, Nationality and people in Ethiopia have the right to improved living standards and to sustainable development”. The close reading of this article may also give us an idea that rights to adequate food, clothing and housing that constitute the right to adequate standard of living are protected by the FDRE Constitution.

The provisions on ESC rights are formulated in a very general way. This makes it difficult to determine whether the rights protected are justiciable or not. However, since the Constitution does not indicate their non-justiciability, it can be logically concluded that the recognized rights are justiciable.<sup>85</sup>

In addition to incorporating socio-economic rights, the FDRE Constitution has incorporated many social, economic and cultural objectives and principles that the state has to observe for formulation of national policies under chapter ten. These policy principles and objectives under articles 89 and 90 are aimed at requiring the government to develop policies that ensure the enjoyment of rights of citizens. Though these principles and objectives are not directly enforceable by courts, they may affect the interpretation of other rights. Generally, the socio-economic objectives require that policies should aim to ensure equal opportunity for all

---

<sup>85</sup> K. Adem, Human Rights under the Ethiopian Constitution: A Descriptive Overview, p.14, available at [www.pretoriauniversityhrtscentre](http://www.pretoriauniversityhrtscentre).

Ethiopians to improve their economic conditions and to provide all access to public health, education, clean water, housing, food and social security.<sup>86</sup>

### **3.2.2 Other laws**

#### **3.2.2.1 Proclamation No 272/2003: Re-Enactment of Urban Land Lease Holding Proclamation**

This proclamation was enacted in accordance with article 55(2) of the FDRE Constitution. A reading of the preamble of this proclamation shows that the proclamation is generally aimed at modernizing lease holding system of urban land. It has also the objectives of making transfer of urban land consistent with the principles of free market. Moreover, it is targeted to ensure that the claim of every one alleging infringement of rights is transparent and expedient.<sup>87</sup>

This proclamation, as has been said before, is not directly aimed at realizing the right to adequate housing of individuals. Furthermore, there is no single article which provides for obligation of the government and respective modes of protection of the same right. However, one could find some articles which have relevance to the protection of certain aspects of the right to adequate housing. Article 8 of the same proclamation is one of them and stipulates that land is provided free of lease charge for low-cost housing and construction of private dwelling houses. Hence, this proclamation tries to encourage individuals to build their own houses and in turn taking steps to realize the right to adequate housing.

#### **3.2.2.2 Proclamation No. 370/2003- Condominium Proclamation**

This condominium proclamation is adopted in accordance with article 55 (1) of the FDRE Constitution. As it is clear from the preamble, the proclamation is aimed at narrowing the imbalance between large housing demand and small supply for households. This proclamation, unlike the previous one, seems to have better and strong notion of realization of the right to adequate housing. Provision of houses, especially of low-cost houses, is one of the strongest measures that a state could take for the realization of the right to adequate housing.<sup>88</sup> The proclamation fundamentally provides for the way of registration and rights of owners of condominium houses. In relation to rights, owners of units or houses have right to legally transact with their titles, which may include selling or renting of houses.<sup>89</sup> Though only one aspect

---

<sup>86</sup> A. Sisay, The Constitutional Protection of Economic and Social rights in the FDRE, Journal of Ethiopian Law, Volume XXII No 2, December 2008, p. 141.

<sup>87</sup> Re-enactment of Urban Land Lease Holding Proclamation No. 272/2002, Federal Negarit Gazeta, 8<sup>th</sup> Year No 19, 14<sup>th</sup> May 2002, preamble, paras 1-5.

<sup>88</sup> The Right to Adequate Housing, Fact Sheet No. 21/Rev, Office of the United Nations High Commissioner for Human Rights, UNHABITAT, pp. 33-34.

<sup>89</sup> Condominium Proclamation, Proclamation No. 370/2003, Federal Negarit Gazeta, 9<sup>th</sup> Year, No. 95, 11<sup>th</sup> September 2003, articles 21 and 22

of the right to adequate housing is protected by this proclamation, it cannot be denied that the proclamation has a positive effect on the realization of the right to adequate housing.

### **3.2.2.3 Proclamation No 455/2005: Expropriation of Land Holding for Public Purposes and Payment of Compensation**

The expropriation and compensation proclamation primarily aims at regulating the right which is provided under article 40(8) of the FDRE Constitution in more detailed manner.

As has been said previously, prohibition of forced eviction is one element of the right to adequate housing. And also recognition of tenure security can be manifested by prohibiting and not committing forced eviction. However, the close reading of article 40(8) of the FDRE Constitution and the preamble of Proclamation No 455/2005 gives us the idea that evictions could legally take place for purpose of city development and infrastructure projects such as, construction of dams and other large scale projects. At such instances, the proclamation clearly stipulates that evictions should be done in accordance with law. Pursuant to article 3(1) of the same proclamation, there are important requirements for a valid eviction to take place. The first thing is that the land should be important for other uses and would be better used for development of large scale projects. Secondly such removals must always be followed by appropriate and reasonable compensation.<sup>90</sup>

Besides the fulfillment of these requirements the eviction or removal must be done in accordance with law. Consequently, article 4 of the proclamation provides with the procedures that must be followed before actual expropriation takes place. The first thing that should the executive organ do is that giving sufficient and reasonable written notification indicating the time when the land has to be vacated and the amount of compensation to be paid. And the period of notification may not be less than 90 days in any case.<sup>91</sup> After being notified in accordance with the above procedure, land holders are expected to handover the land and remove their property on the land. In default of the land holder in handing over the land, the concerned executive organ may use police force to take over the land.<sup>92</sup>

Article 4 should be read with article 11(6) &(7) and from this one can logically conclude that once order of expropriation is given and communicated to land holder, the latter can only appeal after handing over the land. Consequently, evicted land holders can only appeal on the amount and proportionality of compensation. This position seems to imply that every expropriation is fair and legal. Would it not be

---

<sup>90</sup> Expropriation of Land Holding for Public Purposes and Payment of Compensation, Proclamation No 455/2005, Federal Negarit Gazeta, 11<sup>th</sup> Year, No. 43, 15<sup>th</sup> July, 2005, article 7.

<sup>91</sup> Id., article 4(1).

<sup>92</sup> Id, article 4(5).

appropriate to give individuals the right to appeal on the legality and appropriateness of the eviction order itself?

The legal framework being the above, evicted individuals, after handing over the land, can appeal to Land Administration Authority Appeal Committee and if they are not satisfied by the decision of the Committee, they can make legal claim to ordinary courts. The decision of such courts would be final.<sup>93</sup>

As to the compensation after order of eviction, there are four types of compensations that could be given to evicted individuals or groups. The first one is related with the property which is granted for properties situated on the land. The other one is compensation to cover costs of removal, transportation and erection. The third type of compensation is providing substitute house or land to be used for construction of dwelling house. Besides the substitute land or house, other type of monetary compensation called displacement compensation which is equivalent to the estimated annual rent of the demolished house is paid.

As a conclusion, it can be said that this proclamation better protects some aspects of the right to adequate housing and it can be considered as one legislative measure for the realization of the same right.

#### **3.2.2.4 Proclamation No 721/2011(Re-enactment of Urban Land Lease Holding Proclamation)**

This proclamation, as can be seen from its title, has repealed the previous lease holding proclamation (Proclamation No 272/2003). This proclamation has almost similar objectives with the repealed one. However, the added things show the fact that it has another objective of widening the land use revenue base of local authorities.

In relation to the realization of the right to adequate housing, the proclamation has added a new thing which is regularization of informal settlement. This new introduction has direct relationship with protecting security of tenure of individuals.

Though there are new ideas included under the proclamation, its implication on the realization of the right to adequate housing can not be analyzed because it only came in force before a month.

