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**THE RIGHT TO SOCIAL SECURITY OF PUBLIC SERVANTS IN
ETHIOPIA: ASSESSING THE CHALLENGES AND PROSPECTS**

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ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE STUDIES

SCHOOL OF LAW

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DECLARATION

I, **Henok Messay**, declare that this dissertation is my original work, and has not been submitting to other institution. I also declare that I have recognized the sources I used in the dissertation.

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Signature

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Table of Contents

Acknowledgment	VI
Acronyms	Vii
Abstract	Viii

Chapter 1

1. Introduction.....	1
1.1 Background.....	1
1.2 Statement of the problem.....	3
1.3 Research questions.....	7
1.4 Significance of the study.....	7
1.5 Objectives of the study.....	8
1.6 Scope of the study.....	9
1.7 Research design.....	9
1.8 Limitation of the study.....	11
1.9 Organization of the paper.....	11

Chapter 2

2. Social Security in General.....	12
2.1 Introduction.....	12
2.2 The Idea and Purpose of Social Security.....	12
2.3 Meaning of Social Security.....	14
2.4 Features of Social Security.....	17
2.5 Historical development of social security.....	19
2.6 Elements of the right to Social Security.....	21

Chapter 3

3. The Right to Social Security under International, Regional and Selected National Instruments.....	24
3.1 International Covenant Economic, Social and Cultural Rights.....	26
3.2 Other International and Regional Human Rights Instruments.....	29
3.3 The ILO Instruments.....	32
3.4 Lessons from the Republic of South Africa.....	35

Chapter 4

4. Exploring the legal framework of the Right to Social Security of Public Servants in Ethiopia.....	40
4.1 National Social Protection Policy of Ethiopia.....	40
4.2 F.D.R. E Constitution.....	41
4.3 Pension proclamations.....	42
4.4 Social Health Insurance Proclamation.....	43

Chapter 5

5. Fundamental Challenges and Prospects in the current Social Security system of Public Servants.....	45
5.1 Fundamental Challenges in the current Social Security System of Public Servants...45	
5.1.1 Inaccessibility of Social Security Schemes.....	45
5.1.2 Adequacy of the benefit.....	51
5.1.3 Accessibility of the benefit.....	55
5.1.3.1 Coverage of the social security system.....	55
5.1.3.2 Physical access to the benefit.....	61
5.1.4 Suspension the implementation of the legislation.....	63
5.2 Prospects of the right to Social Security of Public Servants.....	67
5.2.1 Physical Accessibility of the benefit.....	67
5.2.2 Regarding the suspension of benefits.....	67
5.2.3 On the issue of extending the social security system	68

Chapter 6

6. Conclusion and Recommendations.....	69
6.1. Conclusion.....	69
6.2. Recommendations.....	71
6.2.1. General.....	71
6.2.2. Legislative measures.....	72
7. Bibliography.....	74

Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
CBHI	Community-Based Health Insurance
CEDAW	Covenant on Elimination of all forms of Discrimination against Women
CERD	Covenant on Elimination of all forms of Racial Discrimination
CESCR	Committee on Economic, Social, and Cultural Rights
ESC	European Social Charter
FDRE	Federal Democratic Republic of Ethiopia
GC	General Comment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICRC	Covenant on the Right of the Child
ILO	International Labour Organization
PSSSA	Public Servants' Social Security Agency
RTD	Right to Development
SHI	Social Health Insurance
SHIA	Social Health Insurance Agency
SERs	Socio-Economic Rights
UDHR	Universal Declaration of Human Rights

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Abstract

International commitments and constitutional obligations bind the government to furnish social security protection benefits for those of who are in needy. Social security protection is a basic human right, which is indispensable for the welfare of human existences. Social security is the safeguard that provide by community or governments for the particular group of society to ensure income insecurity, particularly in case where they face the unforeseen events of life (such as sickness, employment injury, maternity, unemployment, medical care, and old age) that possibly diminish the earning ability of an individual.¹ Access to social security is globally notable as a human right, under the International Covenant on Economic, Social, and Cultural Rights (ICESCRs). Nevertheless, it is too far to fetch its enforcement, and is not as such easy to get to the majority vulnerable in society. Ethiopia is one of the state parties to the ICESCR and affirms to achieve the goals of the Covenant.² The state has already been committed to the social security scheme, since 1961. This social security scheme had targeted only the government employees (hereinafter referred as to the public servants), until the year 2011.³

Although Ethiopia has adopting been social security-related legislation for public servants, the social security system employed by the state was not inclusive and did not comprehensively incorporate the required elements of social security system. Because of this, some of the public servants have been pushed, and deprived of enjoying the right to social security. This research intends to explore and analyze the challenges that obstruct implementing the right to social security of public servants. In addition, the study will explore the prospects of the right to social security of the public servants in Ethiopia.

KEYWORDS: - Social Security, Social Insurance, Social Assistance, Pension, Public Servant

¹ Fact sheet on social security, by international labour organization, available: <http://www.ilo.org/communication> (Accessed 26 May 2018)

² Adopted and open for signature, ratification, and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, entered into force on 23 March 1976. Ethiopia acceded to it on 11 June 1993.

³ The practice of social security in Ethiopia dated back to 1961; however, the provision of the protection were only limited to the public servants. And, the private employees were excluded to enjoy this right, however, after passed a long time, in the year 2010, the government could provide the social security scheme for the private employees under proclamation No. 715/2010, and proclamation 908/2015.

Chapter One

1. Introduction

1.1 Background

Social security is one of the basic rights of humankind, which is essential for the wellbeing of human beings. The right is guaranteed under a number of international and regional human rights instruments, which among others include the Universal Declaration of Human Rights (hereinafter referred as to UDHR).⁴ The ILO Social Security (Minimum Standards) Covenant No. 102, 1952,⁵ and the International Covenant on Economic, Social, and Cultural Rights (hereinafter referred as to ICESCR).⁶ Furthermore, the right is guaranteed under the International Covenant on the Elimination of all forms of Discrimination, Against Women (CEDAW),⁷ International Covenant on the Right of Children (hereinafter referred as to CRC),⁸ The African Charter on Human and Peoples Rights (hereinafter referred as to ACHPR)⁹ and the Covenant on the Right of People with Disabilities (CRPD)¹⁰. Ethiopia is a state party, to these entire international Covenants. Ethiopia is also a member of the ILO.

Moreover, the right to social security also stipulated under several non-binding instrument, which, among others includes, the Human Rights Committee General Comment (hereinafter referred as to GC) 19,¹¹ Limburg principle¹² and the Massteric Guidelines.¹³ These instruments

⁴See General Assembly resolution 217(III), Universal Declaration of Human Rights, 10 December 1948, Art. 25(1), Available at: <http://www.refworld.org/docid/3ae6b3712c.html> . [Accessed, 23 May 2018].

⁵ ILO covenant No. 102, the Social Security (Minimum Standards) covenant, 1952: available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247 [Accessed 23 May 2018].

⁶ See General Assembly resolution 2200 A (XXI), International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (entered into force on 23 March 1976). [Accessed 23 May 2018].

⁷ See General Assembly resolution 34/180, covenant on the Elimination of All forms of Discrimination against Women, 18 December 1979 (entered into force 3 September 1981), Art. 11(e) and 12(2(c)), available at: <http://www.refworld.org/docid/3ae6b3970.html>. [Accessed 23 May 2018].

⁸ See General Assembly resolution 44/25, covenant on the Rights of the Child, 20 November 1989 (entered into Force 2 September 1990), Art.26, available at: <http://www.refworld.org/docid/3ae6b38f0.html>. [Accessed 23 May 2018]

⁹African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, 1981(entered into force 21 October 1986), Art. 16 and 18(4),

¹⁰See General Assembly resolution 61/106, United Nations covenant on the Rights of Persons with Disabilities, 13 December 2006 (entered into force 3 May 2008), Art 28, available at: <http://www.refworld.org/docid/45f973632.html>. [Accessed 23 May 2018].

¹¹Committee on economic, social and cultural rights thirty-ninth session 5-23 November 2007, general comment (No. 19), adopted on 23 November 2007

¹² It is internationally well-known principles, made by a group of distinguished experts in international law, convened by the International Commission of Jurists, the Faculty of Law of the University of Limburg (Maastricht,

are a series of explanatory remarks on the nature, application, and duties of states parties the ICESCR. In particular, general comment No.19 describes the contexts that are involved to make ensure the elements of social security system: Availability of social security coverage,¹⁴ Adequate of benefit¹⁵ and Accessibility of protection.¹⁶

The right to social security is one of the fundamental human rights, which allows the developing states to claim assistance the developed countries to work towards causes to come about these rights. Ethiopia is among others that enacted social security-related legislation. This also presented through several legislations and policy of the country. The Constitution of the Federal Democratic Republic of Ethiopia (hereinafter referred as to FDRE)¹⁷ incorporated the right to social security. Article 41/5,¹⁸ Article 41/6,¹⁹ Article 41 (7)²⁰ and Article 90 (1)²¹ of the Constitution are the main provisions include the concept of social security. Moreover, the state also has made a national social protection policy²² in order to implement the right to social security in particular and social protection in general.

Ethiopia has also adopted specific social security-related legislation: the public and private pension proclamations. The legislation addressed both public servants and private employees working with private organizations. This social security schemes are managed by the Public Servant, Social Security Agency (hereinafter referred as to PSSSA)²³ and the Private

the Netherlands) and the Urban Morgan Institute for Human Rights, University of Cincinnati (Ohio, United States of America), met in Maastricht on 2-6 June 1986.

¹³Massteric guidelines on violations of Economic, Social and Cultural Rights, Maastricht, January-22-26, 1997

¹⁴ “[t]he right to social security requires, for its implementation, that a system, whether composed of a single scheme or variety of schemes, is available and in place to ensure that benefits are provided for the relevant social risks and contingencies.” Cited above note at 12, Para, 11

¹⁵ “[b]enefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant.” Id, Para, 22

¹⁶ General comment no.19, Cited above note at 11, Para 11, 22 and 23

¹⁷The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No.1/1995, Fed.eg. Gaz., year 1, no.1

¹⁸Id, Article 41/5/

¹⁹ Ibid

²⁰ Ibid

²¹ Id, article 90 (1) of the constitution recognizes the right to social security and imposes a duty on the state for providing social security.

²² National Social protection policy of Ethiopia,2012, Available at:

http://www.socialserviceworkforce.org/system/files/resource/files/Ethiopia_National_Social_Protection.pdf

(Accessed on 7/14/2018)

²³ Public Servant Social Security Agency; dominantly this Agency provides its service for the formal sector, the civil servants.

organization Employees Organization, Social Security Agency (hereinafter POESSA).²⁴ Currently, this social security schemes are governed by different legislation. The public servants pension scheme is governed by Proclamation No. 714/2011 as amended by proc. 907/2015, whereas the private employee pension scheme is governed by proclamation 715/2011 amended by proc. 908/2015.

Historically, public servants in Ethiopia were the foremost beneficiary of the social security system.²⁵ Since 1961, the country has adopted a number of social security-related legislation to realize the right to social security of the public servants. Despite the legal recognition of the right to social security, a number of public servants live without adequate social security coverage. Because of this, some of the public servants have been prevent of enjoying the right to social security. Some of the others obliged to receive the benefits, which less than the minimum level established with international legal instruments.²⁶ Therefore, in this research, the researcher is looking into the challenges to implement the right to social security of the public servants. It studies how the elements of the right to social security are implemented, and identify the social security status of public servants in Ethiopia. Moreover, the study will explore the prospects of coming up with a good legal framework to make ensure the right to social security of public servants in Ethiopia.

1.2 Statement of the Problem

Social Security has a long history in Ethiopia. Historically, the provisions of conventional social security program started in 1961. It is by this conventional social security program that the public servants become the first beneficiary. The provisions of this right for the public servants were provided before Ethiopia adopts the ICESCRs.²⁷ Essentially, article 9 of the ICESCRs, impose an obligation to states parties to recognize the right of every one to social security, including social insurance.²⁸ According to GC No.19 on social security, which is explanatory remarks on the nature, application, and duties of states parties the ICESCRs, stipulated that “[t]he right to

²⁴ Private Employee Social Security Agency; dominantly this Agency provides its service for the formal and informal sector of employee

²⁵ According to proclamation No. 46/1961, the civil servants had right to enjoy the following benefits of social security, such as old age pension, employment injury pension, survivors pension, widow pension,

²⁶ According to General Comment no. 19, states parties to the ICESCRs, are oblidge to provide social security benefit for their citizen, which is to a minimum essential level.

²⁷ Essentially, Ethiopia had acceded, the ICESCRs, in 1993. However, the provisions of the social security right was already made for the public servants since 1961.

²⁸ According to this provision of the covenant, the states parties to the covenant do not only expect to recognize and employ social security, but also they are under obligation to implement social insurance. Social insurance is a kind of social security program, which is founded on the principle of insurance: resources pooling and risk sharing.

social security is of central importance in guaranteeing human dignity for all person when they are faced with a circumstance that deprives them of their capacity to fully, realize their covenant rights.”²⁹

Currently, there are several kinds of social security system in the world: social insurance,³⁰ social assistance,³¹ and social welfare.³² Each one of the social security systems has its own typical characteristics that differentiate one from the other. Since 1961, Ethiopia has opted for implemented social insurance program for public servants. The founding principle of this social security system is the principle of insurance: resource pooling and risk sharing. Hence, the social insurance program presupposed the beneficiary (public servants) to contribute from their monthly salary and fulfill other necessary criteria, such as meeting the minimum years of service to obtain the social security coverage.

Consequently, Ethiopia has adopted different social security-related legislation and pension proclamations, such as decree No. 46/1961;³³ latter substituted by proc. No.209/1963;³⁴ proc.No.5/1974;³⁵ proc. No. 345/2003;³⁶ proc.No.714/2010³⁷ and proc.No.907/2015.³⁸ These

²⁹Committee on economic, social, and cultural rights thirty-ninth session 5-23 November 2007, general comment no. 19 adopted on 23 November 2007. Para, 1

³⁰Social insurance is one of a social security system, which aimed for protecting the wages of those workers who do not have sufficient source to support theme and their families in case of loss of income due to meeting contingencies in their work life.

³¹Social assistance is one of a social security system, which organized by the state, by providing cash assistance and medical relief, to such members of the society, as they cannot get them from their own resources.

³²Social security has a different segment that aims to archive its purpose. Social welfare is one of the means to achieve the goal of social security. Social welfare has been defined in the following “The well-being of the entire society, Social welfare is not the same as standard of living but is more concerned with the quality of life. Social welfare also defines by Webster dictionary as follow, organized private and public social service for the assistance of disadvantages group.” Available at: <http://www.merriam-webster.com>socialwelfare> (accessed on December 17 2018), social welfare also defined under the Wikipedia website, as follows, “welfare is a type of government support for the citizen of that society. Welfare maybe provided to people of any income level, intended to ensure that the poor could meet their basic human needs such as food and shelter.” Available at: <http://en.m.wikipedia.org>wiki>welfare> (Accessed on December 17 2018), Overall, all types of social security systems have a common elements that share, as well as there is a point that divided them. Social assistance and social insurance have some similar features because both are social in approach and are organized under a law passed in this behalf. However, both differ from each other in some respects. “The general taxpayers finance social assistance, while social insurance is financed by tripartite or bipartite contributions. Social insurance ignores the income and means of liable relations while social assistance makes the beneficiary a first charge on the liable relation.” V.G.Goswami, Labour and Industrial Law, 2011 Edition p.3 available at: <http://lawbookshop.net>lbour-industrial> (accessed on December 17 2018)

³³Public servants' pension decree, 1961, dec.No.46, Neg. Gaz years1961.no.17, this is the first social security-related legislation in the legislation history of Ethiopia.

³⁴Public servants' pension proclamation, 1963, proc. No.209, Neg. Gaz years 1963. no.23, this the subsequent partial amended legislation of proc.No.209,

³⁵Public servants' pension proclamation, 1974, proc.No.5 Neg. Gaz years1974.no.5, this is also the amending proclamation of the previous one.

³⁶Public servants' pension proclamation, 2003, proc. No.345 Neg. Gaz years 2003. no.25, this is also the amendment proclamation of the ex-pension proclamation.

legislations have incorporated a criterion that required to be exhausted by the public servants before enjoying the right to social security, particularly for the retirement benefit for life. For instance, article 9 of Proclamation No. 5/1974, stated if an employee, “[r]esigns voluntarily after completing ten (10) years of service, but before completing Twenty (20) years of service, he/she would not receive a retirement pension for life, except claiming reimbursement of the pension contribution”.³⁹ Likewise, the latter proclamation 345/2003⁴⁰ and proc.No.714/2010⁴¹ also affirmed the legacy of the repealed legislation.⁴² According to this precondition, public servants who do not satisfy one of the conditions would not have the right to social security coverage. For that reason, several public servants have been pushed away from social security coverage, because they could not meet the minimum years of service, 20 years. Most of them are above sixty, (60) years old and have no one to support them.⁴³ It is, in fact, the main purpose of social security to uphold individuals to receive a fair measure of living when they are faced with societal and economic urgent needs. However, the unavailability of further kinds of the social security system (except social insurance) exposed these public servants to face a miserable life. Unlike the Ethiopian experience, however, the minimum years of service for enjoying pension right for life is different in some countries. For instance, Canada require the minimum 2 years of

³⁷Public servants' pension proclamation, 2010, proc. No.714 Neg. Gaz years 2010. no.24, this is also the recent 2011 amending proclamation of the past social security-related legislation. This proclamation is active in the current social security system of the state.

³⁸Public servants' pension proclamation 2015, proc. No.907 Neg. Gaz years 2015. no.21, this one legislation is the most recent social security-related legislation of the country. Accordingly, the legislation has amended some of the provision of proclamation no.714/2003. Therefore, the current active social security-related legislations (pension proclamation) are proc. No. 414/2003 and 907/2015.

³⁹ Following the adoption of the 1952 ILO no.102 covenant on “minimum standard of social security,” Ethiopia has adopted its foremost Social Security-related legislation in 1961. Pension decree no. 46/1961 was the first social security-related legislation that enacted by Ethiopia. Pension is a kind of social security benefit, which is provide for an old age person. It is obvious that an individual cannot work for entire life, with the same level of capacity and power. Because, the capacity and power of individual will be going to deteriorate throughout of, time. Thus, when an individual lose his capacity to work, due to old age, the government is under obligation to provide protection for this particular groups.

⁴⁰Public servants' pension proclamation, 2003, proc. No.345 Neg. Gaz years 2003. no.25, this is also the amendment proclamation of the ex-pension proclamation.

⁴¹Public servants' pension proclamation, 2010, proc. No.714 Neg. Gaz years 2010. no.24, this is also the recent 2011 amending proclamation of the past social security-related legislation. This proclamation is active in the current social security system of the state.

⁴² The subsequent pension legislation, No. 345/2003 and No.714/2010 in similar fashion of Predeceased proclamation, they have affirmed that no retirement pension for life for those who have served less than twenty years.

⁴³ Interview with Ato Eregete Medebewe Joffe and others (10 peoples), who has been failed to enjoying the right to social security, in Addis Ababa Ethiopia, (April, 29,2018)

service for a retirement benefit,⁴⁴ the Republic of Algeria require the minimum 15 years of service.⁴⁵

The other issue that needs to be looked into is the benefit size and coverage of the social security benefit. According to the GC No.19 of the ICESCR, benefits shall be adequate in amount and in time, this is for enables the beneficiary to realize their right social security.⁴⁶ Nevertheless, the social security benefits size of Ethiopia is not enough and failed to consider the inflationary increase. The social security scheme in Ethiopia falls short of international standards. Consequently, some of the beneficiaries have forced for begging and forced to engage hard work for the living.⁴⁷

On the other hand, according to the international Human Right instrument such as ILO Covenant No. 102 on social security (minimum standards) and the ILO recommendation No 202/ 2012, the social security system should provide for the coverage of the following nine principal schemes of social security. Old age,⁴⁸ survivors,⁴⁹ employment injury,⁵⁰ sickness,⁵¹ health care,⁵² unemployment,⁵³ maternity,⁵⁴ family and child support,⁵⁵ disability⁵⁶. Since Ethiopia is, a

⁴⁴ Available at: <http://events.snwebcastcenter.com/manulife/GBRS/Prod/Media/PDFs/SL/ge10129.pdf> see also <https://laws-lois.justice.gc.ca/eng/acts/p-7.01/page-7.html#h-18>, and <https://www.tpsgc-pwgsc.gc.ca/remuneration-compensation/services-pension-services/pension/info/retr/trssamda-pnsnalty-eng.html>. There are three types of sources you might have for retirement income in Canada: A pension you receive from an employer, if available; Modest retirement benefits provided to you by the government and Your own savings that you accumulate over time. <https://www.monster.ca/career-advice/article/pensions-retirement-benefits-rrsps> (Accessed on September 21 2018)

⁴⁵ Available at: <https://www.ssa.gov/policy/docs/progdesc/ssptw/2016-2017/africa/algeria.html>. Regarding the social security overview of Algeria, the following coverage has been incorporated “This includes social insurance against illness, maternity, disability, as well as life insurance, retirement pension, coverage in case of accident or occupational disease, family benefits and unemployment insurance, etc.” <https://www.expats.com/en/guide/africa/algeria/12320-work-in-algeria.html> (Accessed on September 21 2018)

⁴⁶ General comment 19, cited above at note,11

⁴⁷ Interview with Ato Eregete Medebewe Joffe and others (10 peoples), cited above at note, 46

⁴⁸ This is a normal payment that made for a person in return for the service he has made up to his age of retirement. Currently, the retirement age of many countries is between 55 and 65 years. For instance, the retirement age in Ethiopian is 60 years.