---

<sup>93</sup>Proclamation No 455/2005, supra note No 90 article 11(2)-(4).

Furthermore, similar with the other proclamations discussed above, this proclamation has no direct and strong relationship with the measures ought to be taken in the realization of the right to adequate housing.

### **2.2.3 Policies**

Among policies of the government which are adopted in accordance with article 89 and 90 of the FDRE constitution, policies related with the right housing would be discussed below.

Urban Development Policy is prepared by the Ministry of Federal Affairs and adopted by the council of Ministers in March 2005. Given serious urban problems such as lack of water, road, electric power and telephone and problem of adequate housing, the government found it important to adopt this policy to tackle the above challenges. When we specifically consider the content of the policy, there are articles which are devoted for adequate housing. Pursuant to the policy, the main concern of government in relation to adequate housing is widening availability of low cost houses. To realize this concern, the city administration would focus on helping the general public to cooperate in the construction of such low cost houses.<sup>94</sup>

### **3.2.4 International Instruments Ratified by Ethiopia**

Similar to its domestic law making power, the House of Peoples Representative (HPR) in Ethiopia is entrusted with the power to ratify international human right treaties after they are accepted by the executive branch.<sup>95</sup>

There are diverse practices in nations of the world in relation to the status of ratified human right treaties within the domestic legal system. The same is true for Ethiopia and the status of ratified international treaties is not clear.<sup>96</sup> There are different arguments regarding the status of international treaties ratified by Ethiopia. Almost all scholars base their arguments on article 9 and 13 of the FDRE Constitution.

Once a treaty is ratified by a state, the later is duty bound to respect, protect, promote and fulfill the rights recognized therein. Therefore, Ethiopia cannot officially adopt a legislation that

---

<sup>94</sup>A. Sisay, Justiciability supra note No 1, p.40.

<sup>95</sup> FDRE Constitution, supra note 4, Article 55(2).

<sup>96</sup> A. Getachew, Protection of Fundamental Rights and Freedoms in the Ethiopian Federalism, 1<sup>st</sup> National Conference on Federalism, Conflict and Peace Building, May 5-7 2003 Addis Ababa, p.7.

contradicts ratified international treaties. Consequently, the government of Ethiopia should issue legislations and take measures that are consistent with its treaty obligations to give effect to ratified human right treaties.<sup>97</sup> Accordingly, let alone enacting contradicting laws, Ethiopia, as a state party to the ICESCR, can not raise its domestic laws as a defense to escape its treaty obligations.<sup>98</sup> This notion is further strengthened by the argument of the UN Committee on ESC rights. The Committee on its General Comment No 9 stated that ratified international treaties should be made directly and immediately applicable in the domestic legal system of a nation.<sup>99</sup> The African Commission on Human and Peoples' Rights is also serious about the above issue and stated that states are mandated to examine whether domestic laws comply with ratified human right treaties. If states cannot uphold fundamental rights contained under international treaties, the principle of ratifying treaties would be defeated.<sup>100</sup>

Therefore, Ethiopia is prohibited from invoking domestic laws as a defense for not discharging its treaty obligation and in fact domestic laws can not prevail over but conform to all ratified treaties. Hence state organs or officials cannot disregard international treaties for inconsistent domestic laws because article 9(4) of the FDRE Constitution makes ratified treaties integral part of law of the land. The implication of this article, therefore, is ratified human right treaties are integral part of the domestic law of the country and in fact subordinate to the FDRE Constitution. Consequently, international treaties are superior to any domestic law except the Constitution which is supreme law of the land.<sup>101</sup>

As has been said before, the principle is that states should ensure the compatibility of domestic norms and ratified treaties and more over they cannot invoke domestic laws for their failure to discharge treaty obligation.

Important to mention is the problem related with the status of treaties and the Constitution itself. Are treaties subordinate to the constitution? Many scholars base their arguments in relation to this idea on article 13(2) of the FDRE Constitution. Reading of article 13/2 of the Constitution

---

<sup>97</sup> S. Takele , the Monist-Dualist Divide and the Supremacy Clause, Revisiting the Status of Human Right Treaties in Ethiopia, *Journal of Ethiopian Law*, 23 J. Eth. L. No. 1 p. 10.

<sup>98</sup> *Id.*, pp. 11-12.

<sup>99</sup> General Comment No 9 on Domestic application of the ICESCR, adopted in 1998, UN document E/1999/22, para 4.

<sup>100</sup> Purohit and Moore Vs the Gambia, Communication No. 24/2001.

<sup>101</sup> A. Getachew, *supra* note 96, p.8.

and article 7(2) of Proclamation No 251/2001 reveals the fact that the Constitution in general and the Bill of rights in particular shall be interpreted in conformity with treaties ratified by Ethiopia. Accordingly, some argue that this article is a rule of interpretation which applies only in relation to chapter three the Constitution because the latter used the UDHR and other international human right instruments as a source or ground. Therefore whenever there is a contradiction between the third chapter of the Constitution and ratified human right treaties, the latter shall prevail.<sup>102</sup> The other argument is that, article 13(2) of the Constitution provides for rule of interpretation and treaties ratified by Ethiopia are integral part of the Constitution and even uses as a means or direction of interpretation of the Constitution.<sup>103</sup>

The other issue is in relation to hierarchical relationship of ratified treaties and law enacted by the legislative organ, which is the HPR. One of the arguments is to just follow the ordinary legal principle of interpretation. Hence, the two sets of law have equal status because they are made by the HPR and if in case the two contradict the principle *lex posterior derogant lex priori*, which means that a law which is enacted latter would prevail over an earlier law of the same status. And for a good reason treaties are superior to regulations for the latter are adopted by a body which is responsible to the HPR.<sup>104</sup>

---

<sup>102</sup> A. Getachew, supra note 96 p.9.

<sup>103</sup> I. Ibrahim, The Place of International Human Right Conventions in the 1994 FDRE Constitution, Journal of Ethiopian law, No.20, Vol.13, 2000, p. 31.

<sup>104</sup> FDRE Constitution, supra note 4, Article 72(2).

## Chapter Four

### Legal Framework for Redressing Victims of Violation of the Right to Adequate Housing in Ethiopia

#### 4.1 Enforcement of the Right to Adequate Housing

As has been mentioned previously, Ethiopia has ratified the majority of the international human right instruments which are directly related to the right to adequate housing. Such ratifications, as a matter of principle, entail the obligation to respect, protect, promote and fulfill those rights that are included under the instruments. Right to adequate housing as one basic right included under such instruments entail the same obligations. Hence, Ethiopia has undertaken to realize the right to adequate housing either immediately or progressively.<sup>105</sup>

Immediate obligations require the state of Ethiopia to take steps towards the full realization of the right to adequate housing. Such steps must be taken within a reasonably short time and the steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligation to enforce the right to adequate housing.<sup>106</sup> Therefore, for instance, the government of Ethiopia, irrespective of scarcity of resources, should adopt legislations or policies specifically devoted for the full realization of the right to adequate housing.<sup>107</sup>

With regard to progressive realization, the Ethiopian government is obliged to take every step necessary within its capacity, towards the full realization of the right to adequate housing. Here, the measures to be taken must be reasonable and the State should move expeditiously and effectively as possible towards the full realization of the same.<sup>108</sup>

Therefore, a state, once party to the above international human right instruments, is required to throw every stone for the realization of the right to adequate housing. Consequently, if a state

---

<sup>105</sup> GC No. 4, supra note 30, para 12-14.

<sup>106</sup> Id., para 10.

<sup>107</sup> G. Dejene, The Realization of the Right to Housing in Ethiopia, 22 Oct, 2007, LLM thesis, University of Pretoria (Unpublished) p. 29.