⁴⁹ In the dictionary, meaning survivors meant to be “a person who survives, especially a person remain alive after an event in which others have died.” In the context of social security, survivor should be understand as an individual or a group of individual that are a family, spouse, children and descendants of the deceased, who are entitled to enjoy the right to social security, pension right of the deceased.

⁵⁰ This kind of social security scheme that concern to worker who has sustained injury while he is under duty. This schemes also cover medical expence.

⁵¹ It is a kind of benefit, which focus to made protection and cover medical expence for an employee who is suffering from some kind of sickness not related with his work.

⁵² It is kind of benefit provides free medical services for people especially for individuals who have low income generate and covered.

⁵³ It is a kind of social security benefit provided for an employee who had a job but temporarily lost the job and incapable of obtaining a suitable employment.

member to ILO, the state is under obligation to absorb the nine scheme of social security. However, the state has failed to employ unemployment and family and child benefit. Because of this reason, several civil servants, including those who have had jobs, but temporarily lost their job faced a problem of income interruption. They do not have an income to enable to manage the needs of their family. Moreover, some of the family has faced a problem to send their children to school, due to interruption of income.

Health care is one of the principal schemes of social security. The principal goal of social health insurance is avoiding unexpected costs of medication, for those of who live in low-income. Regarding this scheme, Ethiopia has planned and proclaimed a national comprehensive social health insurance program by Proclamation No.690/2010. Though the adoption of the legislation is a good progress, the proclamation could not be implemented for the last seven years. Therefore, since, the public servants are the one who “earns fewer salaries in the country labour market,” they become the beneficiaries of this program. Overall, this kind of social security program is important for the public servants' to protect them and their family health efficiently and effectively. Nevertheless, as a result, the lacks of Implementation of the law, the public servants have been exposed to get health service from private health centers, with high cost.

The provisions of the social insurance program in Ethiopia, also encounter a problem due to physical inaccessibility of the social security benefit. International human rights legal instruments impose obligation on the states to make available the benefit to be accessible in time and place. However, in Ethiopia, the beneficiaries have faced many problems to collect their benefits. Therefore, the above facts show the challenges that exist in implementing the right to social security of the public servants in Ethiopia.

1.3 Research questions

- ✚ What is the status of protection of social security right of the public servants in Ethiopia?
 - ✓ Where does the legal duty of the state emanate to provide social security?
 - ✓ Is the domestic social security-related legislation compatible with the international and regional normative standards?

⁵⁴ It is a kind of social security benefit that aim to provide medical care and maternity leave, which is perenatal and postnatal for a woman employee.

⁵⁵ It is s kind of benefit, which aimed to give to protection for the family and children of the employee.

⁵⁶ This kind of scheme focused to give protection for the person who has been retired due to sickness and is unable to pursue. However, this must be certified by medical bord of doctors.

- ✓ What are the challenges and prospects that exist in realizing the right to social security of public servants in Ethiopia?
- ✓ What are the challenges faced by the public servants and their families in realizing social security and its benefits?
- ✓ Is there any measure that has been taken so far by the government to reduce impediments in realizing the right to social security of the public servants?

1.4 Significance of the study

Little research looked into social security in Ethiopia. As far as my knowledge, I could not find and research, which has done before, concerned with the right to social security of public servant in Ethiopia. I have attempted to look into every whether if there is by chance research made related to my research title, yet, I could not find any, until the submission of this thesis. Thus, this research would have a significant role to identify the hindrances that deter the smooth implementation of the right to social security of public servants. Moreover, the study will try to show the status of the social security system of Ethiopia. I believe the finding of the study would help the government, focus on the problem concern, and highlight the challenges, which can help policymakers to address the problem. In addition, the study would be stimulative for the government to take legislation formulation and reformulation.

1.5 Objectives of the study

1.5.1 General aims of the study

The general aim of this study is to analyze (explore) the challenges and prospects of implementing the right to social security of public servants in Ethiopia.

1.5.2 Specific objectives of the study

- To look into the challenges faced by public servants in accessing social security benefits.
 - ✓ To show the gap under Ethiopian social security-related legislation, in light of international and regional normative legal frameworks that promotes the right to social security,
 - ✓ To identify the problems that prevents the smooth implementation of the right to social security of public servants,
 - ✓ To find out the rationales that impeded to the implementation of the right to social security,
 - ✓ To evaluate the strength and weakness of the right to social security of the public servant in Ethiopia,

- ✓ To come up with the possible solution and remedies to reduce and avoid problems that obstruct the implementation of the right to social security of public servants and
- ✓ To generate baseline information for further study.

1.6 Scope of the study

Social security is a broad idea, which incorporates several systems and programs. Since Ethiopia has only dealt with the social insurance system, the concern of the study will be limited to this subject. Thus, the social assistance and social welfare, social security system did not touch by this study.

1.7. Research design

1.7.1 Methodology

The researcher used doctrinal research in this paper. However, I have also used a qualitative research technique. This technique would help the researcher to cut out the accurate cause of problems faced by the beneficiaries. This will be employ through in-depth interview, and open and close end questioner. The informant will be the pertinent government officials, the ex-public servants who have been failed to enjoying right to social security, the current beneficiary of social security and the public servants who are under a duty. The criteria used for the selection of informant based on their intimacy issues at hand. Both interview and questioner are the first hand information, which is more accurate and reliable for enable to come up with the real cause of problems faced by the beneficiaries.

1.7.2 Data Sources

The origins of data are both primary and secondary roots. As primary data, the researcher uses interviews, personal observation, and questionnaires (open-ended and close-ended).

Interview: - The researcher conducted face-to-face both structured and non-structured in-depth interviews with fifty-three (53) key informants who are purposively selected. Among them, the interview conducted with eight government official; twenty-five the ex public servants who has been failed to enjoying social security benefit and twenty social security beneficiary.

Questioners: - The researcher conducted open ended and close-ended questioners for one hundred five (105) key informants who are purposively selected. Among them, the questioner conducted with thirty social security beneficiaries and seventy-five the current public servants.

Personal observation: - In doing of interview, there are a conditions enables the researcher to observe information from the participant in different ways. The perception and attitude of the participants towards the social security and its benefit is the one way. In addition, that since the researcher is working as senior legal Attorney at the Federal Democratic Republic Ethiopia Public Servant Social Security Agency; he could observe a lot of practical incidence that enables him to observe the reality.

As secondary sources of data, the researcher uses, academic books, international and regional human rights instruments, soft laws, proclamation, and directives, also, used, in the study.

1.7.3 Sampling

To conduct the research both primarily and secondary data were collected. The primarily data was incorporated key informants interview and questioners from different government institution, the ex-public servants who have been failed to enjoying the right to social security, beneficiaries of the right to social security and the public servants who are on working. Since it would be difficult to contact all individuals, Purposive sampling is appropriate method to collect the data. The key informants were government officials (Adviser of the Director General, Director of legal affairs and the Fund and the investment Directorate of the Public Servant Social Security Agency and Social Health Insurance Agency). In addition, groups of the individual's who failed to enjoying social security benefit (20 individuals) were considered for the study. Some individuals who are the beneficiary of a social security pension benefit (50 people) and individuals who work currently as civil servants (75 individual) have considered in this study.

1.7.4 Data processing and analysis

Data analyzed through various instruments such as in-depth-interviews with key informants, in questionnaires, personal observation, and experience of the Republic of South Africa. The gathered data was systematically analyzed and interpreted by following the necessary steps of data screening and organization in argumentative, descriptive, and inferential fashion. Besides, the data analysis has further been with the secondary source of data, such as the international instrument, principles, standards, guidelines, and national legislation carried out. Further, the experience of some world states, which has better progress to provide social security, such as Republic of South Africa has been part of the exploring.

1.7.5 Hypothesis

This research has developed the Following hypotheses:

Hypothesis 1: the status of the right to social security of public servants in Ethiopia is weak.

Hypothesis 2: the status of the right to social security of public servants in Ethiopia has failed to meet the elements of the right to social security system.

1.8 Limitation of the study

Social security has a varied idea; it could encompass other sorts of discipline, other than law. Since this is legal research, issues other than legal subjects are not considered under this study.

1.9 Organization of the paper

The study was organized into six chapters. The first chapter gives the introductory part of the thesis. It incorporated background of the study, statement of the problem, research questions, and objectives of the study, research methodology, and significance of the study, hypothesis, and limitation of the study. The Second chapter addressed social security in general, it discusses about the idea and purpose, definitions, features and historical development and the elements of social security. The third chapter explores the normative instruments of social security; it tries to deal on International covenant on Economic, Social and Cultural Rights, the ILO instruments, other international human rights instruments and lessons from the Republic of South Africa. The fourth chapter explores the legal framework of social security, of the civil servant in Ethiopia. This includes the national social protection policy of Ethiopia, the F.D.R.E Constitution, the pension proclamations, and social health insurance legislation. The fifth chapter discusses the challenges and prospectus of social security. This focused on identifying the core obstacle and challenges for the smooth implementation of the right to social security of the public servants. Moreover, the chapter incorporated prospective and opportunities that enshrined under the implementation of the right to social security of public servant. Finally, the last chapter provides Conclusion and recommendations for enable to improve and enhance implementation of the right to social security of the public servants.

Chapter Two

Social Security in General

Introduction

The concept of social security is principally concern on the provisions of the protection for the individuals and a group of people in a case where they face the income shortage problem. This sort of protection would enable the individuals and their families have a secured livelihood. Many scholars and institution have tried been labeling the concept and meaning of social security. However, there are different understandings about the idea and meaning of social security. By this chapter, the researcher has tried to make a few of the different view and descriptions of social security. So, this diversified meaning of social security will be discussed in this chapter in-depth. In addition to this, this chapter is also intended to discuss the historical development, the different features, and a elements of the right to social security.

The Idea and Purpose of Social Security: -

Security was the primary concern of human being since the time memorial. There are various reasons, either natural or manmade that lead a human being to seek protection, such as earthquake, famine, flood, fire are among others that force a human being to prime need to secure him and his families.⁵⁷ However, social security in the modern era majorly focused on the issue of "dignity and social justice." Particularly, after the occurrence of the industrial revolution, the issue of security forces the then countries to look into search other means to harness various risks that come up with the industrial revolution.⁵⁸ Following the outbreak of the industrial revolution, development and using machinery were the common understanding of the then countries. When the big European industries replace human labour by machine, the outcome was unemployment and early retirement, which does not experience before.⁵⁹ Therefore, to overcome the then problems countries were forced to opt for social security as a way to escape the problem. The fundamental understanding of social security is varying from states to states and from individual to individual. For instance, one unknown author noticed the concept of social security

⁵⁷ Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/49070/11/11_chapter%206.pdf (accessed on May 24 2018)

⁵⁸ Conceptual framework of Social Security in India, p.46, available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwiAsPWpzobhAhXEjKQKHSsABOgQFjAAegQIBRAC&url=http%3A%2F%2Fshodhganga.inflibnet.ac.in%2Fbitstream%2F10603%2F68332%2F6%2F06_chapter%25202.pdf&usg=AOvVaw1U_9fScdAohLwc7Ad82X4H (accessed on May 24 2018)

⁵⁹ Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/68187/11/11_chapter%202.pdf (accessed on May 24 2018)

as follows, “[s]ocial Security is a dynamic concept; its measures are of great significance to the country for the Socio-economic benefits and developments.” It is true that the given state would be productive and developed, only when the state could protect and keep its resource: the people from deterioration. It has been a long since we heard the concept called people of a given state is a potential resource to develop that country. Given that a fact, the governments are under obligation to provide economic security to rescue their people from the impairment.

Moreover, on the subject of the organ that responsible for providing this protection, some author gives the responsibility for the community in general. Accordingly, members of the society are under a moral obligation to support and assist the individuals or groups who are in the position not able to meet their basic need that caused by unforeseen contingencies.⁶⁰ Therefore, this social security should be provided by collective action that allows the participation of several stakeholders in a given state. Likewise, the understanding of social security also analyzed by Devereux, according to his statement, “[s]ocial security commonly understood as all public and private initiatives that provide income or intake transfers to protect the vulnerable against livelihood risks and improve the social status.”⁶¹ As well, Devereux’s argument demanded the necessity of having collective action (both public and private initiatives) for the provisions for the protection of the people. Therefore, the idea of social security entails the purpose of protecting individuals and group of the society of a given state in a case where they face stoppage.

The main goal of social security is to shield in needy society from risks that are unforeseen in the normal course of things. As Abebe Mesfin rightly noted “[t]he aim of social security is to ensure that persons who (either temporarily or permanently) are unable to obtain an income, or who are facing exceptional financial responsibilities, are enabled to continue to meet their needs by providing them with financial resources or certain goods or services”.⁶² Likewise, social security has a significant role on the subject of poverty eradication, ensuring a basic minimum standard of living for people and throw in to attain an equal distribution of the resource.⁶³ Essentially, the

⁶⁰Conceptual framework of Social Security in India, p.52, cited above note at 58

⁶¹Devereux, S. & Sabates-Wheeler, R. (2004). Transformative social protection. IDS Working Paper 232 Brighton: IDS. Available at: https://www.unicef.org/socialpolicy/files/Transformative_Social_Protection.pdf (Accessed on March 23 2018)

⁶² Abebe Mesfin, Development of Social Security: Practices, Problems and Prospects of Pension Plans in Ethiopia(2003 unpublished, school of law, Addis Ababa), p.5

⁶³Jean D. Triegaardt, Accomplishments and challenges for partnerships in development in the transformation of social security in South Africa, p.10 available at:

core objective of social security is to make ensure the citizens of given states safe and frustration-free lives.⁶⁴ This would be done through bringing about a different program of social security. In addition, the objectives of social security also stated by scholars, such as André Leliveld, according to him social security aimed "the protection of individuals or social groups against a fall in their standard of living as result of temporary adversity and amelioration of low standards of living of individuals and social groups resulting from long-standing deprivation."⁶⁵ Overall, one may expect that what kinds of contingencies he/she is going to face; however, they could not be sure that when a problem is come into the existence. This gap of knowledge would be filled by the social security system. Therefore, the notion of social security comprises the idea of securing an individual the case where incapable his/her need due to social and economic contingencies.

Meaning of Social Security:-

It is necessary to distinguish social security from the inclusive concept of social protection. According to some unknown author statement, "social protection denotes a general system of basic social support, which is no longer linked to the regular employment relationship, and which is founded on the conviction that society, as a whole is responsible for its weaker members, in other words, a system of welfare support and protection." According to this unknown author statement, the meaning of social protection is wide and inclusive, however, which does not concern the regular employment relationship. In the same way, Paul and John argued, social protection should be understood in a wide manner, because, according to these authors argument, social protection does not limit to social security, rather it ranging to incorporate the government's development programs and approaches.⁶⁶ The argument of Paul and John on the meaning of social protection has also expanded the size of social protection to incorporate other activities including the government plan to enhance the development of the states.

On the other side, the meaning and the concept of social security have stated in a different way. For instance, ILO, 1952 Covenant on "minimum standard of social security", stipulated that

<https://www.dbsa.org/EN/About-Us/Publications/Documents/Accomplishments%20and%20challenges%20for%20partnerships%20in%20development%20in%20the%20transformation%20of%20social%20security%20in%20South%20Africa.pdf> (accessed on July 21 2018)

⁶⁴ Available at: <https://www.mhlw.go.jp/english/wp/wp-hw/vol1/p1c1s3.html> (accessed on May 24 2018)

⁶⁵ Available at: <https://core.ac.uk/download/pdf/15599739.pdf> (accessed on May 24 2018)

⁶⁶ Paul Bukuluki and john-bosco Mubiru The status of social security systems in Uganda: challenges and opportunities, Makerere University School of Social Sciences, College of humanities and social, Kampala, Uganda. November 2014, P.11, available at: <http://socialprotection.org/discover/publications/status-social-security-systems-uganda-challenges-and-opportunities> accessed on (accessed on February 17 2019)

‘social security’ as guaranteeing a stable income through medical care, sickness benefits, unemployment benefits, old-age benefits, employment injury benefit, family benefits, maternity benefits, and invalid benefits.⁶⁷ Therefore, according to this statement of the ILO, the inclusive nature of social security is narrow, and it is limited to specific schemes and beneficiaries. Whereas, however, both social protection and social security are aimed to provide protection for the society, nonetheless, their application size, their benefits package, and the targeted group are different.

Some institution also defined social security in a different manner. According to International Social Security Association (ISSA, 2012) social security defined as follows, “[s]ocial security means any program or system of social protection established by legislation that provides individuals with the assistance of income security when faced with the contingencies of old age, survivorship, incapacity, disability, unemployment or rearing children”.⁶⁸ The definition that set by ISSA, focused on the social security protection that is supported by legislation, and any activities that have a relation with the social security subject but lack of legislation establishing or backed by law would not be considered as a social security program. However, the good thing about the definition is, it has elaborated and listed the contingencies faced by the individuals.

Sir William Beveridge⁶⁹ defined the term as:

*“The security of an income to take the place of the earnings when they are interrupted by unemployment, sickness, or accident to provide for retirement through age, to provide against the loss of support by the death of another person and meet exceptional expenditure, such as those connected with birth, death, and marriage.”*⁷⁰

Another systematic attempt made by the ILO to define social security,

⁶⁷ ILO, 1952 covenant on “minimum standard of social security”, cited above note at 5

⁶⁸ International Social Security Association (ISSA, 2012), available at: <https://www.issa.int/en/topics/understanding/introduction> (Accessed on 7/14/2018)

⁶⁹ Sir William Beveridge, a British citizen and economist who is known as progressive and social reformer. He is best known for his 1942 report social insurance and allied services, which served as the basis for the post-world war 2 welfare states, put in place by the labour government elected in 1945. Available at: https://en.wikipedia.org/wiki/William_Beveridge (Accessed on February 17 2019)

⁷⁰ N. H. Gupta (Dr.), Social Security for Labour in India (Edition, 1986), p.32, as cited on Concept, origin, and development of Social security, available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwii_qSfwobhAhVmTd8KHfygAzEQFjAAegQIAhAC&url=http%3A%2F%2Fshodhganga.inflibnet.ac.in%2Fbitstream%2F10603%2F76677%2F9%2F09_chapter%25202.pdf&usg=AOvVaw0JeGKdB07M9qbCfJzV_4bd (Accessed on 7/14/2018)

See also, F. S.K. Tungaraza, A.S.T. Mchomvu, & S. Maghimbi. “Social Security Systems in Tanzania,” Journal of Social Development in Africa, vol.17 No. 2 (2002), p 1-27; available at <https://www.ajol.info/index.php/jsda/article/view/23831> , see also, as sited by N. Nhede, "prospects, challenges and constraints of social security the public administration quagmire for selected African countries" African Journal of Public Affairs, Volume 7, (2014), p.3

“The security that society furnishes, through appropriate Organization, against certain risks, to which its members are exposed. These risks⁷¹ are essentially contingencies against which the individuals of small means cannot effectively provide by his, own ability or foresight alone or even in private combination with fellows.”⁷²

According to Beveridge definition, social security is assuring continuing one’s life without facing a serious problem. However, the definition by ILO goes far beyond, guaranteeing the end of employment income and moderately is integrating all the people regardless of their division, and has given the responsibility to provide the protection for some known organ.

According to the other definition of the ILO, “Social security can be taken to mean the protection which society provides for its members through a series of public measures against economic and social distress, that otherwise would cause the stoppage or much decrease in earnings resulting from sickness, old age, survivorship, incapacity, disability, unemployment or rearing children, maternity and family benefit”.⁷³ Hence, Under the ILO definition, social security is the benefit that is provided for anyone who is under in needy position, including the formal⁷⁴ and informal sector. According to V.V. Giri “Social security, as understood, is one of the vibrant ideas of the modern age which is influencing social and economic policy. It is the security the state provides against the risks which an individual or small means cannot, today, stand up to buy him or even in private combination with his or her like country dwellers”.⁷⁵ Sinfield describes Social security, as “a state of complete protection against the loss of wealth.”⁷⁶ Both, the Giris’ and Sinfield definitions of social security impose the obligation to provide protection for the state. However, the definition that was provided by ILO expands the duty to support social security from a state, to society.