<sup>108</sup> Ibid.

cannot show this effective move, then that state would be considered a violator of human right in general and the right to adequate housing in particular.<sup>109</sup>

Moreover, a housing policy or legislation can be said reasonable only when it is inclusive in a sense that it includes or does not omit the disadvantaged parts of the society. And also the legislation or other measures must match with the available resource in a nation. Hence, a measure would not be reasonable if the resource available is fair and less attention is given to realizing the right to adequate housing.<sup>110</sup>

As has been discussed before, the government of Ethiopia has issued some laws that have slight relationship with the right to adequate housing. The proclamations and polices, if meant for the realization of the right to adequate housing, should provide for mechanisms of realization of the right. It is also expected to clearly recognize the right and the obligation to realize the right. The laws in Ethiopia, as can be understood from the preamble and text of the proclamations, however, are not targeted towards discharging the obligation to enforce the right to adequate housing.<sup>111</sup>

In addition to the laws, adoption of polices is also one of the measures that should be taken to realize the right to adequate housing. Policies are always aimed at directing the overall actions of organs of the state. If, for instance, a state adopts a national housing policy, every decision of organs including budget allocation must be compatible to such housing policy.<sup>112</sup> In Ethiopia, notwithstanding the Urban Development Policy; which aims at widening the availability of low cost houses, there is no specific national housing policy which is directly aimed at realizing the right to adequate housing.

Though article 90/1 of the FDRE Constitution obliges the government to use housing as a basic principle for formulation of policy, the government has no specific housing policy yet.<sup>113</sup> Hence, the fact that there is no specific and detailed policy shows that the government of Ethiopia failed to take adequate and reasonable measures because adoption of legislation/policy is among the

---

<sup>109</sup> G. Dejene , supra note 107, p. 29.

<sup>110</sup> Id., p. 30.

<sup>111</sup> Id., p. 31.

<sup>112</sup> Ibid.

<sup>113</sup> Id., p. 32.

minimum obligations that is expected from a state.<sup>114</sup> This again means that Ethiopia may not discharge its progressive obligation because adoption of legislations, which is immediate, is a step forward to discharge obligations of progressive nature.<sup>115</sup>

The other important issue appropriate to discuss is about the practice of forced eviction. Forced eviction is defined as the permanent or temporary removal against the free will of individuals or families from their homes without providing appropriate legal or administrative measures.<sup>116</sup> Forced eviction, which is a direct violation of the right to adequate housing, also affects a variety of human rights. These include, the right to human dignity, security of the person, privacy, health, education, life, freedom of movement and freedom to choose one's own residence.<sup>117</sup>

Nations have a legal obligation to respect, protect, and fulfill the right to adequate housing and not to sponsor, tolerate or carry out forced eviction. An eviction could be arbitrary in two ways. The first one is *procedurally arbitrary*, when unfair procedures are followed before, during and after eviction. The second is *substantively arbitrary*, which happens when there are no sufficient and justifiable reasons for the evictions.<sup>118</sup>

There are some separate standards which are directly related with prohibition of forced eviction. One of them is Resolution 1993/77, Forced Eviction, which is adopted by the UN Commission on Human Rights on March 1993. Under this Resolution, the Commission affirmed that forced eviction is a gross violation of human rights in general and the right to adequate housing in particular. Consequently, governments are expected to take measures to eliminate the practice of forced eviction. And in cases of justified evictions, they should provide immediate and sufficient substitute land for those who have been evicted.<sup>119</sup> The other related standard is Resolution 2004/28, Prohibition of Forced Evictions, adopted on 16 April 2004. The notion which was provided in Resolution 1993/77 is further strengthened and re-affirmed under paragraph 1-5 of Resolution 2004/28.

---

<sup>114</sup> GC No 3, supra note 37, para 3.

<sup>115</sup> Id., para 9.

<sup>116</sup> General Comment No. 7 on The Right to Adequate Housing (article 11/1 of the ICESCR): Forced Eviction, adopted in 1997, UN document E/1998/22, annex IV, para 3.

<sup>117</sup> C. Lilian, supra note 66, p.7.

<sup>118</sup> Ibid.

<sup>119</sup> Resolution 1993/77, Forced Eviction, adopted in March 1993, UN doc. E/1993/77, para 1-4.

General Comment No. 7 also provides for the same type of protection for individuals who are evicted from their land and house. According to the General Comment, states have obligation to ensure that legislative and other measures are adequate to prevent and punish forced evictions carried out without appropriate safeguard. Besides ensuring grant of compensation for affected individuals, adequate and reasonable notice before the date of eviction should be given.<sup>120</sup>

An international Workshop, on forced eviction, organized by UN Special Rapporteur on the right to adequate housing, which was held in June 2005, came with Basic Principles and Guidelines on development based evictions.<sup>121</sup> Development based evictions are defined to include those evictions that are often planned or conducted under the cover of public interest. This may include, development of infrastructures such as, urban renewal, slum upgrading, city beautification, projects of large scale industrial or energy projects.<sup>122</sup> As a matter of fact, almost all the steps to be taken before, during and after eviction are similar to those listed under General Comment No 7.<sup>123</sup> On the same Workshop the Special Rapporteur has requested for the inclusion of these principles and guidelines in domestic legislations of states.

When we come to the case of Ethiopia, forced eviction are practiced most often under the cover of development which include, urban renewal, slum upgrading and city beautification.<sup>124</sup>

As has been said above, forced eviction for the purpose of public interest in accordance with law and inconformity with international human right instruments is not prohibited. This notion is clearly manifested by the FDRE Constitution under its article 40(8). Furthermore, Proclamation No. 455/2005 on Expropriation of Land Holding for Public Purposes and Payment of Compensation, presuppose the existence of reasonable eviction and it goes on to provide for procedures to be followed before, during and after eviction.

The problem lies with the position taken by the Expropriation Proclamation which considers every eviction as reasonable if it is decided y the concerned executive organ. In this case, evicted

---

<sup>120</sup> General Comment No 7: Force Eviction, adopted on 16 May 1997, UN doc. E/1998/22. Annex, para 4.

<sup>121</sup> UN doc. A/HRC/4/18, 5 February 2007, annex 1.

<sup>122</sup> Id., p. 8.

<sup>123</sup> Id. p. 37.

<sup>124</sup> See the discussion on cases which are considered by the FDRE Institute of Ombudsman under chapter four of this paper.

individuals or groups cannot resist or object the order of eviction, but only the proportionality and appropriateness of compensation.<sup>125</sup>

#### **4.2 Current Status of Housing in Ethiopia**

Under this sub topic, due to lack of information, it is only general situation of Addis Ababa that the writer can address.

Pursuant to the definition given by UN HABITAT, 80% of Addis Ababa is a slum. The majority of low income Ethiopians live in government owned rental houses (Kebele houses). In relation to quality or adequacy of the houses, they are constructed of mud and wood and they are too old. There are also a good number of such houses without access to water, electricity and sanitation.<sup>126</sup> From the perspective of physical form or setup, Ethiopia is dominated by single storey with no free space in the compound. Such constructions comprise 98.3% of buildings and the rest 1.7% are multi-storied buildings. In terms of tenure, only 30% of houses are owner occupied which means the rest are under rental system.<sup>127</sup>

The majority of the population in Ethiopia demand for adequate housing which include affordability, habitability and availability of services. Though there is such demand, there is low *effective demand* which includes ability and willingness to pay for adequate housing. Due to different economical and social reasons, people are not able to pay for housing and impliedly individuals are in need of affordable housing.<sup>128</sup> Majority of low income Ethiopians receive their income from informal sources and lack saving and capital to use as collateral. In addition to this problem, housing finance of formal credit is limited and with high lending rates. Therefore, one can conclude that houses of adequate or even minimum standard are out of the reach of the poor.<sup>129</sup>

---

<sup>125</sup> Proclamation No. 455/2005, supra note 90, article 11(6) and (7).

<sup>126</sup>The Ethiopian case of Condominium housing: The Integrated Housing Development Program, UN- HABITAT, p.15.

<sup>127</sup> Id., p.16.

<sup>128</sup> M. Solomon(PHD), Policies and Practices Affecting the Right to Housing in the Urban Centers of Ethiopia, Addis Ababa, April 2006, pp 22-31.

<sup>129</sup> Condominium housing, supra note 126, p.17.

In response to the above challenge, the Ethiopian government arranged for low income housing development. This is formulated as Integrated Housing Development Program (IHDP). This program was launched in 2004 and aimed at:

- i. Increasing housing supply for the low income population.
- ii. Recognizing existing urban slum areas and mitigate their expansion in the future.
- iii. Increasing job opportunities for micro and small enterprises and unskilled laborers, which will in turn provide income for their family to afford their own houses.
- iv. Improving wealth creation and wealth distribution for the nation.<sup>130</sup>

As has been said before, the IHDP is aimed at providing low cost houses for the poor and disadvantaged part of the society. Though this was the target, recent practices show that the “poorest of the poor” are not beneficiaries due to economical inability to afford the initial down payment and monthly service charges. For a person who is not formally employed and without stable income source, it would be challenging to cover increasing household expenditure and down payments at the same time. Therefore to cope with this economic pressure, many households left their houses and rent them to those who can afford monthly expenses, who are often middle income people.<sup>131</sup>

The other important issue is related with quality of the construction. Though the aim was to provide low cost but not low quality housing, most of the constructions are criticized for being of low quality. Burst sewerage pipes that leaked through all floors and wide spread cracking of wall plasters are among the manifestations of low quality construction. Moreover, households face problem of water provision and sewerage disposal.<sup>132</sup>

---

<sup>130</sup> Condominium housing, supra note 126 p.20

<sup>131</sup> Id., p.50.

<sup>132</sup> Id., pp.52-54.

### **4.3 Remedies for victims of violation of the right to adequate housing**

Redressing victims of violation of the right to adequate housing is one aspect of the realization of the same right and the following discussion would analyze how far the Government of Ethiopia has been working on redressing victims of violation of the right to adequate housing.

#### **4.3.1 Judicial Remedies**

For the purpose of analyzing the practice of courts in entertaining cases of the right to adequate standard of living, the writer has done interviews with eight judges of the Federal High court. The interview was meant to consider the attitude of judges on implementation of internationally and constitutionally guaranteed rights of citizens in general and the right to adequate standard of living in particular.

Most of the judges do have a good concern towards realization of the right to adequate standard of living. However almost all agreed that, since realization of such rights require mobilization of resources, courts are not legitimate to make decisions of such nature.<sup>133</sup> Furthermore, they said that obligation of the state on the right to adequate standard of living is progressive in nature that it may not be legitimately accused for not realizing the right. The other point of the judges was that most of the components of the right to adequate standard of living are usually managed by policies and proclamations which give the established organs to deal with complaints related to the rights. For example, people may complain right to water to administrative organs authorized at varied levels. Complaints of violations of right to water use by users of water for economic benefit may be presented to the Ministry of Water Resources pursuant to Proclamation No. 197/2000. Those who are not satisfied with the decisions of the Ministry may appeal to ordinary courts within 60 days. The same is true in relation to adequate housing. For example, any individual who alleges violation of the right to adequate housing either by way of forced eviction or other means is entitled to go to the concerned housing authority/agency in the city.<sup>134</sup> Usually eviction cases occur because of maladministration and such cases would be directly sent to institutions established for dealing with such issues.

---

<sup>133</sup> Interview with Judges at the Federal High Court, held on September 13/2011(names of judges are not disclosed because they do not want to be officially cited).

<sup>134</sup> Proclamation No. 370/2003, supra note 89, article 11.

The other important question forwarded for the judges was about the direct applicability of the FDRE Constitution. As has been said in the other part of this paper, though not clearly stipulated, the right to adequate housing is impliedly recognized under article 41 of the FDRE Constitution. Hence the question here is that, can a victim of the right to adequate housing invoke this article in a legal litigation? Articles 83(1) and 84 of the FDRE constitution give the mandate of interpreting the constitution to the House of Federation. These articles are used by Ethiopian courts to develop a notion that courts have no power to apply and enforce the right to adequate standard of living. However, when there are constitutional disputes (a dispute where one litigating party invokes that a certain article or decision is unconstitutional), and the case is already before a court of law, the latter will submit a legal issue to the Council of Constitutional Inquiry only if it believes that there is a need for authoritative interpretation. If the court have a reason to believe that the provisions are clear, it can apply it without referral to the Council.<sup>135</sup>

The answer of the judges was almost similar in that all of them believe that any issue or aspect of litigation cannot be entertained by courts if it has constitutional issues. According to the judges, the House of Federation is one that is given with the power to interpret the constitution. Though it has been asked that “what if the invoked article of the constitution is clear to apply on a case, would your answer be different?”, some of the judges were reluctant to answer this question and the others said that the recent practice and some decisions of the House of Federation does not allow them to directly apply constitutional provisions. However, this understanding would defeat the concept that the judiciary should enforce rights enshrined in the constitution and other domestic laws of the country.<sup>136</sup>

Despite the fact that there were and are many victims of the right to adequate standard of living in general and the right to adequate housing in particular, cases related with socio-economic rights has been rejected for being non justiciable. However, a fact that cannot be denied is that there have been cases of forced eviction which are directly related with compensation. The problem with the claims is that they do not contain violation of different elements of the right to

---

<sup>135</sup> A. Sisay, *Supra* note 86, p. 145.

<sup>136</sup> A. Sisay, *Justiciability* *supra* note 1, p. 22.

adequate housing, but only the violation of the protection against forced eviction. The internationally recognized justiciable components of the right are not raised in courts.

The fact being the above, the reading of article 13(1) of the FDRE Constitution tells us that all the three organs of the government are under responsibility to respect and enforce fundamental rights and freedoms. The judiciary, as one of the three organs of the government, is therefore expected to respect and enforce the constitutionally guaranteed socio-economic rights. Furthermore, article 37(1) of the FDRE constitution provides that everyone has the right to bring a justiciable matter to, and obtain a decision by a court of law.

The final point that has been raised by the respondent judges was issue of progressive realization of socio-economic rights in general and the right to adequate standard of living in particular. According to them, State Parties are expected to act progressively in discharging their obligations in relation to ESC rights. In such type of obligations, duty bearers are only expected to take steps to the extent of available resources. Therefore, it would not be appropriate to give judgment that compels government to do a certain act for the realization of ESC rights in general and the right to adequate housing in particular.

The obligation of progressive realization does not entitle states, however poor they may be, to sit back and justify every failure on their part to lack of resources. The obligation requires states take immediate steps and fulfill the obligation step by step through deliberate, concrete and targeted measures. There are rights which are capable of immediate enforcements. For example, a state should not interfere with the enjoyment of legally obtained right to housing of individuals through forced eviction.

## **4.3.2 Institutional Remedies**

### **4.3.2.1 The Human Rights Commission**

The Ethiopian Human Rights Commission was established in 2000 by Proclamation No. 210/2000, which is issued as per article 55(1) and (14) of the FDRE Constitution.

The Commission is basically responsible for ensuring that human right provisions of the Constitution are respected, ensuring conformity of laws, regulations and directives with the human right provisions of the Constitution, increasing awareness of the public on human rights, investigating human right violations and recommending revision of legislations when appropriate.<sup>137</sup>

Since the right to adequate housing is among the basic human rights and the Commission is meant to protect such rights, practical consideration of the activities done in relation to the right to adequate housing is appropriate.