⁷¹These risks are sickness, maternity, invalidity, old age, and death.

⁷²ILO, Approach as to Social Security, (Geneva 1942) p.81 as cited on Concept, origin, and development of Social security, available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwui_qSfwobhAhVmTd8KHfygAzEQFjAAegQIAhAC&url=http%3A%2F%2Fshodhganga.inflibnet.ac.in%2Fbitstream%2F10603%2F76677%2F9%2F09_chapter%25202.pdf&usq=AOvVaw0JeGKdB07M9qbCfJzV_4bd (Accessed on 7/14/2018)

⁷³ILO, 1984, Introduction to social security Geneva: ILO.p.3-4, available at <http://www.nzdl.org/gsd1mod?e=d-00000-00---off-0cdl--00-0---0-10-0---0---0direct-10---4-----0-11--11-en-50---20-about---00-0-1-00-0--4---0-0-11-10-0utfZz-8-00&a=d&c=cdl&cl=CL1.205&d=HASH01b2aaf82c303018424f01a9.3.3> (Accessed on 7/14/2018)

⁷⁴ Sector which encompasses all jobs with normal hours and regular wages, and are recognized as income source on which income taxes must be paid. However, informal sector is an informal economy, or grey economy is part of the economy that is neither taxed nor monitored by any form of the government

⁷⁵Giri, Labour Problems in Indian Industry (Edition, 1972) p.269, book review, available at: as cited on Concept, origin, and development of Social security, cited above note at 70

⁷⁶D. Pieters, "Social security: An Introduction to the Basic Principles" Kluwer Law International, vol. (2006), p.2, available at: as cited on Concept, origin, and development of Social security, cited above note at 70.

In the other definition of social security, Grega Strban, define “social security is a public system of income protection in case of its loss or decline or increased costs, organized through the development of (broader or narrower) social harmony.”⁷⁷ Grega Strban defines social security as a system of social protection that protects not only in case of the decline in income, but also provides security for during increase of costs.

Along the same line, the International Labor Organization (ILO) has instituted the social security “Minimum Standards” Covenant no 102 of 1952 define social security to mean:

*“The result achieved by a comprehensive and successful and series of measures for protecting the public (or a large sector of it) from the economic distress, that, in the absence of such measures, would be caused by the stoppage of earning in sickness, unemployment or old age and after death; for making available to that same public medical care as needed; and for subsidizing families bringing up young children”.*⁷⁸

Overall, the definition made by the scholars and the international organization has tried to show that social security has a multiple dimensional and wide-ranging aspects. Generally speaking, 'Social Security' means, "safety and freedom from fear of want a hunger, and it is applied to society as a group of interrelated and interdependent people."⁷⁹ However, most importantly, the researcher has opted to use the ILO definition of social security as an operational definition.

*"The protection which society provides for its members, through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, disability, old age, death; the provision of medical care; and the provision of subsidies for families with children."*⁸⁰

Features of Social Security: -

The role of social security is very wide and plays a significant part in the protection of society from economic contingencies. The ways that used to give protection by the states or society

⁷⁷Grega Strban, “Constitutional Protection of the Right to Social Security in Slovenia” in Alexandre Egorov, Marcin Wujczyk, (ed), The Right to Social Security in the Constitutions of the World: Broadening the moral and legal space for social justice (1st ed,2016), vol 1, p.3, available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwin3Zq4zYbhAhWPsaQKHZ--DTMQFjAAegQICRAC&url=http%3A%2F%2Fwww.ilo.org%2Fwcmssp5%2Fgroups%2Fpublic%2F---ed_norm%2F-normes%2Fdocuments%2Fpublication%2Fwcms_518153.pdf&usq=AOvVaw22b7bv0Ou6X5ZnAGNhRRmS (Accessed on February 14/2018)

⁷⁸MK Srivatsava, Agricultural Labour and the Law, (ed. 1993), p.151,as cited on Concept, origin, and development of Social security, cited above note at 70.

⁷⁹ Conceptual framework of Social Security in India, cited above note at 46, p.58

⁸⁰ILO covenant (1984), p2-3, see also International Labour standard on Social Security Organization. Available at <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang-en/index.htm> (Accessed 20 December 2018)

might be the form of institutional based or an unstructured way. Importantly, Social Security has two broad dimensions, namely: “formal and informal social security arrangements.”⁸¹ This meant that social security could be provided in two forms that are formal and informal systems. A formal social security system refers to statutory or conventional social security programs such as pension schemes, health insurance, and workers’ compensation schemes.⁸² This shows that formal social security is a kind of security that is provided by an organized organ about the specific economic contingencies. Conversely, informal social security systems revolve around flexible, “[i]nformal social security arrangements by individual households, families, or local communities towards poverty alleviation”.⁸³ Therefore, unlike the formal social security, the informal social security arrangement provided by in an unorganized and scattered manner, however, this sort of social security has a very long and strong historical bond with the society.

In the current modern social security era, social security has divided into two major classifications, which are social insurance and social assistance. Social insurance scheme is a kind of social security system which provides protection and benefit for an employee whose earnings is faced by stoppage – and social assistance schemes also other types of social security system which aimed to provide for benefits and protection for the members of society whose income does not meet their basic needs.⁸⁴ What is more, that makes similar to these social security systems is that both are proposed to secure the society to have a wellbeing standard of life and to protect from unforeseen economic insecurity.⁸⁵ In addition, according to the unknown author’s work, “[s]ocial assistance is a program that organized by the state by providing cash assistance and medical relief, to such members of the society, as they cannot get them from their own resources”.⁸⁶ According to this author statement, social assistance is a kind of social security system that provides by the state for the members of the society whose income could not able to meet their basic needs. The other unknown author also stated that “[s]ocial assistance is, in fact, a broad-based ideology, which embraces within its coverage all residents irrespective of whether he or she is in employment, or not”.⁸⁷ As well the former unknown author, the later one

⁸¹N.Nhede, "prospects, challenges and constraints of social security the public administration quagmire for selected African countries," *African Journal of Public Affairs*, Volume 7, (2014), p.3

⁸²Ibid

⁸³Ibid

⁸⁴See ILO Recommendation 202 concerning National Floors of Social Protection, adopted on 14 June 2012, available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R202 (Accessed 20 December 2018)

⁸⁵Ibid

⁸⁶Concept, origin, and development of Social security, cited above note at 70, p28

⁸⁷ Conceptual framework of social security in India, cited above note at 58, p.33

also affirmed that social assistance is a kind of security that provides for all society with no distinctions between employee and none. Therefore, social assistance is a kind of social protection that included all the needy society irrespective of their economic status; however, it should be noted that one should be in view of needy or to be assisted for to benefit from the social assistance program. However, the deserve question to be raised here is that if the program of social assistance, accessible for all with no discrimination, who is responsible to cover the cost of this program? According to some unknown author, “[t]he funds for social help is financed by the state from its various sources of revenues, yet the scheme can be financed by the voluntary contribution from the charitable and religious funds.”⁸⁸

Whereas, social insurance is a bit different social protection system from the social assistance one, social insurance, from its nomenclature one can assume that it has related with the insurance concept. It is true that the pure insurance concept founded on the concept of resource pooling and risk sharing fundamental principles. Moreover, it also requires the beneficiary to fulfill some sorts of precondition before the claim to indemnify, such as periodical contribution and the fulfillment of other criteria. Likewise, the social insurance, social security system has also shared these fundamental principles of insurance. Therefore, the beneficiary of social insurance of the social security system is obliged to meet the minimum requirement set by the social insurance legislation to enjoy the benefit. However, unlike the objectives of insurance business, the social insurance aim does not strive to meet the profit-oriented objectives; rather it “[a]imed at protecting the wages of those workers who do not have sufficient source to support their own self or their families in case of loss of income due to old age, unemployment, and invalidity”.⁸⁹ Therefore, the objective of social insurance is limited to address and maintain the social justice in society.

Historical development of social security

The historical development of social security dated back to the early ancient time, long before it propagates to in Europe. Kaseke has noted, “In Africa, the extended family was an important social security institution, providing support to its members based upon culturally determined patterns of mutual assistance.”⁹⁰ Likewise, the Ethiopian IDIR and IKUBE are, among others,

⁸⁸Id p, 34

⁸⁹Id p, 39

⁹⁰Kaseke, *The challenges of extending social security to the poor: an African perspective*, E. 2000, unpublished paper, International Council on Social Welfare Biennial Conference, Cape Town, South Africa. 23-27 October, pp. 16, as cited at “The status of social security systems in Uganda: challenges and opportunities”

which have been playing an important role to establish the traditional social security institution. These sorts of traditional social security institutions have been playing a significant role in the maintenance and security of an individual from the economic stoppage. However, these and other traditional social security system could not be walking with the demand of the time. Especially, “[w]ith increasing industrialization and urbanization, the role of the extended family system as a social security institution has been seriously eroded. This paved the way for the poor to transform themselves by developing mutual aid societies, which includes savings clubs, burial societies, food cooperatives, and other semi-formal systems.”⁹¹

Historically, the English Poor Law of 1601 was the first systematic codification of the English laws on the responsibility of the state to provide for the welfare of its citizens.⁹² Beyond the welfare provisions for the citizens, this systematic codified law had classified as who is needy. “[i]t distinguished between the “deserving” and the “undeserving” poor and mostly covered the young orphans, the elderly, and the mentally and physically handicapped.”⁹³ Following emerge the industrial revolution in Europe; the development of social security has made progress in Europe. The German chancellor Otto von Bismarck was the one has made introduce the first social insurance systems for the working classes in 1883 in Europe.⁹⁴ However, this social security development was not limited in Germany; rather it was disseminated all over Europe. Great Britain passed an old-age pension act in 1909 and added unemployment and health insurance in 1911.⁹⁵ Other European nations followed in rapid succession after the footstep of Great Britain. Moreover, the spread of the trend of social security also crossed the Atlantic Ocean and reached the U.S.A., United States had not an organized welfare system until the Great Depression, when President Franklin D. Roosevelt under the New Deal introduced emergency relief measures.⁹⁶ In addition to this “[a] series of economic programs were enacted in the United States between 1933 and 1936, including the Social Security Act of 1935 among other relief,

⁹¹Jean D. Triegaardt , Accomplishments and challenges for partnerships in development in the transformation of social security in South Africa DBSA, available at: https://www.researchgate.net/publication/265281718_Accomplishments_and_challenges_for_partnerships_in_development_in_the_transformation_of_social_security_in_South_Africa accessed on (accessed on May 24 2018)

⁹² International Journal of Economics, Management and Accounting, p5 available at: <http://journals.iium.edu.my/enmjournal/index.php/enmj/article/view/335>(accessed on 7 May 2018)

⁹³Id,p6

⁹⁴Ibid

⁹⁵ Available at available at: http://www.bbc.co.uk/history/british/modern/field_01.shtml, see also memorandum submitted to the house of commons' health committee inquiry: social care October 2009 by pat thane, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=2ahUKewi6-Pun6IbhAhUN-aQKHRpPCTyQFjAFegQIBBAC&url=http%3A%2F%2Fwww.historyandpolicy.org%2Fdocs%2Fthane_social_care.pdf&usg=AOvVaw3PWfNuC_PiGSsX27YEQJ2u (accessed on 7 May 2018)

⁹⁶Ibid

recovery, and reform programs.”⁹⁷ Importantly, for the current social security stage, all the historical development of social security has its own significant input, but largely the role of the social security trend that existed on the following of the Second World War was crucial. Following the end of the Second World War, the development of social security was influenced by the British government’s report of 1942, which is widely known as the “social insurance and allied service,” and known, then as the Beveridge report⁹⁸ after its author William Henry Beveridge.⁹⁹ The report asserted for a cohesive countrywide system of social security run by the State and focused on increasing social security actions to cover all citizens, which would accomplish social justice.¹⁰⁰

Elements of the right to Social Security

Article 9 of the ICESCR shows that “[t]he States Parties to the present Covenant recognize the right of everyone to social security, including social insurance. The right to social security is of central importance in guaranteeing human dignity for all people when they face circumstances that deprive them of their capacity to realize their Covenant rights.”¹⁰¹ However, this view of the covenant only happened where the right to social security of the people employed taking into consider some international standards or measure. According to GC No.19 of Committee on Economic and Social Rights, there are the elements of the right to social security. Therefore, the following elements of implementing social security are expected to be observed by the states parties to the covenant.

- a) **Availability:** - is the element that expected to be met by the member states of the covenant in implementing the right to social security of their citizens. Availability imposes an obligation on the states parties to make available the necessary condition for the citizens enable to enjoy the right without any obstacle. As clearly noted on Para 10 of the human right committee general comment No 19, “[t]he right to social security needs, for its effecting, that a system, whether composed of a single scheme or various schemes, is available and in place to make

⁹⁷ Vaughan, Emmett J. and Therese Vaughan, Fundamental of Risk and Insurance, 1999. p195, as cited on International Journal of Economics, Management and Accounting cited above note at 73, p 194

⁹⁸ What does the report say? “The British government also asked Sir William beverage to write a report on the best way of helping the low incomes. In December 1942, Beveridge published a report that proposed that all people of working age should pay a weekly contribution. In return, benefit would be paid to people who were sick, unemployed, retired, and widowed. Beverage argued that this system would provide a minimum standard of living.” available at: <http://www.spartacus-education.com> (accessed on February 17 2019)

⁹⁹International Journal of Economics, Management and Accounting, cited above note at 92, p.22

¹⁰⁰Ibid

¹⁰¹Human Rights Committee General Comment No. 19, the right to social security, (accessed on 4 February 2008, E/C.12/GC/19), Para 1

ensure that benefits delivered for the relevant social risks and contingencies. In addition, [t]he system should be established under domestic law, and public authorities must take duty for the effective administration or supervision of the system”.¹⁰² Therefore, this provision obliged states parties of the socioeconomic covenant, to, provide, and makes the necessary efforts to provide the right to social security.

- b) ***Social risks and contingencies:*** -are the foreseen and possible problems that would expose the individuals or group of people to the stoppage. However, there are several conditions, which are possible to hamper the economic security of an individual. In the early times of coverage of risk and contingencies the society, family, and individuals gave their assistance to the needy of society without the sorting of the types of risks. Currently, the coverage of modern social security focuses on the certain risks and contingencies, which expected to be, delivered by states parties of the socioeconomic covenant. In this regard Para 12 of the human right general comment general comments No 19 on social security stipulated that “[t]he social security system should provide for the coverage of the following nine principal branches of social security: healthcare, maternity, sickness, old age, unemployment, employment injury, family and child benefit, disability and survivors and orphan”.¹⁰³
- c) ***Adequacy:*** - is the other element of the right to social security. Accordingly, obtain of the social security would not be the end of the journey of social security protection, rather, the sizes of the benefits that generate from the social security program have to be also ample and enough. Adequacy means the quality of being able to meet a need satisfactory. In this regard, the human right committee general comment on social security stipulated the following, “[t]he rights to social security encompass the right access and uphold benefits, whether in cash or in kind”.¹⁰⁴ In addition, the provision affirmed that the size of the benefit must be enough in amount and duration so that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 enshrined under the ICESCR. More strongly, the comment substantiates that “[t]he adequacy standard is intended to ensure that beneficiaries can afford the goods and services they need to realize their Covenant rights”.¹⁰⁵

¹⁰²Ibid

¹⁰³ Id Para 12

¹⁰⁴General comment, as cited above note at 11, Para 22

¹⁰⁵Ibid

- d) **Accessibility**: - is the other kind of element of the right to social security yardsticks. The term accessibility connotes the situation by which one can easily enjoy the covenant right without difficulties. In this regard, Para 23 of the human right committees, general comment No 19 on social security stipulated the following: [m]aking the social protection program (s) easy for people to reach understanding and use, irrespective of age, disability, ethnicity, geographical location, or other causes. In addition, the comment substantiated that “[a]ll people should be covered by t he social security system without discrimination on any of the grounds restricted under article 2, paragraph 2, of the Socio-economic Covenant”.¹⁰⁶ Therefore, according to this provision what one could perceive is that the accessibility of social security program must not be discriminatory and partial.
- e) **Physical access**: - is also the other element that aimed to make the social security benefit not only available but also be physically accessible to enable the beneficiary easily access from the place where they live. Moreover, the benefit expected to be delivered to the beneficiary on time. In this regard, the human right committee general comments No. 19 on social security stipulated, “[b]enefits should make available in a timely and beneficiary should have physical access to the social security services to access benefits and information and contribute where relevant.”¹⁰⁷ Therefore, according to this provision, making the benefit physically accessible for the beneficiary is one of the obligations imposed on the states parties of the covenant. On the other note, the general comment has also stipulated on the situation, how suspend implement legislation on the right to social security is conducted; otherwise, the “[v]iolations of the right to social security can occur, through acts of suspension of legislation necessary for the continued enjoyment of the right to social security”.¹⁰⁸

¹⁰⁶ Ibid

¹⁰⁷ Ibid

¹⁰⁸ Ibid

Chapter Three

The Rights to Social Security under International, Regional and selected National Instruments

Introduction

Historically, the economic and social rights such as social security right have been less attention in the industrial states than the civil and political rights.¹⁰⁹ Practically, the civil and political rights have been considered ‘absolute’ and ‘immediate’, however, economic, social and cultural rights were held to be progressive.¹¹⁰ In general, the realization of economic, social and cultural rights consider being costly, given that it presupposed that is an obligation imposed to the state to afford protection for the individuals.¹¹¹ Some scholars also have argued the implementations of economic, social and cultural rights are limited for specific states of the world. For instance, according to Stefan Granlund, “since it is “impossible” for developing states to provide, for instance, social security to its entire people, economic and social rights should not be, viewed as human rights, at least not on the same terms and status, like civil and political rights.”¹¹² However, scholars such as Amartya Sen assert that “why should complete feasibility is a condition of the cogency of human rights when the objective is to work towards enhancing their actual realization. The understanding that some rights are not fully realized, and may not be fully realizable under present circumstances, does not, in itself, entail anything like the conclusion that these are, therefore, not rights at all.”¹¹³ Sen. considered universal social protection policies as one of four important instrumental freedoms that lead to enhanced capabilities and human development.