As one of the domestic human right institutions in the country, the Commission has its own organizational set up. Consequently accessing the institute was not a problem and interview with human right experts who work in the Human Rights Violation Correcting Directorate was done to examine the role of the Commission in realization of the right to adequate housing.

The first question that was raised for the experts is about their awareness on the right to adequate standard of living in general and right to adequate housing in particular. According to the respondents, the Commission is empowered to work basically on promotion of human rights including the right to adequate housing. It is especially working towards increasing awareness of people on their ESC rights in general.<sup>138</sup>

In relation to the practical consideration and investigation of cases related with violation of the right to adequate housing, the respondents said that cases of violation of the right to adequate housing often related with eviction are brought to the Commission. Though such allegations are made by individual or group victims, such issues are not usually accepted because forced and arbitrary evictions are made because of maladministration on the side of the executive.

---

<sup>137</sup>Establishment Proclamation of the Ethiopian Human Rights Commission, Proclamation No 210/2000 articles 5 and 6(1-5).

<sup>138</sup> Interview with experts in the Human Rights Violation Correcting Directorate of the Ethiopian Human Right Commission. Held on Sep 14, 201. Name of the experts are not disclosed because the respondents are not interested to be officially cited.

Consequently experts would discuss with victims and convince them to take their claims to the Institute of Ombudsman.<sup>139</sup>

The other reason given by the experts for not usually dealing with violations of the right to adequate housing is the fact that housing is not priority for the Commission and it is recently working on Civil and Political rights and labor protection which is part of ESC rights.<sup>140</sup>

#### **4.3.2.2 The Institute of Ombudsman**

The FDRE Institute of Ombudsman has been established by Proclamation No 211/2000 as per article 55(1) and 55(15) of the FDRE Constitution. The office is established with a view to ensuring respect of recognized rights and freedoms by the executive organ. It is basically aimed at protecting rights, fighting mal administration and ensuring good governance in the executive.

As one way of ensuring respect of rights and freedoms, the Institute is given the power to investigate complaints of maladministration and recommend for the revision of existing laws or practices or decisions.<sup>141</sup> The institution's power, however, is not without limitations. Consequently, the institution shall have no power to investigate decisions given by counsels, cases pending in courts of law, matters under investigation by the Ethiopian Anti-Corruption Commission or decisions given by security forces units of Defense Forces in respect to matters of National Security or defense.<sup>142</sup>

For the purpose of observing the practice of the institution in relation to ensuring the realization of the human rights in general and right to adequate housing in particular, an interview is done with Ato Petros W/Senbet, who is Maladministration Investigation Directorate Director. According to the Director, the Institute is empowered to deal with issues related with the right to adequate housing as well other human rights if the issues are not out of the scope of the Institute as provided under article 7(1-4) of the establishing proclamation.<sup>143</sup>

---

<sup>139</sup> Interview with experts, supra note 138.

<sup>140</sup> Ibid.

<sup>141</sup> Establishment Proclamation of the Ethiopian Institute of Ombudsman, Proclamation No 211/2000, article 6(1-6).

<sup>142</sup> Id., article 7(1-4).

<sup>143</sup> Interview with Ato Petros W/Senbet, Maladministration Investigation Directorate Director, on Sep 19, 2011.

In the normal course of urban development, the executive organ undertakes many measures which would directly affect right to housing of individuals, families and/or the community at large. In such instances individuals or group of people would come to the institution and there is an officer who would initially evaluate the technical sufficiency of the case. If the complaint is found to be appropriate, it will be submitted to the concerned legal expert.<sup>144</sup>

According to the Director, most of the housing cases are related with eviction for the purpose of city development or road construction. In such instances, individuals or groups basically allege two things. The first is that they are evicted from their home or land without due process of law, which may include not giving notice and sufficient and reasonable time. Secondly, they would invoke that compensation is not totally given for them and/or the granted compensation is not sufficient and not proportional with the damage they sustained. In dealing with such cases, the first thing that would be considered is whether the individual or group has ownership right or title deed in relation to the house or land under question. After establishing the fact that the complainant has valid ownership right, other evidences would be scrutinized as appropriate.

Once the legal expert established this fact, the next step would be analyzing whether the measure taken by the executive is appropriate or not.<sup>145</sup> While checking appropriateness, what would be done is to establish either the eviction is done in accordance with law following due process of law including giving notice of reasonable time or establish the fact that the eviction is arbitrary that was not done in accordance with law.<sup>146</sup> After establishing either of the two facts, the next step is evaluation of the compensation granted for the claiming party. Compensation could be in cash, in kind or both of them as appropriate. At this stage, the expert may find that the compensation is not proportional to the damage or if it is in kind, he/she may conclude that the compensation is not appropriate.<sup>147</sup> Finally, after it is established that the individual's or groups' right is violated, the Institute will send recommendations to the concerned organ.

---

<sup>144</sup> Interview with Ato Petros W/Senbet, supra note 143

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

The other important but not frequently brought is case of individuals/groups who claim for a house for they are citizens of Ethiopia and they cannot afford to have their own house. According to the Director, though it is obvious that there are many people who live in low quality or inadequate house, or even do not have their own house and cannot afford to meet such, it would be challenging to recommend the government to provide adequate house for all alleging parties. Therefore, such cases are not entertained by the Institute and the reason given is the fact that ESC right entail an obligation of progressive nature. And since Ethiopia is not in a position to provide adequate houses for all individuals without houses because of unavailability of resources, it would not be appropriate to recommend for provision of houses for every complaint of violation of the right to adequate housing.<sup>148</sup> When such issues are encountered, what the Institute has been and is doing is that discussing with the complaining individuals or groups and trying to make them understand the real situation in the country. Hence, the Institute has never given recommendations to the executive organ on such issues.<sup>149</sup>

Furthermore, a question related to the type and enforceability of the recommendation given by the Institute was raised to the Director. Consequently, the Director affirmed that the Institute usually found violation of human rights by the executive organ. Recently many evictions, though important for urban development, are done without due process of law. Therefore, the Institute will write recommendation for the executive organ in order for it to change or modify its decision. For the purpose of making the recommendation enforceable, the Institute writes a notice which reminds the executive organ to implement the recommendations and if it cannot do so, demand the office to give explanation as to why it cannot implement.

After writing such full recommendation, the Institute expects implementation of the recommendation within a reasonable time. In spite of such expectation, there are instances where the organ in question neither implement nor justify reasons for not implementing recommendations. In such situations, after arranging for discussion, the Institute will wait for three months and take the case to ordinary courts.<sup>150</sup> The fact being the above, it is often observed that at this final point of receiving court summon, concerned organs would come to the

---

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> Proclamation No 211/2000, supra note 141, article 41.

Institute in person and justify the reason for not implementing or write a letter of promise to implement the recommendation within a reasonable time.<sup>151</sup> After all this process, one of the parties in a case may not be satisfied by the decision of the Institute. Such appeals are always welcome in the Institute and the latter can modify, amend or approve its own decision.<sup>152</sup>

Practical cases which are considered by the Institute will be analyzed in the next section and are annexed at the last part of this thesis. Names of petitioners and respondents are kept anonymous purposely for the Institute has its own principle of confidentiality.

### **Case No. One**

This case was first brought in May 21/2011 GC. The merit of the case is that the petitioner alleges that his house has been demolished for the purpose of road construction and he has been evicted without appropriate arrangement for reparation and substitute land for construction of dwelling house.

After considering the facts and evidences adduced, the Institute found that the case is being adjudicated by an ordinary court of law. Pursuant to article 7(2) of Proclamation No 211/2000, the Institute cannot deal with cases which are pending in courts of law at any level. Therefore, the Institute, after establishing this fact and that the case has not been finalized, had rejected the case.