This chapter is meant to introduce several international human rights instruments that recognized social security, such as the UDHR, the ILO’s Covenant on Social Security, the ICESCR, and

¹⁰⁹S. Granlund, The right to social security South Africa in between rights and relief, (2005, unpublished Uppsala university), p.26 available at: <http://uu.diva-portal.org/smash/record.jsf?pid=diva2%3A819077&dswid=-5424> (accessed on 7 May 2018)

¹¹⁰E.W.Vierdag, the legal nature of the right granted by the international covenant on economic, social and cultural right (ed,1978), vol,9,p103 available at: <https://www.cambridge.org/core/journals/netherlands-yearbook-of-international-law/article/legal-nature-of-the-rights-granted-by-the-international-covenant-on-economic-social-and-cultural-rights/387194EDB02F6531C47E688FD74C088F> (accessed on 7 May 2018)

¹¹¹Asbjorn Eide Economic, Social Cultural Rights as Human Rights in Asbjorn Eide, Catrina Krause and Allan Rosas (eds), Economic, Social Cultural Rights: Text book(2nd ed, Brill, Leind 2001), p10

¹¹²The right to social security South Africa in between rights and relief, cited above note at 109, p26

¹¹³A. Sen, “Elements of a theory of human rights” In Philosophy and Public Affairs32 (2004), no. 4, p,348 available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1088-4963.2004.00017.x> (accessed on 7 May 2018)

other international human rights legal instruments. Furthermore, the chapter discusses the best experience of countries, which has a good practice of social security, such as the Republic of South Africa (R.S.A). According to some notable scholars on social security, the Republic of South Africa has a better social security system in the South Africa region. Kaseke claims that the Republic of South Africa has one of the most comprehensive social assistance systems in Southern Africa.¹¹⁴ The International Labour Office also affirmed that the South African Social Security system is among others are the most part inclusive contained by the region.¹¹⁵ In addition, according to the statement made by Devereux, South Africa is widely and deservedly, praised for the comprehensiveness, generosity, fairness, and efficiency of its social protection system.¹¹⁶ Unlike the status of the social security program of some African countries, as Adrian di Lollo, rightly noted, “South Africa has the largest social assistance system on the African continent, and some claim that the proportion of beneficiaries to the total population in South Africa is among the highest in the world. In 2010, over 13 million of a population of 49 million people received some form of social assistance.”¹¹⁷ South Africa has made good progress in broadening social assistance and expanding health care and social insurance since 1994.¹¹⁸ This

¹¹⁴ Kaseke, the role of social security in south Africa, 2010, p.160, available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjM5c-114jhAhUNjqQKHZeXDTtoQFjAAegQICRAC&url=http%3A%2F%2Fciteseerx.ist.psu.edu%2Fviewdoc%2Fdownload%3Fdoi%3D10.1.1.922.9998%26rep%3Drep1%26type%3Dpdf&usg=AOvVaw3_kig_GaMbVBR3uwXz93au (accessed on 7 May 2018)

¹¹⁵ ILO Social Protection Department South Africa: Extending social protection by anchoring rights in law, September 2016, available at: <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwiKoJqU2ojhAhWDIIAKHW8JBgEQFjAAegQICRAC&url=http%3A%2F%2Fwww.social-protection.org%2Fgimi%2FRessourcePDF.action%3Fressource.ressourceId%3D53853&usg=AOvVaw1-jocp-5XR0UyXveSXXlv0m> (accessed on 7 May 2018)

¹¹⁶ Stephen Devereux, Centre for Social Protection, European report on development building social protection systems in southern Africa, Institute of Development Studies, Brighton, UK) Paper prepared in the framework of the European Report on Development, 2010,p.12 available at: <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjVx6fS24jhAhWB6aQKHT3dCCUUQFjAAegQIABAC&url=http%3A%2F%2Fciteseerx.ist.psu.edu%2Fviewdoc%2Fdownload%3Fdoi%3D10.1.1.671.2698%26rep%3Drep1%26type%3Dpdf&usg=AOvVaw0Yj3GPVmgYBArjjjMREMWe> (accessed on 14 May 2018)

¹¹⁷ Adrian di Lollo, “SOCIAL PROTECTION IN SOUTH AFRICA” in try well kalusoparudi dicks claraosei-boateng (ed.) social protection schemes in Africa, p.227 available at: https://www.google.com/search?ei=KRFKWIGszWvgTfsZPYBg&q=social+protection+schemes+in+Africa&oq=social+protection+schemes+in+Africa&gs_l=psy-ab.12..0.3260.3260.0.4541.1.1.0.0.0.786.786.6-1.1.0....0...1c.2.64.psy-ab..0.1.786....0.RmvqHANiUAs (accessed on 14 May 2018)

¹¹⁸ Comprehensive social security in South Africa, a discussion document, Prepared by inter-departmental task team social security and retirement reform, version 11.9, march 2012, p.24 available at: <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjXmsf33ojhAhUK3KQKHebZDu4QFjAAegQICRAC&url=http%3A%2F%2Fpmg-assets.s3-website-eu-west-1.amazonaws.com%2F161128Comprehensive%20Social%20Security%20in%20South%20Africa.pdf&usg=AOvVaw07h6VoijkpEwmZuGZpZbBd> (accessed on 21 May 2018)

has made the R.S.A social security system as the progressed social security system in southern Africa.¹¹⁹ Therefore, the social assistance practice of R.S.A tales that, social assistance use as a means to creates just society, reduce poverty, and promote social and economic development which is regarded as a model for other countries, especially for the third world also known the global south.¹²⁰ Internationally, South Africa is particularly recognized as having a progressive and far-reaching social assistance program for a middle-income developing country.¹²¹ This makes the R.S.A Social Security System model for emulating by other developing states. This is the reason that the research opts to employ the experience of the R.S.A social security system, in light of the exploring the status of the right to social security of the public servants' in Ethiopia.

3.1 The International Covenant on Economic, Social, and Cultural Rights

The Universal Declaration Human Right (UDHR) is the first international human right instrument that recognized the right to social security. According to Article 22, “everyone, as a member of society, has the right to social security.”¹²² The other notable international legal instrument, which recognizes the right to social security, is the ICESCR. The covenant provides for the right of access to social security in articles 9, 10 and 11.¹²³ Article 9 makes provision for social security as a whole, while Article 10 addresses social security in the context of the protection of the family and benefits covering maternity leave for women. Article 11(1) deals with the right to an adequate standard of living and includes social assistance. In addition, the GC No.19, on the right to a social security Para 1 stated:

¹¹⁹ibid

¹²⁰ Leila Patel and Jean Triegaardt: South Africa: Social Security, Poverty Alleviation, and Development, p.5 available at: https://link.springer.com/chapter/10.1057/9780230582194_4 (accessed on may 2018)

¹²¹ H. Bhorat and A. Cassim ‘South Africa’s welfare success story II: poverty-reducing grants’ (2014) Brookings, Africa in Focus. As cited in Sophie plageron and Marianne s.ulriksen The right to social Security in South Africa, p.2, available at: <https://www.google.com/search?q=Sophie+plageron+and+Marianne+s.ulriksen+The+right+to+social+Security+in+South+Africa&ie=utf-8&oe=utf-8>, see also, <http://www.brookings.edu/blogs/africa-in-focus/posts/2014/01/27-south-africa-welfare-poverty-bhorat#> (accessed on may 2018)

¹²² The Universal Declaration of Human Rights came in to the picture 1948, following the end of the world war second. It true that, the status of this document is declaration, the mere expression of the intention of the then member states of UN. Due to this fact, some argued this document does not have a binding legal effect over the member states of UN. However, others also argued, “Despite the fact that the Universal Declaration of Human Rights was not meant to be a binding document, scholars argued that most of the provisions therein attained the status of customary international law. Under international law, rules of customary international law impose obligations on all states.” As cited at M. Abate Tadesse, “The Implications of 2009 Ethiopian CSOs Law on the Right to Freedom of Association, “Journal of Ethiopian Law, vol.27, no.1(2015), foot note 39,

¹²³International Covenant on Economic, Social, and Cultural Rights, Cited above note at 6, Articles 9, 10 and 11

*“The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights.”*¹²⁴

According to article 2 (1) of the covenant, state parties have the duty to achieve the full realization of the right recognized under the covenant. Moreover, the notion of “Progressive realization” is a central facet of state parties’ duty, to recognize and protect economic, social, and cultural rights under the covenant. The ILO social security instruments also recognize this principle.¹²⁵ In addition, States parties have a duty to take proper measures to the maximum of their available resources towards the full grasp of the right to social security.¹²⁶ State’s compliance with its duty to respond appropriately is assessed by considering its resources-financial and others -available.¹²⁷

In the principle of the full realization, the Office of the High Commissioner of Human Rights provides a general comment on a state party, duty (art, 2. Para, 1), ICESCR general comment No.3.¹²⁸ This comment focused to impose an obligation on States parties to carry out to the minimum standard rights enshrined under the ICESCR. This minimum core standard¹²⁹

¹²⁴Committee on economic, social and cultural rights, general comment (No. 19), Cited above note at 11, Para 1

¹²⁵The ILO Social Protection Floors Recommendation, 2012 (No. 202),

The Recommendation comprises a set of principles, including the overall and primary responsibility of the State; a rights-based approach based on entitlements prescribed by national law; diversity of methods and approaches; progressive realization; universality of protection based on social solidarity; adequacy and predictability of benefits; protection of rights and dignity of beneficiaries. In addition, non-discrimination, gender equality, and responsiveness to special needs; financial, fiscal, and economic sustainability; transparent, accountable, and sound financial management and administration; as well as tripartite participation and consultation with representatives of persons concerned. Available at:http://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205341/lang--en/index.htm (accessed on 14 May 2018)

¹²⁶ Article 2(1) of the ICESCRs

¹²⁷Ibid

¹²⁸Human Rights Committee, General Comment No. 3, The nature of States parties’ obligations (Art. 2, par.1), (2/11/2009),

¹²⁹ Minimum core standard is the list minimum socio-economic rights obligation that imposed on the state parties of the covenant. This standard expects the state to make the provisions available for every one with no distinction as much as the given states resource allows. According to David blitz, minimum core termed as an obligation imposed on the state to which every individual is entitled immediately, p.5. David, also asserted that “the state has a minimum core obligation to realize essential levels of each right still represents a viable and principled method of approaching the justifiability of socio-economic rights.” P, 11. Available at: https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/soafjhr19&id=4&men_tab=srchrresults (accessed on 14 May 2018). In the other note the concept of minimum core obligation has labeled by different scholars, for instance Philip and Aliston argued that minimum core is an *absolute floor* obligation and state specific obligation. Available at: https://www.researchgate.net/publication/323787361_The_Minimum_Core_Obligations_of_Economic_Social_and_Cultural_Rights_The_Rights_to_Health_and_Education (accessed on 2/7/2019)

However, young argued in different view from Aliston on minimum core obligation. According to her minimum core obligation is it is all about *consensus*, however no consensus have been made. In the other notes, “[t]here is no

cannot be subject to bargain or compromise. The minimum core obligation must be understood from the much-diversified aspects of states obligation. According to article 2/1/ of the socio-economic covenant, states parties to the covenant has the obligation to use the *maximum available resource* (emphasis is mine) for realizing the covenant right. In addition, states parties under the obligation to realize *progressively* (emphasis is mine) the right, which enshrined under the ICESCRs.

The fundamental human rights obligation: the obligation to respect, fulfill, and protect has also direct relation with the essence of the minimum core obligation.¹³⁰ Therefore, for instance, the obligation to *protect* includes “adopting the necessary and effective legislative and other measures.” The obligation to fulfill also requires states parties to “adopt the necessary measures, including the implementation of a social security scheme, directed towards the full realization of

agreement as to whether the essence of the MCOs relates to the level of right realization necessary for human survival or the level necessary for human dignity.” *ibid* Tasioulas is the other scholar that forwards his contribution regarding to the meaning and essence of minimum core. He understood minimum core obligation in the following manner: Immediacy; Special content; Non-derogability and Justifiability. *Ibid* More importantly, the essence and meaning of minimum core obligation has defined under the human right committee general comment no.3. “Governments, no matter what level of resources are at their disposal, are obligated to make sure that people living under their jurisdiction enjoy at least essential levels of protection of each of their economic, social, and cultural rights.” Available at: <https://www.escr-net.org/resources/minimum-core-obligations> (accessed on 2/7/2019) In addition, according to article 9 of the Maastricht guidelines “Violations of the Covenant occur when a State fails to satisfy what the Committee on Economic, Social and Cultural Rights has referred to as “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights [...]” available at: <http://hrlibrary.umn.edu/instreet/Maastrichtguidelines.html> (accessed on 2/7/2019). Overall, despite the controversies, the researcher of this thesis has took a stance for this study that the minimum core obligation is a minimum essential level of obligation impose on the states parties to the ICESCRs. The base that I used to come to this stand is that the statement that made under article 2/1/ of the ICESCRs, paragraph 59 of general comments no 19, Para 10 of general comment 3 and article 9 of the Maastricht guidelines.

¹³⁰ The obligation to fulfill, to promote, and to respect is the main obligation of human right. These obligations have entailed an important and necessary measure, which need to make by the States parties. The same, other rights, states parties to the socioeconomic covenant are expected to realize these obligations in relation with the implementation of the right to social security. In this regard, the Committee on economic, social and cultural rights, general comment (N.o 19), stipulated that these three obligations are the necessary measures, which must be, observe by states parties to the covenant. Accordingly, the obligation to fulfill has divided in to three: the obligation to facilitate, promote, and provide. According to Para 47 of general comment 19, the obligation to facilitate demand the states parties to take a positive measures to help individual and the community to enjoy the right to social security. This obligation include “legislative implementation; adopting a national social security strategy and plan of action to realize this right; ensuring that the social security system will be adequate, accessible for everyone and will cover social risks and contingencies”. The other obligation is the obligation to promote. This obligation concerned to the creation of awareness and education about the right to social security. The obligation to provide is the other obligation that needs to be observed by the States parties. The obligation to respect also focused on “The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to social security. The obligation includes, *inter alia*, refraining from engaging in any practice or activity that, for example, denies or limits equal access to adequate social security.”

Available at: <https://www.globalhealthrights.org/instrument/cescr-general-comment-no-19-the-right-to-social-security/> (Accessed on July 21 2018)

the right to social security.” In addition, paragraph 59 of general comments no 19, stipulated that states parties to the socio-economic covenant has the obligation to ensure access to social security schemes, on non discriminatory base; to respect the existing social security system and protect for interference; and to take targeted steps to implement social security schemes.

However, in a case, where State party failed to meet this obligation, it can assign its failure to meet the minimum core duties, and the state must show that every effort was making use all at its disposal to satisfy, as a priority, minimum obligations.¹³¹ Hence, the minimum core of the right should constantly be satisfied absolutely. If the state has failed to comprehend the minimum essential levels of the right to social security, it will instantaneously aggregate to a violation of the right and resource un-attainability is not a defense for its contravention. Therefore, the minimum core obligation content suggests a “ground” under which no government can go irrespective of the economic condition of a nation. The minimum core necessitates states to safeguard the fulfillment of, at the very least, the basic least possible vital level of the right.

3.2 Other International and Regional Human Rights Instruments

The Covenant on the Rights of the Child (CRC) provides that every child have the right to benefit from social security, including social insurance.¹³² The states parties are thus under an obligation to take the necessary measures to achieve the full realization of the right in accordance with national law.¹³³ The CRC further provides that every child have the right to a standard of living adequate for its physical, mental, spiritual, moral, and social development.¹³⁴ In addition, according to the collective reading of article 9 and 2(2) of ICESCR, States parties must ensure the right to social security, including social insurance, for all without discrimination. Article 2/1/ of the ICESCR and Article 26 of the Covenant on the Rights of the Child (CRC)¹³⁵ oblige States Parties to take valuable measures, within their maximum available wealth, to realize this right.

The Covenant on the Rights of Persons with Disabilities (CRPD) consists of 50 articles addressing civil and political, economic, social, and cultural rights.¹³⁶ Article 28 recognizes the right to an adequate standard of living and social protection. Further, the Covenant on the Elimination of all forms of Discrimination, Against Women (CEDAW) article 11/1/e and 14/2/c

¹³¹Id Para 10

¹³²The covenant on the Rights of the Right of the Child (1989) was ratified in 1995 by South Africa.

¹³³Article 26(1) of the covenant on the Rights of the Child, 1989

¹³⁴ Id article 27/1/

¹³⁵covenant on the Rights of the Child, concluded: 20 November 1989, entered into force: 2 September 1990. 28 I.L.M. 1456 (1989)

¹³⁶covenant on Rights of persons with disabilities, concluded: 20 March 2007, entered into force: 3 May 2008.

stated the states parties shall take proper measure to cut out discrimination against women to ensure the right to social security.¹³⁷ On the other note, there are international legal instruments that impose the obligation on the state party to fully, and comprehensively implement the particular right of each of the covenants. Otherwise, the non-provision of a right would make an individual incapable to enjoy the rest of his/her rights. According to the Universal Declaration of the Right to Development (hereinafter referred as to RTD),¹³⁸

*“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to **participate**(emphasis is mine) in, contribute to, and*

¹³⁷Covenant on the Elimination of All Forms of Discrimination against Women, concluded: 18 December 1979, entered into force: 3 September 1981.

¹³⁸ The right to development has been defined in differ context of understanding. According to some, the right to development is a “comprehensive economic, social, cultural, and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals based on their active, free, and meaningful participation in development and in the fair distribution of benefits resulting there from.” Available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=2ahUKEwj74ND96YjhAhWImbQKHZZWB6gQFjAEegQIBhAC&url=http%3A%2F%2Fwww.politicalperspectives.org.uk%2Fwp-content%2Fuploads%2F2010%2F08%2FCIP-2007-01-10.pdf&usg=AOvVaw1C9ChKozxvH98Ivnb7_C8Y (Accessed on 14 May 2018). According to Mesenbet, “The right to development is defined as a human right that has the objective of fulfilling the continuing improvement of the well-being of individuals by expanding their capabilities and their freedom. It also provides a unique opportunity to promote an international economic order that is based on equity, social justice, and one that integrates human rights in different dimensions.” M. Assefa Tadeg, “Reflections on the right to development: Challenges and”, journal of African human rights law, vol 10, no.2 (2010), p.344. On the other note, zelalme also states, “It should be underscored that albeit the RTD has garnered wide recognition as to its human right status, States are not legally bound to realize it for the DRD is not a legally binding international human rights treaty. However, in the African human rights system, the African Charter on Human and Peoples’ Rights (ACHPR) that is a legally binding regional human rights treaty recognizes the RTD an enforceable human rights entitlement.” Z. Shiferaw Woldemichae, “[the right to development under the constitution of the federal democratic republic of Ethiopia: some reflections]”, journal of PROLAW student of law for development, no.5, p.3. However also, as cited on zelalem shiferaw, other scholars, such as W. Tieya, and Michael Akerhurst maintain assert, “the wide acceptance of the DRD by the UN General Assembly will lay a strong foundation for the establishment of customary international law in respect of the RTD.” The African Charter on Human and Peoples’ Rights (African Charter), adopted in 1981, in article 22, recognized the right to development. Because of this recognition, the African Commission on Human and Peoples’ Rights (African Commission) began to develop a body of jurisprudence on this right. Journal of African Law, 57, 2 (2013), 196–214 © School of Oriental and African Studies, 2013 doi: 10.1017/S0021855313000077 first published online 28 June 2013. Available at: <https://www.cambridge.org/core/journals/journal-of-african-law/article/critical-review-of-the-jurisprudence-of-the-african-commission-on-the-right-to-development/E7628C42A45D6128BEC354C44132729F>. (Accessed on July 24 2018). The Africa commission also has made remarkable decision regarding to the right to development in the following communications: ‘the Endorois community has suffered a violation of article 22 of the Charter’, (Communication 276). Available at: https://www.hrw.org/sites/default/files/related_material/2010_africa_commission_ruling_0.pdf. (Accessed on June 23 2018). It is also interesting to see that the right to development is included in national constitutions of African countries, including Ethiopia. The Constitution of the Federal Democratic Republic of Ethiopia *inter alia* reiterates to ensure the rights of the people of Ethiopia as a whole and each nation, nationality or people to improved living standards and to sustainable development. (Art 43(1), Ethiopian Constitution). Similarly, Uganda and Malawi incorporate the right to development in their national constitutions. As cited on M. Assefa Tadeg, “Reflections on the right to development: Challenges and”, journal of African human rights law, vol 10, no.2 (2010), p333. available at: <http://www.ahrlj.up.ac.za/tadeg-m-a> (accessed on July 24 2018) (See the Constitution of the Republic of Uganda, National Objectives and Directive Principles of State Policy, Objective IX and the Constitution of the Republic of Malawi, art 31).

enjoy (emphasis is mine) economic, social, cultural, and political development, in which all human rights and fundamental freedoms (emphasis is mine) can be fully realized."¹³⁹

Besides, the Regional Human Rights Instruments also recognized the right to social security. Therefore, that, the Africa Charter on peoples and human rights (ACPHRs) has incorporated provision recognizing the right to social security. However, the rights did not stipulate in the clear and express manner. Certain features on the right may, however, gained from Article 16, the right to health, and Article 18 (4), the right of the aged and disabled to special measures of protection. Furthermore, the American Declaration on the Rights and Duties of Persons,¹⁴⁰ Arab Charter on Human Rights, 2004 (ACHR),¹⁴¹ Association of Southeast Asian Nations, 2013 (ASAN)¹⁴² and The European Social Charter, 1961(ESC)¹⁴³ have incorporated express provisions and references to the right to the social security.

Moreover, the Limburg Principles of 1987¹⁴⁴ and the so-called Maastricht Guidelines of 1997¹⁴⁵ are the other non-binding Human Right legal instruments. These constitute the official commentary of the International Commission of Jurists in co-operation with other institutions.¹⁴⁶

Contained in these instruments is a series of explanatory remarks on the nature, application, and duties of state parties towards the SERs. The Copenhagen Declaration on Social Development and Program of Action is yet another important example of soft law, adopted at the UN World

¹³⁹ Art 1 Declaration on the Right to Development.