The petitioner was aggrieved by the decision and brought an appeal to the institute up on same facts. The Institute, as provided under article 27 of Proclamation No 211/2000, can accept and consider such appeals. After accepting the appeal, the Institute made the appropriate evaluation of the case and it found that the same merit has been decided by two courts at different levels. Therefore, since the Institute has no mandate to consider such cases, it approved the initial decision of the subordinate expert.

---

<sup>151</sup> Interview with Ato Petros W/Senbet, supra note 143.

<sup>152</sup> Proclamation No 211/2000, supra note No 141, article 27.

When we critically see the decision of the Institute it fully relied on article 7 of the Proclamation which prohibits the Institute from considering cases which are pending in ordinary courts of law at any level. Here the question is: are cases which have already been decided can be entertained by the Institute? According to the writer's view, article 7(2) of the Proclamation which says "... Cases pending on courts of law at any level" is clear enough and the term "pending" excludes those cases which have been decided and got final judgment. The Amharic version of the same proclamation also strengthens this idea because it clearly says "በፍርድ ቤት እየታየ ያለ ጉዳይ".

The rationale of this provision seems to avoid conflict of jurisdiction between the judiciary and the Institute and therefore, once a case got final decision in a court of law, it can be considered by the Institute. Consequently, the reason given by the institute in this decision is not appropriate.

#### **Case No. Two**

This case, like the first one, is related to denial of appropriate compensation and substitute land after eviction.

According to the petitioner, the order of eviction has been given in the year 2005 and the executive organ has decided for both monetary compensation and substitute land. However, due to different reasons, the eviction was not done at the time arranged for the same and it was finally executed after five years in the year 2010. At this time, the concerned organ refused payment of compensation by saying that the petitioner has received the appropriate compensation at the first order of the eviction.

The Institute, before deciding on the merit, considered whether the person has received the compensation at the said event. In the process of investigation, the Institute found no document in the executive organ that shows actual payment of compensation. Therefore, it gives recommendation to the concerned executive organ for conclusion of payment of compensation and granting a substitute land.

In the writers view the decision of the Institute is reasonable and it shows the fact that individuals or groups may not be left without compensation after evictions are done.

### **Case No. Three**

The petitioners under this case are two. According to them, they are arbitrarily evicted from the land they have been working for economical gain. They have initially brought the same case to the Institute and the latter had rejected the case because the petitioners did not exhaust the administrative remedies according to article 17 and 18 of Proclamation No 272/2002. After this decision, the case was again brought to the Institute because the concerned executive organ said that the issue is already decided by the appeal Committee and that there would be no different decision that could be given. At this instance, the Institute reconsidered the case and started to investigate on the merits of the case. The first issue that was analyzed was whether the petitioners have valid and legal right on the land. Consequently, after considering variety of evidences including GIS (Geographic Information System), it was found that the land the petitioners were claiming is a green area left for recreation. In addition to this, it was also found that the petitioners have been convicted and been sentenced for holding the same place illegally. Accordingly, the Institute concluded that the immediate removal of the petitioners without reasonable notice and compensation is appropriate and does not amount to arbitrary eviction.

The decision of the Institute can be evaluated by initially considering the existence of forced eviction. According to paragraph 3 of GC No 7, forced eviction exist when individuals or families are removed from the home or land they occupy against their will and without appropriate legal protection. From this clear definition, one can logically conclude that, removal of individuals from the land they occupy amounts to forced eviction irrespective of the way the land or house is occupied. And if the act of the executive organ amounts to forced eviction, then following the appropriate procedures which include giving reasonable notice and substitute land is expected. However, since it has been judicially proved that the land is occupied illegally, the executive organ may not be expected to award a substitute land. But, the holders of the land should have been given reasonable time to remove their property. Therefore, the conclusion of the Institute is not in conformity with international standards.

#### **Case No. Four**

This case was brought to the Institute in Dec 14/2010. The petitioner alleged that she owned a house which lied on 200 M<sup>2</sup> and on the year 2005 the City's Road Authority decided that a road to be constructed would touch the house and it has been decided to give her a substitute land and compensation.

According to the petitioner, despite this decision, it was found that the new road touch only 30 M<sup>2</sup> of the house and the rest part was not affected by the construction. Consequently, she requested for returning the compensation and the respective plan of the house on the substitute land. However, the concerned executive organ did not accept her request. While this process was going, the other event which brought about this claim was done by the executive organ. On Dec. 4, 2005, the petitioner was notified to leave the old house till Dec. 7, 2005 and on that date she was forced to leave the house.

The Institute accepted the complaint and considered the facts invoked by the petitioner. Variety of evidences were evaluated and it was concluded that though the woman has legal and valid title on the old house, once order of removal is made and compensation and substitute land is given, there would be no ground to recommend for reinstatement of the petitioner. Therefore, there is no maladministration committed against the petitioner and the case was closed.

As to the writers view, the Institute should have analyzed the merit of the case in a more critical way. The first thing that should have been considered is whether the eviction was appropriate and reasonable. One can clearly understand from the facts of the case that the road construction has only affected small part of the house and the destruction of the rest and most part of the house was and is not important for the road construction. Therefore, the Institute should have criticized the removal of the petitioner. Besides, even if it can be argued that the eviction is appropriate because the construction affects small part of the house, the time given for removal, which is three days, is not reasonable and sufficient. Hence, this is directly against paragraph 15 of GC No.7. Therefore, the Institute should have again criticized the inadequacy and non-reasonableness of the notice given for the petitioner.

### **Case No. Five**

The case was brought to the Institute by the petitioner to legally own a house which was initially given to him and another individual as a substitute up on removal of an old one. According to the petitioner, he has been given a house of three rooms with another woman and the latter left the house because it was inconvenient for her and the *kebele* administration gave her an alternative land, where she is living now. After the woman left the house, the petitioner was living there and the claim is to own the whole house by paying the appropriate rent fee. Though he has requested for the same time and again, no answer was given to him.

After receiving the complaint, the Institute, as usual, traced back the way how the petitioner possessed the house. According to the finding of the Institute, the petitioner possessed the house illegally and the concerned authorities could not stop the person for unknown reasons. Consequently, the Institute concluded that there would be no legal ground to force the *kebele* to enter in to a rent contract and give part of the house to the petitioner. Therefore, the case was closed for there is no maladministration committed against the petitioner.

As far as the writer's knowledge is concerned, the conclusion of the Institute is fair and there is no component of the right to adequate housing which is violated.

### **Case No. Six**

This case is directly related to forced eviction. The petitioner complained that he is evicted from his house because of urban development and city beautification without being appropriately compensated and no substitute house is given for him.

After the claim was accepted, the City Administration Authority was called to justify the reasons for not providing money compensation and substitute house for the petitioner. According to the respondent, the petitioner was not given compensation and alternative house because the house the latter was living cannot be observed in the GIS and is not officially registered.

The Institute also tried to investigate the issue and there was confusion between the petitioner's house and other woman's house. Consequently, compensation has already been given to the

other woman and the respondent affirmed that it is illegal to give compensation and substitute house for two individuals on a single house.

The Institute, while trying to settle the issue, further investigated and found the fact that even if the house is not observed on the GIS, it was found on the Line Map of the city. Hence, the Institute requested the concerned organ for at least the substitute house. After reasonable negotiations, the City Administration Authority has decided to grant the petitioner with both money compensation and substitute house.

According to the writer's view, this is a decision that should be appreciated. In a country where there is no developed GIS and urban development system, one can expect many individuals who live in slums that cannot be observed in GIS and not officially registered. In such situations, it would be violation of right of individuals to deny compensation for at least they have been living there.

## **Chapter Five**

### **Conclusion and Recommendations**

#### **5.1 Conclusion**

The right to adequate standard of living, which is one of ESC rights, requires at a minimum level that every one shall enjoy the necessary subsistence rights. The right, which consists of the right to adequate housing, food, clothing and water, is recognized under many important international human right instruments including the UDHR, ICESCR, CEDAW, CRC and so forth. The right to adequate housing is a basic human right whose realization is related to many other human rights.

By this thesis, in addition to understanding and analyzing the normative content of the right to adequate standard of living, components of right to adequate standard of living have been discussed.

The right to food, which is one of the basic elements of the right to adequate standard of living, is directly related with human dignity. Pursuant to GC No 12, which is meant to interpret the same right, right to food and the inherent dignity of human person are inseparable and without food it is impossible to fulfill other rights.

The second element of the right to adequate standard of living is the right to adequate housing which is the focus area of this thesis. According to GC No 4, a house is to be said adequate when certain conditions are fulfilled. Security of tenure, affordability, habitability, availability of services, materials, facilities and infrastructure, accessibility, location, and cultural adequacy are the criteria for adequacy. In realizing the right to adequate housing, State Parties have verity of obligations which include the obligation to recognize the right at national level, obligation to respect, protect and fulfill.

The other component of the right to adequate standard of living is the right to adequate clothing, which is directly related with culture and belief of societies or individuals. Due to the diversity in

culture of the world and other factors there is no separate GC which is allotted for the interpretation of this right. However, the right to adequate clothing is dealt under different GCs.

The last element of the right to adequate standard of living is the right to water, which has many components within it. According to GC No 15, irrespective of the context of a nation, there are factors that must be considered for the realization of the same right. These factors include, availability, quality and accessibility.

The government of Ethiopia, in addition to providing some aspects of the right to adequate standard of living under its Constitution, has ratified the above international human right instruments. And all international instruments ratified by Ethiopia are also made integral part of domestic law of the country. Moreover, the freedoms and liberties guaranteed under the Constitution shall be interpreted in conformity with international human right treaties ratified by Ethiopia.

There are also proclamations and policies that have relationship with the right to adequate housing. Proclamation No 272/2000 (Re-enactment of Urban Land Lease Holding Proclamation), Proclamation No 721/2011(Re-enactment of Urban Land Lease Holding Proclamation) and Proclamation No 370/2003 (Condominium Proclamation) are among the legislations which have some provisions which are related to the realization of the right to adequate housing. The other legislation which has a better importance in relation to the right to adequate housing is Proclamation No. 455/2005(Expropriation of Land Holders for Public Purposes and Payment of Compensation). According to this proclamation, eviction should be accompanied by appropriate compensation.

When we consider the practical problem, there are many violations of the right to adequate standard of living in general and the right to adequate housing in particular, but victims are left without redress because courts of the country usually raise issues of legitimacy of courts to adjudicated violation of the right to adequate housing because the realization of such right require mobilization of resources. Courts also fail to directly apply the FDRE Constitution in litigations by raising article 83(1) and 84 of the FDRE Constitution which gives mandate of

interpreting the Constitution to the House of Federation. Non-justiciability and progressive realization are also raised by courts of Ethiopia not to adjudicate cases of violation of the right to adequate housing.

There are also two major domestic human right institutions that work on the protection and realization of human rights in general and ESC rights in particular. These are the Ethiopian Human Rights Commission and Institute of Ombudsman. These institutions are basically aimed at promoting human rights and in certain instances investigate violation of human rights in Ethiopia. Though the institutions have such power, the remedies given by them are recommendations and thus cannot be compared with judicial judgments with respect to enforceability.

The other related issue in relation to institutional remedies is that allegations of violation of all elements or aspects of the right to adequate housing are not always considered for many reasons. It is often cases related with eviction and consequent compensation that are usually dealt by the Institute of Ombudsman.

Generally it is found that, though the government of Ethiopia has made significant efforts for the realization of the right to adequate housing, there is still much left to be done including adoption of specific housing legislation for the country.

## **5.2 Recommendations**

As has been said before, realization of the right to adequate standard of living is related to many human rights and it is considered as basic in the life of human beings.

When we consider the legal frame work in relation to this right, the FDRE Constitution provided for the right to adequate standard of living in very general way. The components of the right and enforcing mechanisms are not provided in a clear manner. Therefore, the first thing to recommend is that the government of Ethiopia should adopt detailed and separate legislation especially for the right to adequate housing.

Though there are efforts made, there are still violations of the right to adequate standard of living in general and the right to adequate housing in particular. Victims are entitled to either judicial or quasi judicial redress. In relation to the judiciary, the government should increase awareness of judges on the realization the right to adequate housing, on applying the FDRE Constitution and ratified international human right instruments. On this aspect, the government should have its own stand on the issue of status of ESC rights, issues of justicability and adjudication of cases of violation of the right to adequate housing by applying the FDRE Constitution.

People who are victims of violation of the right to adequate housing are not aware of the specific elements of their right and alternative remedies for redress. Consequently, the government of Ethiopia and human right institutions, such as the Human Rights Commission should work towards increasing awareness of the public.

Further researches and studies must also be done for the clear understanding of enforcement of ESC rights in Ethiopia.

## References

### Laws, Conventions, Declarations and General Comments

Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, San Salvador, adopted in 1988 and came in to force 1999.

African Charter on Human and Peoples' Right adopted in 1981 and came in to force in 1986.

Condominium Proclamation, Proclamation No.370/2003, *Federal Negarit Gazeta*, 9<sup>th</sup> Year, No. 9, 11<sup>th</sup> September 2003.

Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No 1/1995.

Convention on Elimination of all forms of Discrimination Against Women.

Convention on Elimination of all forms of Racial Discrimination.

Establishment of the Ethiopian Human Rights Commission, Proclamation No 210/2000.

Establishment of the Ethiopian Institute of Ombudsman, Proclamation No 211/2000.

European Social Charter (revised), 1996.

Expropriation of Land Holding for Public Purposes and Payment of Compensation, Proclamation No 455/2005, *Federal Negarit Gazeta*, 11<sup>th</sup> Year, No. 43, 15<sup>th</sup> July, 2005.

General Comment No 3, on the Nature of State Parties Obligation, article 2 of the ICESCR, adopted in 1990, UN document E/1991/23 General Comment No 4, on the Right to Adequate Housing.

General Comment No 4, the Right to Adequate Housing, adopted in 1991, UN document E/1992/23.

General Comment No 7, on the Right to Adequate Housing, Forced Eviction, adopted in 1997, UN document E/1998/22, annex IV.

General Comment No 9, on the Domestic Application of the ICESCR, adopted in 1998, UN document E/1999/22.

General Comment No 12 on the Right to Adequate Food, adopted in 1999, UN document E/C.12/1999/5.

General Comment No 15 on the Right to Water, adopted in 2002, UN document E/C 15/2002/22.

International Covenant on Economic, Social and Cultural Rights, adopted for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976.

Optional Protocol on ESC Rights, General Assembly, Resolution A/REs/63/117, 10 December 2008.

Protocol to the African Charter on Human and Peoples' Right on the Establishment of an African Court on Human and Peoples' Right, enacted in 1998 and came in to force in 2004.

Re-enactment of Urban Land Lease Holding Proclamation No. 272/2002, Federal Negarit Gazeta, 8<sup>th</sup> Year No 19, 14<sup>th</sup> May 2002.

Re-enactment of Urban Land Lease Holding Proclamation No 721/201, Federal Negarit Gazeta

Resolution 1993/77, Forced Eviction, adopted in March 1993, UN doc. E/1993/77.

The Right to Adequate Housing, Fact Sheet No. 21/Rev, Office of the United Nations High Commissioner for Human Rights.