¹⁴⁰ American Declaration on the Rights and Duties of Man. Adopted 2 May 1948. OAS Doc. OEA/Ser. L/V/II.65, Doc. 6, pp. 19. available at: [https://www.oas.org/dil/access to information human right American Declaration of the Rights and Duties of Man.pdf](https://www.oas.org/dil/access%20to%20information%20human%20right%20American%20Declaration%20of%20the%20Rights%20and%20Duties%20of%20Man.pdf) (accessed on 29 august 2018)

¹⁴¹ Arab charter on human rights, adopted by league of Arab states, 23 May 2004; Article 36 provides the States parties shall ensure the right of every citizen to social security, including social insurance. available at: <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKEwiG3vLE7ojhAhVCzKQKHefMDpwQFjACegQIBBAC&url=http%3A%2F%2Fwww.humanrights.se%2Fwp-content%2Fuploads%2F2012%2F01%2FArab-Charter-on-Human-Rights.pdf&usq=AOvVaw2eOFhKTsfvf0war9LZU8R5> (accessed on 29 august 2018)

¹⁴² Association of South East Asian nations, human right declaration adopted 23 Feb 2013; Article 30 of the legislation set the following declaration. Every person may to social security, including social insurance where available, which assists him or her to secure the means for a dignified and decent existence. available at: https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf (accessed on 29 august 2018)

¹⁴³ European Social Charter opened for signature in Turin on 18 October 1961; Article 12 of the charter needs contracting parties to show or preserve a system of social security at a satisfactory level at least equal to that required for approval of the Social Security (Minimum Standards) covenant, 1952 (No. 102). Available at: https://www.cvce.eu/content/publication/2003/3/7/e71c737f-4afb-41e3-9426-43bbf1cd0f00/publishable_en.pdf. (accessed on 29 august 2018)

¹⁴⁴ Limberg principle 1987, Cited above note at 12

¹⁴⁵ Maastricht Guidelines of 1997, Cited above note at 13

¹⁴⁶ Ibid

adopted by the Conference that included representatives of the governments of member States, and representatives of workers and employers.¹⁵⁵

In the Declaration of Philadelphia (1944), the International Labour Conference recognized the ILO's obligation as regards "[t]he extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care."¹⁵⁶ The ILO's Income Security Recommendation, 1944 (No. 67), provides that "[s]ocial insurance should afford protection, in the contingencies to which they are exposed, to all employed and self-employed persons, together with their dependents" (Paragraph 17).¹⁵⁷

In addition, in 2001, the International Labour Conference (ILC), which incorporated of states, employer representatives and workers representatives, confirmed that social security is a basic human right and a fundamental way for making social consistency, in that way serving to make certain social peace and social insertion.¹⁵⁸ One series of Covenant relevant to social security is that of the International Labour Organization (ILO).¹⁵⁹ This Covenant gives general standards for the traditional branches of social security. Among other things, the primary objective of this instrument is to set some minimum standards, which are to be adhered to by *ILO member* (emphasis is mine), states especially those, which ratify the Covenant.¹⁶⁰ Moreover, even though such states, which did not consent the Covenant, not compulsory, are obliged for the application of these minimum standards, for setting social security sacheem.¹⁶¹ Therefore, this covenant has incorporated the floor standards, of social security, which expected to use by the state parties. What is more, the covenant has explained nine benefits of social security, Such as, old age,¹⁶²

¹⁵⁵ ILO's Income Security Recommendation, 1944 (No. 67), available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R067 (accessed on April 23 2018)

¹⁵⁶ Ibid

¹⁵⁷ Ibid

¹⁵⁸ Resolutions and Conclusions concerning social security, International Labour Conference, 89th Session, 2001. available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_209311.pdf (accessed on April 23 2018)

¹⁵⁹ The General Conference of the International Labour Organization, having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fifth Session on 4 June 1952

¹⁶⁰ Happiness, M. (2014), Analysis of social security schemes in Tanzania with response to the social security (minimum standards) covenant, 1952, (master thesis), university of Tanzania. P,24 available at: http://repository.out.ac.tz/603/1/MADUHU_H-DESSERTATION_FINAL.pdf (accessed on April 23 2018)

¹⁶¹ Ibid

¹⁶² ILO covenant old age and survivors benefit covenant (No.128) concerning invalidity, 1967, (date of coming in to force 01:11.1969)

survivor,¹⁶³ unemployment,¹⁶⁴ family and child,¹⁶⁵ invalidity benefits,¹⁶⁶ medical care,¹⁶⁷ sickness,¹⁶⁸ employment injury¹⁶⁹ and maternity benefit¹⁷⁰.

The covenant deemed a means “for making longer of social security coverage as it's flexible in its application and calls for to take part employers and workers in manage of the social security schemes.” The impact of the ILO Covenant, importantly covenant No. 102, has had and continues to have considerable weight on the development of social security in the diverse areas of the world.¹⁷¹

In addition, in 2012, the International Labour Conference (ILC) has adopted a new Recommendation No. 202¹⁷² concerning national floors of social protection. The recommendation promotes national policies aiming at implementing such policies. With a view to giving the necessary flexibility in the choice of the methods and policies for achieving the

¹⁶³ Ibid

¹⁶⁴ ILO covenant No.102, minimum standards of social security195247

¹⁶⁵ Ibid

¹⁶⁶ Cited above note at 67, article 7

¹⁶⁷ ILO covenant, (No.130) concerning Medical Care and Sickness Benefits, Date of coming into force: 27:05:1972

¹⁶⁸ Ibid

¹⁶⁹ ILO 121 covenant: Benefits in the Case of Employment Injury, on the subject social security, Date of adoption: 08:07:1964, (Date of coming into force: 28:07:1967.)

¹⁷⁰ ILO covenant (No.103) maternity protection (revised 1952), date of coming in to force: 07:09: 1955. (the covenant was revised in 2000 by covenant No.183)

¹⁷¹ Ibid

¹⁷² The General Conference of the International Labour Organization, that convened at Geneva, on 30 May 2012, has reaffirmed that the right to social security is as a human right. In addition, it has also acknowledge that the right to social security is, along with promoting employment, an economic and social necessity for development and progress, and Recognizing that social security is an important tool to prevent and reduce poverty, inequality, social exclusion, and social insecurity, to promote equal opportunity and gender and racial equality. For the purpose of this Recommendation, “*social protection floors* are nationally defined sets of basic social security guarantees, which secure protection aimed at preventing or alleviating poverty, vulnerability, and social exclusion.” According to article 4 of the recommendation Members should, in accordance with national circumstances, establish as quickly as possible and maintain their social protection floors comprising basic social security guarantees. Available at: <http://www.socialsecurityextension.org/gimi/gess/RessFileDownload.do?ressourceId=34188> (accessed on august 24 2018). What is more, “[t]his instrument gives guidance on introducing or maintaining social security floors and on implementing social protection floors as part of strategies to extend higher levels of social security to as many people as possible, in accordance with the guidelines set out in ILO standards relating to social security.” Available at: <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm> (accessed on august 24 2018). The Recommendation aims to ensure that people have effective access to health care and basic income security throughout their lives. Thus, it provides that national social protection floors must at least contain the following guarantees: access to essential health care, including maternity care; basic income security for children, providing access to nutrition, education, care, and any other necessary goods and services; basic income security for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity, and disability; basic income security for older people. It is important to note that this is the minimum expected of states and that a state can raise the bar by providing wider guarantees depending on its financial ability. Ebenezer Durojaye (2015) The ILO Social Protection Floors Recommendation 202, and poverty reduction, Development in Practice, p,273 available at:<https://www.researchgate.net/publication/273525925> The ILO Social Protection Floors Recommendation 202 and poverty reduction(accessed on august 24 2018)

intended social protection outcomes, schemes providing such benefits may include universal benefit schemes, social insurance schemes, social assistance schemes, negative income tax schemes, public employment schemes, and employment support schemes.¹⁷³

3.4 Lessons from the Republic of South Africa

Social security is a system of social protection provided in many countries in the world and is not restricted to developed countries. Social security has been accepted as policy throughout the developed and developing nations. Despite the different subject of coverage, several developing states have different forms of social security programs.¹⁷⁴ In fact, states possibly will opt to use the social security program, which is compatible with their economic capacity. Accordingly, some might used to prefer social assistance program, and others may opt to employ a social insurance program. Overall, the developed states have well progressed and advanced levels of social security programs compared to the developing world. In the industrialized nations, more than, 90 %, of the population is covered, by various forms of state or market-organized social security systems.¹⁷⁵

Whereas, according to Van Ginneken, the statement “[i]n developing countries, despite a notable effort by policymakers, development institutions, and donor agencies, well over 50 % of the population remain uncovered against basic risks.”¹⁷⁶ When we compare the seven continents of the world, of their economic development, one could not deny that Africa is the poorest region of the world and has the youngest and least developed social security programs.¹⁷⁷ Also, this has affirmed from a study made by Clive Bailey & John Turner “Social security programs do not cover most Africans.”¹⁷⁸ One may mention several causes for not having the effective cover of the social security program in the Africa continent; the high prevalence of HIV/AIDS in some

¹⁷³ ILO, Recommendation No. 202 concerning national floors of social protection Paragraph 9(3)

¹⁷⁴ Social Security in Developed Countries: Are There Lessons for Developing Countries? Available at: <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198233008.001.0001/acprof-9780198233008> , Social security options for developing countries. S. GUHAN, available at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-246X.1980.tb00676.x>. Extending social security in developing countries: a review of three main strategies. available at: <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780198233008.001.0001/acprof-9780198233008> (accessed on May 9 2018)

¹⁷⁵ Van Ginneken, W. (1997): Social Security for the Informal Sector: Issues, Options and Tasks Ahead. ILO- available at: <http://www2.ilo.org/public/english/protection/socfas/publ/discus/discus5.htm> (accessed on July 21 2018)

¹⁷⁶ Ibid

¹⁷⁷ Clive Bailey & John Turner, Social Security in Africa, *Journal of Aging & Social Policy*, 14:1, 105-114, DOI: 10.1300/J031v14n01_09, (2002), p.1; available at: https://www.tandfonline.com/doi/abs/10.1300/J031v14n01_09 (accessed on august 26 2018)

¹⁷⁸ Ibid

sub-Saharan countries and internal armed conflicts are among and others, which has formed complicated troubles in a few countries for social security programs.¹⁷⁹

However, some African countries have made a better social security implementation record than the others. For instance, the Republic of South Africa (R.S.A) social protection system is the most comprehensive in Africa.¹⁸⁰ Regarding the comprehensive social security system of the R.S.A, some assert that the social security system of the Republic of South Africa is not comprehensive.¹⁸¹ They substantiate their argument by raising the current accessibility of the social security program, for the whole people.¹⁸² In the other hand, others asserted that it is a comprehensive social security system when it compared with the rest of African countries.¹⁸³ In view of that, the researcher has opted to use the latter argument for analyzing the research.

The wide-ranging nature of the R.S.A social security system lies in contributory and noncontributory cash and in-kind legal guarantees. The country's social security system relies on three pillars social assistance, compulsory social insurance, and voluntary private insurance.¹⁸⁴ Overall, there are at least two common forms of social security, namely, *social insurance* and *social assistance*. *Social assistance* is a state-funded system, also called social grants in South Africa, which is non-contributory and financed entirely from government revenue.¹⁸⁵ This “scheme is means-tested and the onus is upon individuals to prove that they are destitute.”¹⁸⁶ The benefits that are going to be delivered for the individuals either could be in the form of cash or in-kind.¹⁸⁷

¹⁷⁹ Ibid

¹⁸⁰ Building Social Protection Systems in Southern Africa, published by European University Institute, EUI. available at: <https://socialprotection.org/discover/publications/building-social-protection-systems-southern-africa> (accessed on august 26 2018)

¹⁸¹ Transformation of Social Security in South Africa: Accomplishments and challenges for partnerships in development in the transformation of social security in South Africa,p4 available at: <https://www.dbsa.org/EN/About-Us/Publications/Documents/Accomplishments%20and%20challenges%20for%20partnerships%20in%20development%20in%20the%20transformation%20of%20social%20security%20in%20South%20Africa.pdf>(accessed on august 26 2018)

¹⁸² Ibid

¹⁸³ Building Social Protection Systems in Southern Africa. cited above note at 180.

¹⁸⁴ ILO Social Protection Department | South Africa: Extending social protection by anchoring rights in law, country note (2016) available at: <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwj718uUhYnhAhXQI1AKHZ2cDYMQFjAAegQIARAC&url=http%3A%2F%2Fwww.social-protection.org%2Fgimi%2FRessourcePDF.action%3Fressource.ressourceId%3D53853&usg=AOvVaw1-jocp-5XR0UyXveSXIv0m> (accessed on May 2 2018)

¹⁸⁵ Accomplishments and challenges for partnerships in development in the transformation of social security in South Africa, cited above note at 91, p.3

¹⁸⁶ Ibid

¹⁸⁷ Ibid

The other social security system offer by the South African government is social insurance: “(also referred to as occupational insurance) is provided to protect employees and their dependents, through insurance, against contingencies, which interrupt income.”¹⁸⁸ These schemes are contributory for both employers and employees, with the contribution rate in most countries being higher for the employer. The employees are expected to make their contribution from their salaries in accordance with the percentage agreed between them.¹⁸⁹ The R.S.A Social insurance covers contingencies such as pensions or provident funds, medical benefits, maternity benefits, illness, disability, unemployment, employment injury benefits, family benefits, and survivor’s benefits.¹⁹⁰ The current social assistance program in R.S.A covers the following contingencies: the state Old Age Pension; the Disability Grant; the Child Support Grant, Foster Care Grant, disability grant, war veteran’s grant, and the Care Dependency Grant.¹⁹¹ All grants are subject to means tests.¹⁹² In addition, the Unemployment Insurance Fund is the other social security benefit of social security in R.S.A.¹⁹³

Concerning the social security-related legislation, the South African Pension Funds Act has introduced into law in 1956.¹⁹⁴ In addition, the first social assistance was provided under the Pension Funds Act of 1928.¹⁹⁵ This was introduced to discuss the needs of poor Whites and Colored people and was payable to men when they reached 65 years, and women when they reached 60 years old.¹⁹⁶ The principal policy framework for providing social security in South

¹⁸⁸Ibid

¹⁸⁹Ibid

¹⁹⁰Ibid

¹⁹¹See secs 2-4 of the Social Assistance Act 59 of 1992 as amended by the Welfare Laws Amendment Act 106 of 1997 and clauses 4-12 of the new Social Assistance Bill B57D-2003 as amended by the Select Committee on Social Services (first introduced in the National Assembly as a sec 76 Bill; explanatory summary of Bill published in Government Gazette 25340 of 8 August 2003)

¹⁹² Ibid

¹⁹³ Established in terms of the Unemployment Insurance Act 30 of 1966; this benefit of social security which pays out benefits to contributors and their dependents in the event of unemployment, illness, maternity and adoption. Employers and employees contribute on an equal basis to the Fund with practically no state contribution.

¹⁹⁴ Pension Funds Act, 1956 (Act 24 of 1956) and which has been approved as a pension fund, retirement annuity fund or provident fund in terms of the Income Tax Act, 1962 (Act 58 of 1962); available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/38632/103013/F296801225/ZAF38632.pdf> (accessed on July 25 2018)

¹⁹⁵T.d. Sibanda, Social Security in Southern African countries: Lessons from abroad (2012, unpublished, faculty of law, university of Pretoria), p.17 available at: <https://repository.up.ac.za/bitstream/handle/2263/30026/dissertation.pdf;sequence=1> (accessed on May 20 2018)

¹⁹⁶Isobel Frye, studies in poverty and inequality institute, poverty, social security and civil society in south Africa, basic social security I case study, December 2008, p.27 ; available at: https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/Analyse/analyse_03_englisch_Poverty_and_Social_Security_in_SA.pdf (accessed on May 20 2018)

Africa was set out in the White Paper¹⁹⁷ on Welfare released in 1997.¹⁹⁸ This resulted in the Social Assistance Act of 2004 and its rules. The Republic of South Africa has used the human rights approach to realize the right to social security. Therefore, Section 27 of the Constitution, containing the Bill of Rights, states

“... That everyone may have access to social security, including proper social assistance if they cannot support themselves.”¹⁹⁹

In addition, the courts have contributed immensely to the progressive development of social security by embarking on a liberal and purposive interpretation of the right to social security. In this regard, “the Constitutional Court in the *Government of the Republic of South Africa and Others v Grootboom and others* ordered the government to be more proactive about housing by increasing the coverage of housing grants.”²⁰⁰

Related to the social security issues of the civil servants, the state of South Africa has passed the pension law in 1996.²⁰¹ This legislation had been amended several times. Such as the Government Employees Pension Law Amendment Act 35 of 2003, 21 of 2004, and the recent act 19 of 2011.²⁰² Principally the latest amended act 19 of 2011 encompassed the better protection for the civil servants. Accordingly, article 14.2.1 this amended act stated if a member who has at least 10 years’ pensionable service should be paid to his or her present the benefit. Moreover, According to article 14.4.1 of the same Act, the employee shall have entitled payment on his resignation.²⁰³ According to article 14.9.1 of the same legislation, if a member or a pensioner who became entitled to a present and annuity from 1 December 2002, the funeral benefits payable on

¹⁹⁷ It is a Principle, guidelines, recommendations, propose policies and programmes for development social welfare in South Africa. https://www.gov.za/sites/default/files/White_Paper_on_Social_Welfare_0.pdf (accessed on May 1 2018) Note: - “The White Paper on Social Welfare, written in 1996 and gazetted in 1997 contains the policy framework for the restructuring of social welfare. The main feature of the developmental approach is that social development and economic development are interdependent and mutually reinforcing. The Paper acknowledges that economic growth without social development is meaningless, as growth on its own does not benefit the whole population. For the same reason, social development cannot take place without economic development.” M. Rhodes, Southern European welfare states: Identity, problems and prospects for reform, South European Society and Politics (1996), vol.1, No 3, p. 22 also available at: <https://www.tandfonline.com/doi/pdf/10.1080/13608749608539480?needAccess=true> (accessed on May 23 2018)

¹⁹⁸ T.d. Sibanda, Social Security in Southern African countries: Lessons from abroad, cited above note at 164, p.18

¹⁹⁹ social protection schemes in Africa, available: <http://www.google.com/uri?q=http://www.ituc-africa.org.IMG.pdf.s> (accessed on May 23 2018)

²⁰⁰ T.d. Sibanda, Social Security in Southern African countries: Lessons from abroad, cited above note at 176, p.19

²⁰¹ A Government employees pension proclamation, 1996, proc. No.345 Gov. Gaz years 1996. no.21

²⁰² Government Employees Pension Law Amendment Act 35 of 2003, Government Employees Pension Law Amendment Act 21 of 2004, Government Employees Pension Law Amendment Act 19 of 2011

²⁰³ Government Employees Pension Law Amendment Act 21 of 2004, of south Africa, article 14.4.1

the death of such member or pensioner and his or her spouse or eligible children.²⁰⁴ Further, according to article 23.1 and 23.2.1 of the same legislation, Annuities are to be increased from 1 April 2011 every year.²⁰⁵ A basic increase at a rate of at least 75%, of the average percentage increase in the Consumer Price Index (All Items) over twelve months, (1 December to 30 November of the earlier year).²⁰⁶ Overall, the R.S.A social security system for the reason that listed in the following is labeled as well and decent social security system. First, the ability to manage both social insurance and social assistance, social security system; second the comprehensiveness of contingencies that covered by the social insurance and social assistance program; and the third reason that the pensionable service for old age benefit is in the minimum 10 years', and available the funeral benefits.

²⁰⁴Id, article 14.9.1

²⁰⁵Id, article 23.1 and 23.2.1

²⁰⁶Ibid

Chapter Four

Exploring the legal framework of the Right to Social Security of Public Servants in Ethiopia

Introduction

In accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights. For that matter, the state parties to the covenants of the ICESCR and ICCPR oblige to promote and observe the covenant. Among other things, legislation is one way that the state parties can implement the covenant at the national level. As clearly stipulated under article 2, paragraph 1, of the Covenant, States parties are required to utilize “all appropriate means, including particularly the adoption of legislative measures” in implement their Covenant obligations. Accordingly, Ethiopia has also enacted legislation related to social security for implement article 9 of the ICESCR.

Therefore, this chapter is meant to discuss the laws and policies on the right to social security in Ethiopia. Thus, the national social protection policy, the FDRE constitution, pension legislation, social health insurance proclamation, and other related law will be discussed.

4.1 The National Social Protection Policy of Ethiopia

Though Ethiopia commenced the enactment of social security related legislation since 1961, yet the state does not have inclusive and incorporated social security legislation. However, the country has different social protection groups, which enables to achieve the purpose of social protection. Among others, there are “plan, programs, action plans, and interventions that serve various social protection purposes.”²⁰⁷ Ethiopia has recognized the role of social protection in the development goals of the country and its duties that emanates from international and regional Covenant to protect and promote the well-being of its citizens. Accordingly, Ethiopia, since

²⁰⁷ National policy of social protection of Ethiopia, Addis Ababa, (2012), p.7 available at: http://www.socialserviceworkforce.org/system/files/resource/files/Ethiopia_National_Social_Protection.pdf, and also available at: http://www.molsa.gov.et/web/guest/home?p_p_auth=Q1ufQ8cz&p_p_id=77&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&77_struts_action=%2Fjournal_content_search%2Fsearch&77_showListed=true (accessed on July 14 2018)

2012, has adopted the national social protection policy.²⁰⁸ The Policy envisages providing coverage to universal categories of societal need, focusing on the protective, preventive, and transformative actions necessary to fulfill the constitutional duty of social protection. Increasing social insurance²⁰⁹ is one of the major objectives of the policy.²¹⁰ And, this social security gains to cover the formal sector,²¹¹ while the informal sector,²¹² cover by the social safety net,²¹³ and livelihood and employment schemes,²¹⁴ addressing inequalities of access to basic services.²¹⁵

4.2 The FDRE Constitution

Ethiopia has a legal framework of a national social protection policy to underpin actions necessary to fulfill constitutional requirements. Article 41/5/ of the FDRE²¹⁶ Constitution states “the State shall, within reach means, divide resources to deliver rehabilitation and assistance to the physically and disabled, the aged, and to children leave without parents or guardian.”

Article 41/6 affirms:

‘The state shall follow policies which aim to expand job opportunities for the unemployed and the poor and shall undertake programs and public work projects’.

In addition, Article 41 (7) stated:

²⁰⁸ Ethiopia has adopted the social protection policy, in 2012. This policy founded on article 41 and 91 of the F.D.R.E constitution. This policy has focused and incorporated formal and informal government interventions, which target to diminish and ultimately avoid socioeconomic risks. According to this policy, the following elements are the current social protection background. “Social insurance programme (pension), food security programme, national nutrition programme, support to vulnerable children, health insurance, disaster risk management, support to persons with disabilities, support to older persons, urban housing and grain subsidies, employment promotion, and community based social support.” The policy has also stated on main gaps in social protection interventions, “Gaps in policy framework (comprehensive and integrated social protection framework), Gaps in programme planning and implementation (limitations in public participation in their design, implementation, monitoring, and evaluation), and gaps in legal authority to enforce requirements for sector wide engagement and accountability.”

<https://www.cmpethiopia.org/content/download/2676/11160/file/National%20Social%20Protection%20Policy%20of%20Ethiopia.pdf> (accessed on May 13 2018)

²⁰⁹ Social insurance is based on the principle of risk sharing and involves the pooling of contributions by individuals to state or private providers in return for a payout if a setback or change in circumstances happens

²¹⁰ Ibid

²¹¹ Cited above note at 59

²¹² Ibid

²¹³ For those who are venerable drought and floods, food price inflation and other economic shocks

²¹⁴ Improving individuals’ livelihoods and earnings opportunities either by helping them to increase the returns from their current work or to move from inactivity or low return jobs into higher productivity jobs

²¹⁵ Id p.15

²¹⁶ Federal Democratic Republic of Ethiopia constitution, that adopted 1995

'The State shall undertake all measures necessary to increase opportunities for citizens to find gainful employment'. Article 90 (1) of a constitution is the other rules of the constitution that showed and incorporated the right to social security.²¹⁷

4.3 Pension proclamations

Since 1961,²¹⁸ Ethiopia has issued legislation to provide a pension program for the public servants. Decree No.46/1961 is the first statutory legislation that incorporated rules related to public servants social security coverage. The decree had also incorporated coverage related to the occupational injury;²¹⁹ incapacity pension;²²⁰ widow pension;²²¹ orphan pension,²²² and parent pension.²²³ The other pension proclamation No.345/2003²²⁴ unlike, the earlier proclamations is more elaborated and inclusive. It is the aim of the country's social protection policy to expand a social security system. Therefore, it has found necessary to strength to the extent circumstance allow, the public servant pension scheme and revise and merge the existing laws. To achieve this aim the public servants' pension proclamation No. 714/2011²²⁵ is proclaimed.

This proclamation²²⁶ has incorporated provision that progressed with the existing progress of social security. Considering the time demand, the government has amended Partiality this proclamation-by-proclamation No.907/2015.²²⁷

According to the article, 5²²⁸ of this newly amended proclamation:

“A public servant who has completed at least 10 years [...] shall receive a retirement pension for life on gaining retirement age.”

This provision reduced the minimum period of service from twenty (20) to ten (10) years.

²¹⁷ FDRE constitution cited above note at 17, article 90/1/

²¹⁸ The first social security related legislation, decree 46/1961 enacted as pension decree for the civil servants. Public servants' pension decree, 1961, dec.No.46, Neg. Gaz years1961.no.17

²¹⁹ Id article 10, According to this point, a state has the obligation to ensure the protection of workers who are injured in the course of employment or other productive work.

²²⁰ Id article11, public servants who sustain employment injury and separate from work due to permanent capacity that prevents him/her from engaging in any remunerated work.

²²¹ Id article 15, the pension benefit that is going to payable for the wife of the deceased (the widow) to enables her to meet her needs for life.

²²² Id article 17, the pension benefit that is going to payable for the survival of the deceased child, whose age is less than 18 years (the widow) to enables, her to meet his or her needs for life.

²²³ Id article 19, the pension benefit that is going to payable for the parents of the deceased to enables her to meet their needs for life.

²²⁴Public servants' pension proclamation, 2003, proc. No.345 Neg. Gaz years 2003. no.24

²²⁵Public servants' pension proclamation, 2010, proc. No.714 Neg. Gaz years 2010. no.24

²²⁶The following are the aim of the Ethiopian social security related proclamation, No. 714/2011. Reach the citizen step-by-step, the strength, and sustainability of the system contribute to social justice, industrial peace, poverty decline, and development.

²²⁷ Public servants' pension proclamation2015, proc. No.907 Neg. Gaz years 2015. no.21

²²⁸ Id article 5

4.4. Social Health Insurance proclamation

From the previous chapter's discussion, social security is one of the basic rights of human being. Social Security has incorporated several benefits that aimed to make available for the beneficiary, social health insurance be among and the others of the benefits. The Social Health Insurance scheme shall contribute to an expansion of health service. In addition, it also prevents unexpected medical expenses; make up one of the major intimidation to household livelihood. Social insurance covers both preventive and curative care needed for preserving and repairing a person's health.

Ethiopia has been carrying out Community-based Health Insurance (CBHI)²²⁹ schemes as pilots since 2011 to draw lessons for eventual scale-up countrywide. Ethiopia also has passed the social health insurance legislation, Proclamation No.690/2010.²³⁰ One of the aims of this proclamation concerned with expanding health service, and use cost-sharing among beneficiaries. The scope of the declaration focus on the formal sector individual and the nature of membership²³¹ is compulsory. Some scholars argued and stated that social health insurance (SHI) must be of necessity by law, otherwise it left to an open door of an adverse selection with most members being the most vulnerable.²³² “Critics of SHI argue that it should be voluntary and left the application to market forces.”²³³ Nevertheless, since reducing unexpected medical expenses is a fundamental goal of social health insurance, it should be compulsory. Otherwise, the legislation could not achieve its target and protect the small income earner. Therefore, the membership of social health insurance must be compulsory for those who do not have an alternative. There must be an option for those who can afford to buy premium for commercial insurance, and it should not be compulsory.

²²⁹Community based health insurance is the other version of health service providing by the government. This program focused to the informal sector and towards the local community. Ethiopia has commenced this program since 2011.

²³⁰Social health insurance proclamation, 2010, proc.No.690 Neg. Gaz years 2010. no.50

²³¹ Id article 5

²³² k. nthenya malonza, social health insurance in Kenya- prospects and challenges to implementation, (2009, unpublished university of Nairobi), p.18; available at: http://erepository.uonbi.ac.ke/bitstream/handle/11295/5277/Malonza%20Katherine%20N_Social%20Health%20Insurance%20in%20Kenya%20Prospects%20and%20Challenges%20to%20Implementation.pdf?sequence=4 (accessed on July 21 2018)

²³³Ibid

4.5 Civil Servants' proclamation

Ethiopia has passed several legislations for governing the relationship between employee and employer. Proclamation No.1064/2017²³⁴ is recent, and the updated legislation that governs the correlation between a government employer and the civil servants. This proclamation has incorporated provision linked to social security, significant for the civil servants. Therefore, civil servants have maternity leave, sick leave medical benefit, and employment injury benefits in due course of their employment.

²³⁴Civil servants' proclamation 2017, proc. No.1064 Neg. Gaz years 2017, no.50

Chapter Five

Challenges and Prospects of the Right to Social Security of the Public Servants'

Introduction

“The right to social security, like any human right, imposes three types of obligations on States parties: the obligation to respect, the obligation to protect, and the obligation to fulfill²³⁵.” Therefore, the states parties to agree the ICESCR oblige to respect, protect, and fulfill the right to social security of its citizen. Since Ethiopia is, a party to the covenant, the state obliges to protect, and the obligation to fulfill the right to social security of its citizens in general and the public servants in particular. In accordance to article 2/1/ Para 2 of the ICESCRs and Para 40 of the GC No. 19 on social security, the government has an immediate obligation to the right to social security, and the right should be given an appropriate priority in the implementation. What is more, State parties to force to do their utmost available resources and employ the minimum core principle that entails an obligation to the state parties of the covenant to realizing the minimum threshold.

Therefore, this chapter, thus, will discuss the major challenges that prevent the smooth implementation of the right to social security of the public servants. In addition, it will discuss the justifications that made by the officials in responding to the challenges of the right to social security of the public servants, in light of, international, regional, and national human Rights legal instruments. Furthermore, the chapter also discusses the prospects of the right to social security of the public servants in Ethiopia.

5.1 Fundamental Challenges of the Right to Social Security of the Public Servants'

5.1.1. Inaccessibility of Social Security Schemes

Historically, the modern concept of social security was started in Ethiopia, after the adoption of the ILO Covenant No. 102 1952 on “minimum standards of social security” in 1961. It is in this year that the first social security-related legislation, pension decree promulgated. The launch of this program had made beneficiary the public servants. Social insurance was a kind of social

²³⁵ General comment (No. 19), cited above note 13, Para 43

security system that employed by Ethiopia. This social security program demands the contribution from both employee and employer and the fulfillment of a certain amount years of service. In essence, a given state can exercise more than one social security system such as social insurance, social assistance, and social welfare. However, in fact, the ability to offer the whole social security system depends on the economic capacity of a given state. For instance, most of the developed countries, which have the good economic capacity, such as the Republic of South Africa, have carried out more than two types of social security systems in general:²³⁶ social assistance, social insurance, and social welfare. However, the practice of Ethiopia showed that the country employed only social insurance system. The implementation of all types of social security system has its own merits. Likewise, the inability to use all social security system, or only install a single system also would have a significant problem to meet social justice.

International legal instruments, such as ILO Covenant No. 102, recommended that the member states realize the minimum standard of social security, nine benefits of social security.²³⁷ The GC No. 19 on social security, Para 12 stated that “[t]he social security system should provide for the coverage of the following nine principal schemes of social security: healthcare, sickness, old age, unemployment, employment injury, family and child benefit, maternity, disability and survivor and orphan.”²³⁸ Further, the ILO Recommendation No. 202/2012 promotes and imposes an obligation on the members of the ILO: the national policy and legislation of the ILO member states shall recognize social security as important tool for reducing poverty, social insecurity, social exclusion, and the member has the duty to set up their social protection floors comprising basic social security guarantees.²³⁹ As a result, several countries, including Ethiopia have been implementing this obligation of social security. Nonetheless, the degree of implementation and inclusion of these schemes of social security is different from state to state. For instance, the social security provided by R. S. A covered more than the nine minimum standards of social security, including the funeral benefit.²⁴⁰

²³⁶White paper, cited above note at 178

²³⁷ (1) Medical care, (2) sickness benefit, (3) unemployment benefit, (4) old-age benefit, (5) employment injury benefit, (6) family benefit, (7) maternity benefit, (8) invalidity benefit, and (9) survivors’ benefit

²³⁸See in particular ILO covenant No. 102 (1952) on Social Security (Minimum Standards), which was confirmed by the ILO Governing Body in 2002 as an instrument corresponding to contemporary needs and circumstances. States and trade union and employer representatives in the ILO Maritime Labour covenant (2006), regulation 4.5, standard A4.5, also affirmed these categories. The Committee’s revised general guidelines for State reporting of 1991 follow this approach. See also covenant on the Elimination of All Forms of Discrimination against Women (CEDAW), arts. 11, 12, and 13

²³⁹ ILO recommendation, Cited above note at 84

²⁴⁰Government employees pension law proclamation, 1996, proc.No.21 Gov. Gaz years 1996.171335, article 14.9 Funeral benefits: 14.9.1 In the case of a member or a pensioner who became entitled to a gratuity and annuity on or

However, the social security system: social insurance, provided by Ethiopia does not consist of comprehensively the nine schemes and minimum standards of social security. The state has implemented seven²⁴¹ kinds of social security schemes, since 1961. Unemployment and family and child benefit have never been implemented. In general, the state has tried to cover formally the seven schemes of social security out of the nine.

Thus, the question worth asking is: what are the reasons that compelled the Ethiopian government to exclude these social security schemes? Is there a legal ground that obliges governments to cover those excluded benefits?

According to government officials, unemployment benefit is considered as a “fertile means of encouraging unemployment itself, and due to this fact, the government could not provide the benefit. As well, the government policy is to create job opportunities rather than to pay unemployment benefit.”²⁴² Despite, the above justification made by the state, unemployment benefit has an important role to play in providing income replacement to short-term unemployment. Further, unemployment benefit does not grant for someone who does not involve in a job before, rather it is a benefit provided for people proficient in working but is incapable of getting suitable employment.²⁴³

As anyone of ordinary employees, the public servants, for once or more have faced an incidence to lose their job.²⁴⁴ Currently, most of the public servants who lose their job temporarily are compelled to seek assistance from their close families or friends.²⁴⁵ However, the assistance would stay no longer until they get a new job. In this juncture, these individuals would be obliged to go through a terrible life, until, they meet, a new job. Some of even have a miserable condition which unable to feed and send to school their children.²⁴⁶

According to the cumulative reading of Para 16(d) of the GC 19²⁴⁷ and article 9 of the ICESCRs, impose an obligation under States parties to provide the necessary protection for an individual

after 1 December 2002, the funeral benefits payable upon the death of such member or pensioner and/or his or her spouse and/or eligible children. This sort of a branch of social security does not even incorporated under the ILO instrument.

²⁴¹ Old age, Medicare, sickness, maternity, employment benefit, survivor, and invalidity of social security benefit.

²⁴² Interview with Ato Ayalewe Durressa, advisor of the general director of public servant social security, in Addis Ababa Ethiopia (May, 02,2018)

²⁴³ The 1952 ILO covenant no.102, cited above note at 67

²⁴⁴ Interview and questioner with a public servants,(75) which extracted from different government offices, in Addis Ababa Ethiopia (May, 15,2018)

²⁴⁵ Ibid

²⁴⁶ Ibid

²⁴⁷ Cited above note at 11 Para 16/d/

who has lost his/her job temporarily. In the same general comment, Para 16, a state “ [i]n addition to promoting full, productive, and freely chosen employment, States parties must endeavor to provide benefits to cover the loss or lack of earnings due to the inability to obtain or maintain suitable employment. In the case of loss of employment, benefits should be paid for an adequate period of time and at the expiry of the period, the social security system should ensure adequate protection of the unemployed worker, for example through social assistance.” Therefore, States parties must try to give benefits to cover the loss or lack of earnings because of the inability to get or support suitable employment. In addition, according to article 90(1) of the FDRE constitution, Ethiopia has the duty to afford social security to the extent country’s resource allows.

According to ILO ‘minimum standard of social security’ covenant No. 102 1952, and ILO recommendation No. 202 2012, member states of the ILO are expected to observe the nine social security schemes. Even though Ethiopia is member of the ILO, the state could not comprehensively observe the nine minimum standards of social security. Accordingly, the state could not provide unemployment, child, and family benefit to the public servants. Though the government officials asserted that unemployment benefit encourages unemployment, however, the duration of enjoying unemployment benefit is limited by time. According to article 24 of the ILO Covenant No.102, the duration for enjoying the unemployment benefit limit to for 13 weeks within 12 months.²⁴⁸ Therefore, there is no way that the unemployment beneficiary enjoys the benefit for an unlimited time because the enjoyment of the benefit is limited with time. Hence, the justification made by the government was not justified by international legal instruments.

Lack of enough resource was another reason that rose by government to fail to the implementation of the unemployment benefit. It is true that a resource is a major bottleneck for the implementation of socio-economic rights. However, a mere lack of resources would not be a legal ground for denying using the maximum available resource. Pursuant to the GC No.19 on social security, States parties have a core obligation to make ensure satisfy, at the very least, minimum essential levels of the rights enshrined in the Covenant.²⁴⁹ However, in the case where the state could not able to provide the resource realizing the minimum core obligation of the covenant right, it must be demonstrated that every effort has been made to use all resources that

²⁴⁸ILO covenant No. 102, 1952, Cited above note at 67

²⁴⁹See general comment No. 3 (1990) on the nature of States parties’ obligations (art.2, para.1 of the Covenant).

are at its disposal in an effort to satisfy, as a matter of priority, this minimum core obligation.²⁵⁰ In addition, “States parties have immediate obligations in relation to the right to social security, such as the obligation to take steps (article 2, paragraph 1 of the ICESCRs). Such steps must be deliberate, concrete, and targeted towards the full realization of the right to social security.”²⁵¹ Accordingly, Ethiopia has the above-mentioned obligation to use effectively it’s the realization of the socio-economic right. However, the government officials except made a statement that there is a lack of available resource to give unemployment benefit, they could not prove that the state has been made every effort to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, unemployment and child and family benefits.

Child and family benefits are another excluded social security scheme of the Ethiopian government. The government asserted that child and family benefits only aim to encourage birth.²⁵² In addition, the government officials stated, this benefit particularly employs under countries whose number of population is less,²⁵³ and since Ethiopia does have enough and huge amount population, the population policy of the country does not support the adoption of this benefit.²⁵⁴ Therefore, the population policy of the state was one reason for failure to implement family and child support a benefit, as well as a lack of available resource, is there.

However, the question worth asking is: can population policy be a legal ground to fail to implement family and child support benefit? Is there legal ground to obliged Ethiopia to realize this scheme?

There are various occasions where a family will incline to turn to social security for assistance. The first circumstance is to compensate for losing earnings because of pregnancy, and the second is to aid in the cost of raising children.²⁵⁵ Thus, raising the child cost would be a reasonable ground for a family to incline the family and child support benefit. Therefore, the benefit of family and child support benefit not intended only for encouraging the fertility of the population rather it also aims to help with the cost of raising children. Raising children is a tough task that requires time, money, and endurance of the given family. It is also considered as a valuable

²⁵⁰Cited above note at 11 Para 60, See also general comments No. 3. Para, 10

²⁵¹Cited above note at 11, Para 40

²⁵²Interview with Ato Ayalewe Duessa, Cited above note at 242

²⁵³Ibid

²⁵⁴Ibid

²⁵⁵Family and child support benefit, <https://www.urban.org/sites/default/files/publication/62036/309299-To-What-Extent-Do-Children-Benefit-fro>;<https://www.benefits.gov/benefits/benefit-details/614>;<https://www.benefits.gov/benefits/browse-by-category/category/1>(accessed on 27 June 2018)

investment made on the human being. The cost of raising children is the main problems that encounter families through the process of bringing up children. Especially, for a public servant, raising a child would be difficult. According to the current Ethiopian labour market, “the salary of the civil servants is fewer, and they are victims of inflationary increases.” Moreover, since Ethiopia did not employ unemployment benefit for the public servants, they would face serious problems when they lose their job, because, they would be expected to feed their children and provide cloth, shoes, and school stationery for their children.²⁵⁶ Therefore, this in total would make difficult for the public servants to raise and send their children to school.

Moreover, the right to social security is not a right that is limited to enjoy by public servants or any adult citizens of a country, rather it also granted to children of a given state. According to article 42 of ILO covenant,²⁵⁷ article 26/1 / of the CRC and article 18/1 / of ACRWC,²⁵⁸ the states have the duty to recognize for every child the right to enjoy social security. Further, obligating the states to provide the family and child support benefit comes from the following international and national human right instruments: Para of GC No. 19, article 9 of the ICESCRs, and article 41 (5) of the FRDE. Incidentally, the Ethiopian government has been made progress in improving the right to social security of the child. For instance, the free of charge primarily and secondary education, and school feeding program are the main notable deed of the government. However, this progress is not the end for realizing the right to social security of the child, rather there is an enormous social security obligation related to the child and family that expected to realize by the state.