Universal Declaration of Human Rights, UN General Assembly, 1948.

Vienna Declaration and Program of Action, World Conference on Human Rights, Vienna, 1993.

## **Books**

Black's Law Dictionary, 6<sup>th</sup> ed. 1990.

C. Lilian, *Eviction in South Africa, Relevant International and National Standards*, August 2008, Community Law Centre, University of the Western Cape.

Eide *et al.* (eds), *Economic, Social and Cultural Rights*, a text book, 2<sup>nd</sup> ed., Martinus Nijhof Publisher, Boston/London, 2001

F. Vilijoen, *International Human Rights Law in Africa*, Oxford University Press, 2007.

H. Jayawickrama, *the Judicial Application of Human Rights, National, Regional an International Jurisprudence*, Cambridge University Press, 2002.

M. Christophor, *Litigating Socio-Economic Rights in South Africa, A Choice between Corrective and Distributive Justice*, Pretoria University Law Press, 2009.

S. Manjsuli, *Economic, Social and Cultural Rights in International Law*, Hart Publishing, USA, 2009.

M. Berennan, *To Adjudicate and Enforce Socio Economic Rights*, Vol. 1 No 9.

## Articles and Reports

A. Getachew, *Protection of Fundamental Rights and Freedoms in the Ethiopian Federalism*, 1<sup>st</sup> National Conference on Federalism, Conflict and Peace Building, May 5-7 2003 Addis Ababa.

*Assessment of the Realization of the Right to Housing in Kenya (2009-2010)*, Economic, Social and Cultural Rights Centre, Nairobi, 2011.

A, Sisay, *Justiciability of the Right to Housing and Health in Ethiopia, the Legal and Policy Frame work*, APAP, 2006.

A, Sisay, *The Constitutional Protection of Economic, Social and Cultural Rights in the Federal Democratic Republic of Ethiopia*, Journal of Ethiopian Law, Vol XXII No 2, Dec 2008.

G, Dejene, *The Realization of the Right to Housing in Ethiopia*, LLM thesis, University of Pretoria. (Unpublished), 22 Oct 2007.

I. Ibrahim, *The Place of International Human Right Conventions In the 1994 FDRE Constitution*, Journal of Ethiopian law No.20 Vol.1.3

Initial and Combined Periodic Report Submitted by the state of Ethiopia under Articles 16 & 17 of the ICESCR, July 2009.

K. Jeff, *An Activists Manual on the International Covenant on Economic, Social and Cultural Rights*, Law and Society Trust, March 2003.

M, Solomon (PHD), *Policies and Practices Affecting the Right to Housing in the Urban Centers of Ethiopia*, Addis Ababa, April 2006.

S, Takele, *The Monist- Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Right Treaties in Ethiopia*, *Journal of Ethiopian Law*, 23 J. Eth. L. No 1..

Universal Periodic Review of Ethiopia, 6<sup>th</sup> session, 30 Nov-11 Dec 2009.

Working paper and First Progress Report of the UN Special Rapporteur on Promoting the Realization of the Right to Adequate Housing/CN.4/Sub.2/1992/15 and E/CN.4/Sub.2/1993.

## **Internet Sources**

S,Lekie, *The Justiciability of Housing Rights*, accessed at <http://www.uu.nl/faculty/leg/nl/organisatie/departementen/departementrechtsgeleerdheid/organisatie/onderdelen/studieeninformatiecentrummensrechten/publicaties/simspecials/18/Documents/18-07.pdf>.

*The Right to Adequate Standard of living*, accessed at [info@humanrights.is](mailto:info@humanrights.is) Iceland Human Rights Center.

C. Golay & O. Melik, *The Right to Housing*, accessed at [www.unhabitat.org](http://www.unhabitat.org).

K. Adem, *Human Rights under the Ethiopian Constitution: A Descriptive Overview*, accessed at [www.pretoriauniversityhrtscentre](http://www.pretoriauniversityhrtscentre).

Report of the UN Special Rapporteur on adequate housing, Miloon Kothari, 3 March 2005, E/CN.4/2005/48.

<http://daccessdds.un.org/doc/UNDOC/GEN/G05/117/55/PDF/G0511755.pdf>

UNHABITAT, *The Case of Condominium Housing: the Integrated Housing Development Program*, accessed at [www.unhabitat.org](http://www.unhabitat.org)

UNHABITAT, *Comparison of Urban Upgrading Projects on Development Cooperation in Ethiopia, Ethiopia and its Capital, Addis Ababa*, accessed at [www.unhabitat.org](http://www.unhabitat.org).

## **Interviews**

Interview with Ato Petros W/Senbet, Maladministration Investigation Directorate Director, on Sep 19, 2011

Interview with experts in the Human Rights Violation Correcting Directorate of the Ethiopian Human Right Commission, on Sep 14, 2011(Name of the experts is not disclosed because the respondents are not interested to be officially cited.)

Interview with Judges at the Federal High Court, on September 13/2011(names of judges are not disclosed because they do not want to be officially cited)

## **Cases**

**am**

European Roma Rights Center Vs Greece, Complaint No 15/2003

Purohit and Moore Vs the Gambia, Communication No 24/2001

Social and Economic Rights Center Vs Nigeria, Communication No 155/96

## **Appendix**

### **Appendix A**

#### **Interview Guide for Judges at the Federal High Court**

**Introduction:** I am Armaye Assefa, LLM student at Addis Ababa University School of law. I am doing my LLM thesis on a title “Adequate Standard of Living with Specific Focus on the Right to Adequate Housing: the Normative, Institutional and Legal Framework in Ethiopia”. The purpose of this interview is to get information on awareness of judges on the right to adequate housing and the remedies that could be given for victims of violation of the right to adequate standard of living in general and the right to adequate housing in particular.

#### **Questions**

1. What are the right to adequate standard of living and the right to adequate housing?
2. Do you think courts are legitimate to litigate cases in relation to the right to adequate standard of living in general and the right to adequate housing in particular?
3. Can we directly apply the FDRE Constitution in court litigations related to violations of the right to adequate housing?

## **Appendix B**

### **Interview Guide for Experts at the FDRE Human Rights Commission**

**Introduction:** I am Armaye Assefa, LLM student at Addis Ababa University School of law. I am doing my LLM thesis on a title “Adequate Standard of Living with Specific Focus on the Right to Adequate Housing: the Normative, Institutional and Legal Framework in Ethiopia”. The purpose of this interview is to get information on how far the Human Rights Commission is working in the promotion, protection and realization of the right to adequate standard of living in general and the right to adequate housing in particular.

#### **Questions**

1. What is the right to adequate standard of living and how is it related with the right to Adequate housing?
2. What is the role of the Commission in the realization of the above rights?
3. Do the Commission has mandate to investigate and handle cases of violation of the right to adequate housing?

## **Appendix C**

### **Interview Guide for the Director of the Maladministration Investigation Directorate of the FDRE Institute of Ombudsman**

**Introduction:** I am Armaye Assefa, LLM student at Addis Ababa University School of law. I am doing my LLM thesis on a title “Adequate Standard of Living with Specific Focus on the Right to Adequate Housing: the Normative, Institutional and Legal Framework in Ethiopia)”. The purpose of this interview is to get information on how far the FDRE Institute of Ombudsman is working in the promotion, protection and realization of the right to adequate standard of living in general and the right to adequate housing in particular.

#### **Questions**

1. What is the right to adequate housing?
2. What is the role of the Institute in the realization of the right to adequate housing?
3. Which aspect of the right to adequate housing is often claimed?
4. What are the procedures to be followed in considering and investigating cases related with the right to adequate housing?
5. What kind of decision is given by the Institute? And how is its enforceability evaluated?
6. Is there any enforcing mechanism in the Institute?