Overall, social insurance is the only social security system program that delivers by the Ethiopian government for the public servants. Since the social insurance system established based on the principle of insurance: resources pooling and sharing the risks, the beneficiary of this social security system can only be benefited from the coverage, if and only the coverage area had already embedded on that social security program. Accordingly, since, the unemployment and family and child schemes were not incorporated into the Ethiopian social insurance program; there would not be grounds for claiming benefit when the risk materializes. However, this argument only tenable and acceptable from the viewpoints of the principle of insurance, whereas,

²⁵⁶Interview and questioner with a public servants,(75) which extracted from different government offices, Cited above note at 248

²⁵⁷ILO covenant No. 102, 1952, Cited above note at 67

²⁵⁸Adopted in July 1990 and came into force in November 1999. Ethiopia acceded to the Charter on 2 October 2002. Article,18/1

the nature of social insurance is not only based on the pure insurance concept, it also incorporated other socioeconomic right concepts that enable to settle a social justice. Therefore, the Ethiopian government, cannot relieve from its duty to provide the unemployment and family and child benefit, by the mere fact that the benefit was not covered by the legislation.

There are international human rights instruments that impose a further obligation on Ethiopia for realizing those excluded schemes. According to the ILO covenant No.102, on social security (minimum standards) and the ILO recommendation No.202/2012 on the social protection floor, Ethiopia has the obligation to realize the nine minimum standards of social security schemes. In addition, According to article 2/1/ of the ICESCRs, states have a duty to the larger of its *available resources*, to achieve the *full realization* of the SERs.²⁵⁹ According to Para 60 of GC No.19, the failure to meet minimum core obligation would be acceptable, if a given state demonstrated that every effort has been made to use all resource that is at its disposal an effort to satisfy. However, since Ethiopia did not demonstrate that every effort has been made to use all resource that is at its disposal an effort to satisfy, unemployment and child and family benefits, the justification that made by the government was not according to the General Comment no.19. Moreover, According to the GC No.19 Para 40 and 59/a/ and Para 2, 9, and para10 of GC No.3 Ethiopia has an obligation to carry out the *minimum standards* for paving the way to progressive realization. Likewise, “[t]he obligation to facilitate requires States parties to take positive measures to assist individuals and communities to enjoy the right to social security.”²⁶⁰ The obligation includes ensuring that “the social security system will be accessible for everyone and will cover social risks and contingencies.”²⁶¹ Ethiopia has also an obligation to facilitate (fulfill) the necessary tools for enables to realize the obligation of the convent. For instance, to implement the child and family benefit, at least the government was supposed to make covered the schemes by the social security-related legislation; facilitate a situation to contribute from both employer and employee and use another source of means for collecting funds. However, none of the above means had attempted by the Ethiopian government. In addition, the covenant has also indicated a way to implement the social security right: seeking international cooperation and assistance and take joint and separate action to realize the right inscribed in the covenant, and to set up a non-contributory social security system.

²⁵⁹ICESCR, Cited above note 6 article 2/1

²⁶⁰ General comment no.19 on social security cited above note at 11, Para 48

²⁶¹ Ibid

What is more, exclude these social security schemes not only pausing, a danger over the public servants, but it is also extended to their family. Consequently, they cannot satisfy the right to food and right to the wellbeing of their family. This also would constitute the violation of the right to development of the public servants and their family. As Sen mentioned that, “development requires the removal of un-freedom including poverty, the system of social deprivation, poor economic opportunities, as well as political repression”.²⁶²

Obviously, the lack of income would be trapped and prevented the public servant to enjoy another fundamental human right. In case when the public servants lose his/ her jobs, they cannot feed themselves and their family, and if the child cannot get food, he/she would not go to school. Overall, the right to food, education, and life of this individual would be at endangering.

Therefore, the justification made by the government for failing to employ unemployment and child benefit could not be a legitimate ground failing to implement the obligation to fulfill and protect of the socioeconomic rights of the public servant. As a result, according to Para 65 of the committee of human right general comment No.19, Article 14/f/ of Masseteric guidelines and Para 70 and 72 of the Limber principles, Ethiopia has violated the obligation that imposes by article 9 of the ICESCRs. Moreover, the government has violated article 41 (5) and 90 (1) of the FDRE constitution.

5.1.2. Adequacy of the benefit

Social security consider as a preferable and valuable means to protecting and securing individuals and groups against contingencies caused by sickness, employment injury, unemployment, old age, invalidity...etc. Hence, the role of social security, for the continuance of once life is crucial. Therefore, we can conclude that Social Security benefit can be a significant and important part of the income that supports one, in case of temporary income interruption. The social security benefit may be in cash or in kind, results from contributing employer and employee. In relation to the size of the benefit, international instruments such as GC No. 19 Para.22 stated that benefits, whether in cash or in kind must be up to standard.

In view of that, the size of social security benefits that delivers by states varying from states to states: For instance, the Republic of South Africa provides benefits for The Older Person’s

²⁶² Sen. Development as freedom (1999) available at: <https://www.uio.no/studier/emner/matnat/ifi/INF9200/v10/readings/papers/Sen.pdf> (accessed on June 22 2018)

Grant (OPG),²⁶³ varying between ZAR²⁶⁴ 1,500 (about 3,225 birrs) and ZAR1, 520 (about 3, 298.4 birr)per month.²⁶⁵ However, the experience of Ethiopia is different, in that the Ethiopia pension beneficiaries (old age benefit) earns between an average range 744.00 (seven hundred forty-four) and 2,200 (two thousand two hundred) birr per month.²⁶⁶ Moreover, the survivor's schemes beneficiaries earn between an average range of 300.00 (three hundred) and 1,200 (one thousand two hundred) birr per month. Hence, the benefit sizes of the Ethiopia social security (old age and survivors) is fewer than from that of the South Africa old age grant benefit size. According to the World Bank projection, the international poverty threshold or line, the minimum level of income should not be less than 1,568.00 birr (one thousand five hundred sixty-eight).²⁶⁷ Incidentally, the size of the benefit is not the sole problem of the beneficiary (Ethiopian) rather they have been forced to manage their families through this benefit for several years.²⁶⁸ As a result, the majorities of older persons and survivors beneficiary are engaged in the informal and tiresome fields of works.²⁶⁹ They have forced to continue to work until they become seriously ill or die, and the incomes that they earn from jobs hardly meet their basic needs.²⁷⁰ Most of, older persons are left without care and support, because they have no adequate source of income or saving except their labour.

International legal instruments, such as ILO Covenant No. 102 and 128 set forth the principle of adjusting the rates of benefit following great changes in earnings or the cost of living. According to article 65 of sub-article 10, and 66 (8) of the ILO covenant, “[t]he rates of current periodical payments in respect of old age, employment injury, invalidity and death of a breadwinner, shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.”²⁷¹ Article 67 of the same covenant, states

²⁶³The Older Person’s Grant (OPG) is an income-tested grant provided to people above 60 years of age. This sort of social protection is one of the most important tools for poverty reduction in the country.

<http://www.social-protection.org/gimi/RessourcePDF.action?ressource.ressourceId=53790> (accessed on 4 may 2018)

²⁶⁴ It is the republic of South Africa national currency, Rand. <https://www.investopedia.com/terms/z/zar-south-african-rand.asp> (Retrieved on 7/23/2018)

²⁶⁵This exchange rate of the Ethiopian currency birr made according to the which is taken from the Ethiopian commercial bank official website <http://www.combanketh.et/> (Retrieved on 23 May 2018)

²⁶⁶Interview and questioner: - For assessing the adequacy of the social security benefit of the civil servants in Ethiopia, I had conducted interview, which target the pension beneficiaries. As the result 36% of respondents gain 744.00 up to 2,200.00 birr, and remain 64% of gain 600 up to 1200 birr a month

²⁶⁷Available at: <http://www.worldbank.org>publication>povertyline> (Accessed on September 25 2018)

²⁶⁸Interview and questioner: - 54 % beneficiaries replay that, their family administrated with their income.

²⁶⁹Interview and questioner: - 30 % respondents have been forced to work extra job to satisfying needs of their family, as well as there is increase inflations.

²⁷⁰Ibid

²⁷¹ILO covenant No.102, Cited above note at 67, article 65/10/

“benefits should be sufficient to maintain the family of the beneficiary in health and decency.”²⁷² In addition, according to Para 22 of GC No.19, Benefits, whether in cash or in kind, must be enough and Methods applied should make sure the adequacy of benefits. The adequacy criteria should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights.²⁷³ Likewise, the same general comment Para 67 stated that Existing legislation, strategies, and policies should be reviewed to ensure that they are compatible with the obligations arising from the right to social security, and should be repealed, amended or changed if inconsistent with Covenant requirements.

Despite, international human rights instruments stipulated that revise the social security benefit is mandatory, resulting from substantial changes in the cost of living; the social security-related legislation of Ethiopia did not incorporate such understanding. According to Article 46 of Ethiopia, public servants' Pension Proclamation No.714/2003, “The minimum pension benefit may be adjusted every five years.”²⁷⁴ Accordingly, the time to adjust of the benefit will be conducted every five-year. On the other hand, the changes in living cost or market inflation turn out each year. Therefore, the time limitation, five years, which enshrined under pension proclamation, has failed to consider substantial changes in the cost of living and meet the minimum threshold of the adequacy of benefit. In this regard, the experience of other world states shows a different practice. For instance, the pension benefit adjustment in the Republic of South Africa is conducted every year,²⁷⁵ and the minimum level size of the benefit, defined as 75% of the annuity at retirement adjusted for full inflationary increases.²⁷⁶ Moreover, Ethiopian public servants pension law, except stipulating adjustment period of benefit, nothing has stipulated on the method how and to what extent the adjustment should be made. In addition, the pension benefit is not indexed; there is no index²⁷⁷ benefit system, the country does not have an indicator enables to adjust the benefit in the case where cost inflation. Because of these, the beneficiary of the Ethiopia social insurance program faced miserable lives.

²⁷²ILO covenant No.102, Cited above note at 67

²⁷³ General comment No. 19, on social security, Cited above note at 11 Para 22

²⁷⁴Public servants' pension proclamation, 2010, proc. No.714, Cited above note at 37, article 46

²⁷⁵Government Employees Pension Law Amendment Act 21 of 2004, of south Africa, Cited above note at 211, article 23.1 and 23.2.1

²⁷⁶Ibid

²⁷⁷ A number or ratio (a value on a scale measurement) derived from a serious of observed fact; can reveals relative changes as a function of time.

In fact, the social security benefits revises in Ethiopia following the public servant's salary increment. However, this is not enough progress for halt the living cost rising problem. Because the public servants, salary, increment, conduct within three or four years. This cannot make assure the beneficiaries could afford the goods and services they need to realize their Covenant rights. Overall, the pension benefit adjustment takes place in Ethiopia held formally within five years, as well as, adjustment made upon together with the civil servant's salary adjustment. Thus, since formal adjustment held within five years, an adjustment of the pension benefit did not take into consideration living cost increase or inflationary increase that happens every year.

Therefore, the social security benefit that provides by Ethiopia is below the current poverty line. Due to that fact, some of the beneficiaries have been forced to engage in other informal labours activity to enable to cover the cost of living. The pension benefits adjustment interval has failed to take into consideration market inflation. Because of that, the government of Ethiopia has failed to meet the acceptable standards of social security benefits, which enshrined by international human rights instruments.

Therefore, this deed of the government would form the violation of the provision of a minimum essential benefit to the public servants with ample benefit that meet the internationally accepted standards. Hence, Ethiopia has failed to meet the obligation to fulfill. Consequently, according to the GC No.19 Para 60, Ethiopia has failed to meet the duty imposed under article 9 of the ICESCR.

5.1.3. Accessibility of benefits

5.1.3.1. Coverage of the Social Security System

Social insurance is one of the social security programs aimed to protect and relief to the workers against social and economic shocks. Likewise, Social insurance is the “scheme of assistance for workers, in which scaled rates of contributions are paid, by the workers against assuring benefits in case of contingency.” The Social insurance programme is coined based on insurance principles: Resource pooling and Risk-sharing. Therefore, the member of the social insurance program shall first contribute his/her due and fulfill other conditions to be the beneficiary of the coverage. Social insurance is the only social security program provides by Ethiopia for public servants. Since 1961, the country has passed several social security-related legislation; the

pension proclamations were the one that deals with social security issues.²⁷⁸ Despite passing these legislations, some of the public servants were not then covered by the social security-related legislation. For instance, according to article 8 (b) of pension decree No.46/1961,²⁷⁹ and article 9/2/ of pension proclamation No.5/1974²⁸⁰ a public servant who resigns after completing 10 (ten) but before completing 20 (twenty) years of service have had no retirement pension for life. Likewise, the subsequent legislative article 21 of pension Proclamations No.345/2003²⁸¹ and article 27 of Proclamation No.714/2011²⁸² a public servant who resigns after completing 10 years and before completing 20 years of service, would not have a retirement pension for life. The exclusionary provisions of these legislations were not embedded because the law is exclusionary; rather it is because of the nature of the social insurance principle. Unless otherwise, the public servants fulfill both conditions: the contribution and the necessary years of service, the public servants will not be covered by the social insurance program.

Following EPRDF²⁸³ control the power in 1991, the government had sent back the let Ethiopian regime (Dergue)²⁸⁴, defense force members to the place where they come from. The then Prime Minister's office²⁸⁵ had ordered to have pension coverage for the members who have had served for over 20 years and whose age is above 45 years. Nevertheless, those of who have served less than 20 years, and who did not grasp the age of 45, but served over 20 years, were sent to home with no reimbursement or retirement pension benefit. Major Basha Taddesse Tekelhimanot²⁸⁶ and others (1,007 peoples) are the let Ethiopian regime (Dergue) veterans, who have had less than 20 years of service, and had not reached the age of 45 years when they were dismissed by the EPRDF government in 1991.²⁸⁷ These members have had paid pension contribution through the ministry of finance and economy.²⁸⁸ Nonetheless, they have not been the opportunity to enjoy

²⁷⁸Cited above note at 33-37,

²⁷⁹Cited above note at 33, article 8/b/

²⁸⁰Cited above note at 34, article 9/2/

²⁸¹Cited above note at 35, article 21

²⁸²Cited above note at 36, article 27

²⁸³Ethiopia people's revolutionary democratic front, the current Ethiopian ruling part

²⁸⁴ The late Ethiopian military regime, which dominantly follow the socialist ideology

²⁸⁵ A letter written from the prime minister office under the authority of the let prime minister, Melese Zenawi, on the day April 7/1992

²⁸⁶A group of individuals was the let regime ex-military, and after the downfall of the derg regime, the EPRDF were plane to send back to their home. However, because their period of service is more than ten years and less than twenty years, they were not covering by the then social security scheme.

²⁸⁷Interview with Major Basha Taddesse Tekelhimanot,(who has represent the rest of the group) victims of the pension proclamation legislation, in Addis Ababa Ethiopia (April, 29,2018)

²⁸⁸The ministry of finance and economy was the then government organs who have power to collect the pension contribution from government employers, through delegation, on behalf of the former ministry of pension.

their right to social security, because, they could not fulfill the other requirement which is the necessary years of service.

Similarly, Ato Eregete Medebewe Joffe and others (22 peoples) are the ones who had left their job due to different personal reasons after serving about 10 and fewer than 20 years.²⁸⁹ Currently, both the let Ethiopian regime (Dergue) defense force members and others (22 peoples) individuals, they are averaging 70, above-year-old.²⁹⁰ Moreover, they do not have extra income, which enables them to satisfy the daily needs of their family.²⁹¹ Unlike the let Ethiopian regime (Dergue), defense force members, the Ergette groups had set up an indictment against the Public Servant Social Security Agency. The case had decided for the Ergete's group by Federal Supreme Court Cassession bench.²⁹² However, due to the reason that the case is under adjournment in the constitutional inquiry, related to the constitutional issue, still, now, these groups of Individuals could not be a beneficiary of the pension benefit.

Therefore, these ex-public servants were excluded from the social security coverage, because, they had failed to meet the necessary conditions, provided by the social insurance program. Essentially, at the international level, there is no standard towards the degree of the necessary condition to enjoy social insurance program. For instance, Canada required the minimum 2 years of service for a retirement benefit,²⁹³ the Republic of Algeria required the minimum 15 years of service,²⁹⁴ the Republic German required the minimum 5 years of service,²⁹⁵ the Republic of South Africa required the minimum 10 years of service²⁹⁶ and Ethiopia requires the minimum 10

²⁸⁹Interview with Ato Eregete Medebewe Joffe and others (10 peoples), victims of the pension proclamation legislation, in Addis Ababa Ethiopia, (April, 29,2018)

²⁹⁰ Ibid

²⁹¹ Ibid

²⁹²Ergette Medebewe Joffe (others 22) v. the Public Servants' Social Security Agency, (Fed. Sup. Ct. Cass. Ben., 2010), J.Fed.Sup.Ct.Cass.Deci., vo21, file no.133821, p.188

²⁹³Cited above note at 44

²⁹⁴Cited above note at 45

²⁹⁵The German pension system currently ranks 13th in the world according to the *Global Retirement Index*. Germany operates a three-pillar pension system that is categorized into different types of German pension. Mandatory state pension – known as the Public Retirement Insurance or *Gesetzliche Rentenversicherung* (GRV) in Germany. Company or occupational pensions – known as *betriebliche Altersvorsorge* (bAV), these are private voluntary pension schemes offered by employers, which allow employees to bolster their German pension contributions for retirement. Private pensions – these are individual pension investment plans set up through banks and insurance providers to increase your total German pension entitlement when you reach pension age. The official pension age for women and men in Germany is 65 years old, but will be gradually increased to 67 years over a transition period from 2012 to 2029. For the standard old-age pension, the minimum qualifying period is five years. Available at: https://www.expatica.com/de/finance/retirement/german-pension-guide-understanding-your-pension-in-germany-83112_4/ (Accessed on September 21 2018)

²⁹⁶Cited above note at 173, article 14.3.3

years²⁹⁷ of service for a retirement benefit. Hence, the discretion to make a decision regarding the degree of social insurance precondition is left to the countries. That is why the let the Ethiopian regime (Dergue), defense force members and the ex-civil servants become excluded from retirement benefits.

Most of the ex-civil servants excluded from social security coverage do not have other income that made them and their family enables to sustain. Briefly, they are left without care and support, because they have no source of income or saving, except their labour. Therefore, the government did not take action to provide otherwise means of support or assistance for the victims. As a result, of that, the Degrue, defense force members, and ex-civil servants have destined for living a miserable life.²⁹⁸ Some of them are even forced to stay in informal jobs because they have no access to social security.²⁹⁹ On the other hand, in the practice of other states: for instance, the elderly in R.S.A have two main alternative sources of protection for public servants: state old age pensions³⁰⁰ and private pensions^{301.302} Hence, if an individual fails to be a cover of one of coverage, he or she would be protected by the rest protection system. However, this does not available in Ethiopia.

It is obvious that due to the nature of the social insurance founding principle the let Ethiopian regime (Dergue), defenses force member and the ex-civil servants were excluded from retirement benefit. However, other international and national Human rights instruments impose an obligation on the government to provide the social security benefit for these individuals. Furthermore, according to Para 59 of General Comment No.19, and Para 2,9,10 and 12 of General Comment No.3, States parties of the covenant have a core duty to make sure satisfaction of, at the least, minimum essential levels of each of the rights declared in the ICESCRs. What is

²⁹⁷Cited above note at 37, article 5/2/. By the previous social security related legislation of Ethiopia, the minimum years of service for to be entitled to enjoy pension right for life was 20 years. However, the new legislation, which is pension proclamation no 907/2015 has made decrease the ceiling of minimum years of service from 20 to 10 years.

²⁹⁸Interview with Major Basha Tadesse Tekelhimanot, and Ergette Medebewe Joffe, cited above note at, 259&264

²⁹⁹ Ibid

³⁰⁰It is a kind of Social assistance to older people; it enables old age pensioners to support their extended family including grandchildren and unemployed adults since the money is used to meet basic needs such as food, clothing, education and the health needs of children.

³⁰¹A private pension - also called a personal pension - is a product that you can use to save money for retirement. Private pensions are usually defined contribution pensions, which mean the money you receive at retirement is based on the money you have paid in and the performance of your investments. Moreover, a private pension works similarly to a workplace pension, but you rather than your employer set it up. Available at: <https://www.pensionbee.com/pensions-explained/frequently-asked-questions/what-is-a-private-pension?ast=wnh211> (accessed on april22 2018)

³⁰² Government employees pension law proclamation,1996, proc.No.21 Gov. Gaz years 1996.171335;

more, the government also has the obligation to recognize the full recognition of the right to social security and realizing minimum core obligation enshrined under the ICESCRs.³⁰³ Minimum core obligations apply irrespective of the ease of access to resources of the country concerned or any other causes and difficulties.³⁰⁴ As young rightly noted, “[t]he minimum core reflects the aspects of the right, which satisfy the “basic needs” of the rights-holders, rather than any extra, elective, or more ambitious level of interests”.³⁰⁵ Therefore, the minimum core obligation is not a duty that takes the amount to compromise to implement. More to the point, according to article 41(1) and 90 (1) of the FRDE constitution, the government obliged to extend the country’s resource provide rehabilitation and assistance for the aged.

The obligation to fulfill is one of the obligations expected to realize by the state. Adopting international human rights treaties and agreement would not be the end of the implementation of international human rights legal instruments. Rather the states have to make and available the facility, which enables their citizen to enjoy their rights enshrined under the covenants. According to Human Right committee general comment No. 19 Para 15, “[S]tates parties should, within the limits of available resources, provide non-contributory old-age benefits, social services and other assistance for all older persons who, when reaching the retirement age prescribed in national legislation, have not completed a qualifying period of contributions or are not otherwise entitled to an old-age insurance-based pension or other social security benefit or assistance, and have no other source of income.”

Hence, even though, exclude the ex-public servants were made by the principle of social insurance, the government of Ethiopia has had the obligation to protect and provide the necessary benefit for those ex-public servants. The government could not show that there was a lack of available resource to enable to treat these individuals, and was not also demonstrate that the state had made the necessary effort to use the maximum available resource. Given that, the government is expected to come up with an otherwise social security system (which is noncontributory); again, it has failed to implement this obligation. More importantly, the government had the obligation to realize the minimum essential core obligation and was expected to provide, the least minimum protection and coverage.

³⁰³ General comment No. 19, on social security, cited above note at 11, Para 61

³⁰⁴ Cited above note at 11

³⁰⁵ Katharine G. Young, *The Minimum Core of Economic, and Social Rights: A Concept in Search of Content* p.123. Available at, <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1920&context=lsfp> (accessed on april22 2018)

Moreover, failing to implement an obligation to fulfill and respect would not only result, ignoring of the right to social security of the public servants, but rather it would be also a cause for violating other fundamental human rights. These ex-public servants, currently, have nobody to support them, and they do not have a sustainable means to satisfy their daily needs, due to that, ex-public servants and their family right to food, life...etc., Fallen at danger. The realization of these rights has presupposed the implementation of other rights. For instance, for one to realize his/her right to life, the realization of the right to food is the precondition, and for enjoying the right to food, one has to have the money or the capacity to produce. This shows that each right of a human being has a correlated nature. This argument shall take us to the concept called the right to development (hereinafter referred as to RTD).

According to Amartya Sen “development is a means that expand on the capability to choose, and influence one’s life, freedom to live longer, freedom to choose to get an education.”³⁰⁶ Arjun Sengupta, stated that “image of the right to development as a “vector”,(In other words, it is a collective right that protects a set of rights and values, in that if one right is improved, then no right deteriorates, but if any right is violated, the “vector” deteriorates and the right to development is violated)”.³⁰⁷ Further, as Mesnebet noted that RTD is a “composite right, which should be realized in a manner that takes into account the effects of component rights on one another, as well as the resulting outcome.....Translated into a human rights language, an improvement in the realization of the RTD requires the promotion or improvement of at least some human rights, while no other deteriorates”.³⁰⁸

Therefore, we can infer from the above concept that the denying of a single right of an individual constitutes the violation of the rest, and restrict the individual from enjoying the other rights entitled to do so. Accordingly, those let Ethiopian regime (Dergue), defense force members and ex-civil servants have not been the opportunity to have social security coverage. Due to that, these individuals have no money to feed themselves and their family, their condition of life is deteriorating from time to time. Therefore, their right to food and life is endangered. Thus, the

³⁰⁶Sen. Development as freedom (1999), cited above note at 262. P.7

³⁰⁷A. Sengupta, "On the Theory and Practice of the Right to Development," Human Rights Quarterly, Vol. 24, (2002), p. 846, available at: http://journals.christuniversity.in/index.php/ushus/article/download/1656/1383/https://books.google.com/books/about/Aspects_of_Labour_Welfare_and_Social_Sec.html?id=RF8yAAAAMAAJ to Development (accessed on June 22 2018)

³⁰⁸ M. Assefa, "Reflections on the right to development: Challenges and prospects", African human rights law journal, Volume 10, No 2 (2010), p. 327, available at: http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962010000200002 (accessed on April 22 2018)

denying of the right to social security of these public servants would constitute the violation of their right to development.

Therefore, the government of Ethiopia has failed to employ its Human rights obligation to fulfill and respecting, and principle that enshrined under article 47 of the Human Rights Committee general comment No 19 and article 8, 9 and 10 of the Human Rights Committee general comment No.3. Thus, according to Para 65 of general comment No.19, article 15 of Masseteric guidelines and Para 72 of the Limburg Principles, Ethiopia has Violate article 9 of the ICESCR. In addition, the government has violated article 41 (5) and 90 (1) of the FDRE constitution.

5.1.3.2 Physical Access of the benefit

Social security generally understood as a project that made or proposed by the society to move the individuals away from the risk or contingencies that make vulnerable and to improve the lives of the individuals or groups.³⁰⁹ However, the responsibility to protect individuals or group from contingency, not only fall into the society, rather the burden shall go to the government. In this regard, the government has a significant and crucial role in securing the life of its citizens. Therefore, to avert this risk of income interruption of the individual, the states have to be sure that the social security benefits available. However, not only the availability of the scheme is important, but also the benefit must be accessible, in time and place manner.

States used a different kind of means and methods of social security benefits delivery: For instance, the Republic of South Africa has three different payment channels of social security benefit. The first channel is the South African Social Security Agency (SASSA)³¹⁰ pay point discussions, where the payment provider, Cash Payment Service (CPS), sets up mobile ATMs.³¹¹ The second channel is the payment into Grind Rod Bank accounts.³¹² This allows the beneficiaries' full access to traditional banking services, including ATMs, electronic fund transfers, and point of sale transactions.³¹³ Moreover, the third channel is payment at institutions, such as old persons' homes on a fixed date.³¹⁴

³⁰⁹Devereux, S. & Sabates-Wheeler, R. (2004). Transformative social protection. IDS Working Paper, 232 Brighton: IDS. Available at: <http://www.ids.ac.uk/files/dmfile/Wp232.pdf> (accessed on april22 2018)

³¹⁰ South Africa Social Security Agency

³¹¹ ILO Social Protection Department | South Africa: Older Person's Grant. Available at: <https://www.social-protection.org/gimi/RessourcePDF.action?ressource.ressourceId=53790> (Accessed on april22 2018)

³¹² Ibid

³¹³ Ibid

³¹⁴ Ibid

Nevertheless, the practice for payment channels of social security benefit Ethiopia is different. Article 47 of the public servants' pension proclamation No. 714/2003, stipulated only the amount and period of payment of pension benefits. In addition, the proclamation has failed to incorporate means, and place of payment of the benefits. Because of that, some beneficiary has forced to collect their benefits from the paying station that situated around their residence, whereas others obliged to come to collect the benefit from the very long distance.³¹⁵ For instance, some of the beneficiaries come from Mekanissa, Gellan, Kolefe, Kebenna, Saris Abbo, and Karra, to collect their monthly pension benefit from the paying station, which finds around Ledetta church.³¹⁶ In addition, the paying station has lacked enough shelter that protects the beneficiaries from a ray of sunlight and rain, and there is no chair, enables them to sit while waiting for the log lines.³¹⁷

International legal instruments also stipulated rules related to the manner and modes of delivery of the social security benefit. Such as Para 27 of General Comment No.19,³¹⁸ Stated that Benefits should give a prompt manner and beneficiaries should have physical access to the social security services to access benefits and information. Furthermore, according to Para 47 of General Comment No.19 and Para 7 of the Masseteric guidelines, Ethiopia, has the obligation to fulfill, and facilitate the easy way to collect the benefit.³¹⁹ Therefore, the mode and places of payment of social security benefit should be the place where the beneficiaries used to live. Particularly, the old age benefit payment, from the fact the beneficiaries of this benefit is physically weak and aged, the state has a duty to provide their benefits around where the beneficiaries live-in. Therefore, the mode and place of payment of pension benefits in Ethiopia were not in a prompt and place manner conducive for the beneficiaries. Thus, due to that fact, the benefit of social security, of the public servants was not physically accessible. Consequently, according to Para 65 of general comment No.19, Article 15/a/i/ of Masseteric guidelines and Para 70 and 72 of the Limburg Principles, Ethiopia has violated the right to social security of the civil servants which enshrined under article 9 of the ICESCR.

³¹⁵Interview and questioner with a group of individuals (50), who are currently pension beneficiary (40% of beneficiary responded place of payment is around their home, and 60% replay the payment place is not close to their home). In Addis Ababa Ethiopia (May17-30, 2018) these are the name of places where found in Addis Ababa.

³¹⁶ Ibid

³¹⁷ Id, 92% of the respondents replay the paying station is not suitable.

³¹⁸Cited above note at 11, Para 27

³¹⁹The obligation to fulfill is a condition that state parties expect to understand through the implementation of the covenant s. Available at: <https://www.ohchr.org/en/issues/escr/pages/whataretheobligationsofstatesonescr.aspx>(accessed on April 29 2018)

5.1.4 Suspended the implementation of the legislation

The Health Insurance Program, commonly known as “Medicare,” provides comprehensive health insurance protection to the aged, disabled, and for those who are in need.³²⁰ This also stipulated under ILO Covenant No. 102, Social Security (Minimum Standards) Covenant of 1952. Overall, there are two parts of the health insurance program. The first is Social Health Insurance (SHI), and the second is a Community-Based Insurance. The later one commonly focused to provide the health facility for informal sector individuals, whereas, the former focused to give that the health facility for the formal sector individuals. In particular, Social Health Insurance pools, both the health risks of its members, on the one hand, and the contributions of enterprises, households, and government, on the other.³²¹ Social Health Insurance “[a]nswers to the objective of universal coverage, whereby a set of basic healthcare services is accessible to all, irrespective of income or social status.”³²² SHI is hence diverse from other kinds of the health care system, which presuppose the straight payment of health care cost.³²³

The Social health insurance program provides for the concerned, either by the state or through the private health sectors. The Social health insurance program is based on the insurance principle: pooling the resource and sharing the risk. Therefore, beneficiaries are expected to contribute according to their ability to pay, and the remaining amount of contribution would cover by the employer.

The history of social health insurance in Ethiopia traces back to the year 2010. It is in this year that the first social health insurance proclamation No.690/2010³²⁴ adopted. According to article 12 of this legislation, the proclamation comes into force a year after, its publication in the Federal Negarit Gazeta. Thus, this legislation was expected to enter to force in the year 2011 or 2012. However, the proclamation did not enter force yet. According to government officials, the cause for failing to carry out proclamation was the political instability of the country, that abrupt the moment publicizing the legislation.³²⁵ Moreover, the resistances of some public servants

³²⁰Social health insurance in developing countries: A continuing challenge Guy Carrin World Health Organization, available at: <http://www.onlinelibrary.wiley.com/doi/pdf> (accessed on April 20 2018)

³²¹k. ntheny Amalonza, social health insurance in Kenya- prospects and challenges to implementation, cited above note at 214, p.1

³²²Social health insurance in developing countries, cited above note at 302

³²³Ibid

³²⁴Cited above note at 230

³²⁵Interview with Ato Tamiru Degole and w/rit Selamawite Tenaye, chief of staff of at Social Health Insurance Agency, in Addis Ababa Ethiopia (May, 25,2018)

were also among the causes of the malfunction of social health insurance proclamation.³²⁶ The reasons for resistance among others include lack of awareness of SHI, the size of contribution (3%) and the benefits package³²⁷ of the program.³²⁸ In addition, the inadequacy of medicine, the narrowness of the health insurance coverage package, poor facilities at the government health center and poor awareness of the civil servants were also the main reasons for resisting the SHI membership.³²⁹ As well, some of the current public servants also confirmed that they do not have an awareness of the social health insurance program, and some of the public civil servants have decided that they do not want to be the member of the social health insurance program.³³⁰

Even though, the political instability of the states rose as a cause for the malfunction of the proclamation, the truth fullness of this justification was doubtful. Because, there was a period that the government begun, to register, social health insurance membership to implement the proclamation. However, several public servants, including the researcher were not interested to be a member of the social health insurance program. The reason to fail to be the membership was not the instability of the country rather it was because of the poor status of the government health institution, and narrowness of the health insurance package.³³¹ Generally, what the researcher asserts that the justification “political instability” is not the true motive for suspending implementation of the social health insurance proclamation; rather it was because of the resistance of the civil servants that caused the lack of implementation of the proclamation.

According to the International Labour Conference (ILC) Report on Social security, the health care system is essential to keep going the employee health and enables to give relief for those who are in pain.³³² In addition, the low-level health condition of the employee would decrease the productivity of some countries, which are economically poor.³³³ The effect of having a poor health status in a given country would not only limit the capacity to work the employee, but it

³²⁶ Ibid

³²⁷ The health service package is it the menu of the service, which are going to provide by the state for the beneficiary. For instance, the Ethiopian SHI regulation No.271/2012, article 3 stipulated the packages that are going to cover by the service.

³²⁸ Interview with social health insurance officials, cited above note at 315

³²⁹ Ibid

³³⁰ Ibid

³³¹ Interview with the current civil servants (50), whom collected from different government institution, in Addis Ababa Ethiopia (May, 17-27,2018)

³³² International Labour Conference 89th Session 2001 Report VI Social security: Issues, challenges and prospects Sixth item on the agenda, p 15, available at: <https://www.ilo.org/public/english/standards/reln/ilc/ilc89/pdf/rep-vi.pdf> (accessed on April 20 2018)

³³³ Ibid

also would be causes for the employee not able to appear in their job, on the time.³³⁴ Therefore, the failure to provide the necessary health system instruments would consequence the hereinabove outcome. Thus, the resistance of the public servants was correct, because, the malfunction of the legislation was caused by, the poor status of the government health institution, inadequacy of medicine, and narrowness of health insurance package, which ultimately prevent the smooth implementation of the social health program.

According to Para 64 of General Comment No.19³³⁵, and Para 14/a/ of the Massteric guideline, the formal removal or suspension of legislation necessary for the continued enjoyment of an economic, social and cultural right that is currently enjoying, constitute the violation of socio-economic right by the act of commission. Therefore, the banning of the implementation of social health insurance proclamation by the Ethiopian government was contrary to the objective of article 9 of the ICESCR. The suspension of the implementation of this proclamation would yield the violation of the right to social security of the public servants. The justification for the suspension of the implementation of the proclamation was not supported and substantiated by the relevant international law. What is more, the State's party to ICESCRs has also the obligation to respect the three levels of the human right obligation. According to Para 50 of the General Comment No. 14, Ethiopia has a duty to respect, avoid from interfering directly or indirectly with enjoying the right to social security. However, instead of providing the necessary facility for implementing the legislation, the government has taken the action to suspend of the implantation of the proclamation, which constitutes the disrespect and interferes from enjoying the right to social security of the public servants.

Further, other human right instruments, such as Para 12, 33 and 36 of General comments No.14,³³⁶ Stipulated that state parties of ICESCRs have the duty to provide health care facilities, goods, and services, available in plenty quantity, and proper training of doctors and other medical personnel.³³⁷ According to the human rights committee general comment No. 19 on social security, Para 12/a/ "States parties have an obligation to guarantee that health systems are

³³⁴ Ibid

³³⁵ Cited above note at 11, Para 24

³³⁶ Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the highest attainable standard of health, 25 April-12 May 2000, E/C.12/2000/4, available at: <http://www.refworld.org/docid/47a7079a1.html> [Accessed 20 June 2018]

³³⁷ Ibid

established to provide adequate access to health services for all.’³³⁸ In addition, according to the cumulative reading of article 41 (4, 5) & 90 (1) of the FDRE constitution, the government has the obligation to provide the public health to the extent the country’s resource allows. Pursuant to Para 7 of Masseteric guidelines and Para 16 of the Limberg principle, Ethiopia has the obligation to fulfill to appreciate the rights that enshrined under the covenant.

Moreover, SHI schemes need to assure their members that they will, receive in fact, the promised health insurance benefits. This implies that the health services that are part of the health insurance benefit package need to exist or be created by the health insurance funds. It is evident that the health services infrastructure, the human resources, and the other necessary components of health services, such as drugs and laboratory examinations, all need to be available in order to produce adequate health services.³³⁹

However, the Ethiopia governments instated to give emphasis to the fulfilling the necessary health care facility, such as adequate and standardize medication, medical tools, proper training of doctors and other medical personnel the government was preferred to implement the registration of membership. However, this action did not take into consideration the actual ground condition of the state health care facility. Therefore, the state has failed to give due concern for the implementation of the obligation that enshrined under article 12 of the ICESCRs, thus, the government has failed its duty to fulfill the necessary facility, equipment, and well-equipped professionals to enable exercise the right to social security of the public servants. Hence, the failure to do the necessary obligation imposed on the government by international and national human right instruments constitute the violation of article 9 and 12 of the ICESCR.

Likewise, the suspension of the implementation of proclamation not only violates and prevents the right to social security of the civil servants but also violates others right of the civil servants. The right to health is one of the legally protected rights of public servants. The public servants and his family have the right to get health services and facilities without discrimination. The health policy of Ethiopia affirms health service focusing on prevention.³⁴⁰ Since public servants are the one who gets fewer salaries, and not capable to get health service from the private health

³³⁸General comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12) Coverage must include any morbid condition, whatever its cause, and pregnancy and confinement and their consequences, general and practical medical care, together with hospitalization

³³⁹Id, article 12.2

³⁴⁰

Available at: http://www.who.int/profiles_information/index.php/Ethiopia:General_country_health_policies (accessed on June 29 2018)

sector, their right to get health care access with fair cost would be impeded. Therefore, the suspension of the implementation of the proclamation is one the unfreedom aspect that hinders the public servants' from expanding the capability to choose, and influence one's life, freedom.³⁴¹ As Asamartay Sen stated, "development is a process of expanding the real freedom that people enjoy."³⁴² Therefore, one can assume that the suspension of the implementation of Social Health Insurance proclamation has impeded and violated the process of expanding the right to health of the public servants.

Therefore, according to Para 64 and 65 of general comment No.19, Article 14/a/ and 15/a/h/I/ of Massteric guideline, and Para 70 and 72 of the Limberg principles the suspension of the implementation of the social health insurance proclamation was not in the manner with the ICESCRs. In addition, this also violates the right to social security of the public servants, that enshrined under article 9 and 12 of the ICESCR, and the government has violated article 41 (4, 5) and 90 (1) of the FDRE constitution.

5.2 Prospects of the Right to Social Security of Public Servants

5.2.1 Physical accessibility of the benefit

The researcher mentioned somewhere in this paper that Poor facility and the far distance, of the place where the benefit of collecting the problem of the current social security system of public servants'. However, as I could understand from my informants Ato Ayalewe Durressa, some activities are taking by his institution (PSSSA) to avoid those problems.³⁴³ Thus, pension benefit will extend to pay off through the Commercial Bank of Ethiopia. Thus, the beneficiary can access their benefit nearby their house without the need to go to the very far distance.

5.2.2 Regarding suspension of benefits

The researcher has also mentioned that the suspension of the social health insurance legislation had caused hindrance on performing the right to social security of the public servants. Therefore, what I have told by that the officials of the Social Health Insurance Agency; they are preparing to give a widespread awareness creation, for the entire civil servants. Moreover, the SHIA is engaging an agreement with Red Cross, kennema, public and private diagnostic laboratories and some selected private drugstores for providing more standardize medicine equipment. Besides,

³⁴¹Sen, Development as Freedom (1989). Cited above note at 262, page 1

³⁴²Id p.4

³⁴³Interview with Ato Ayalewe Durressa Cited above note at 222

the SHIA also making some activities to enable to incorporate the civil servant through community -based health insurance, until the suspended proclamation be set free.

5.2.3 On the issue of extending the social security system

During my stay with Ato Ayalewe Durressa, what I have taken note is that the government is making the sign of progress and preparation for beginning soon the old age social assistance program. This social security program provides the government with no contribution from the citizen. Afterward, all old men whose ages are above seventy years will be entitled to be cover by this program.

Conclusion and Recommendations

Conclusion

Though Ethiopia became a state party to the ICESCR in 1993, the formal social security system had already been installed since 1961. Subsequently, the state has adopted several social security-related legislation, such as the pension proclamation. Despite the efforts made to modernize the social security system of the public servants, many problems and challenges impede the smooth implementation of the right to social security of the public servants. The right to social security has of fundamental importance in ensuring human dignity for all individuals when they face income interruption problem. The right to Social security also serves as a conduit for the implementation and realization of others socio-economic rights that enshrined under the ICESCRs.³⁴⁴ The implementation and securing of the right to social security of an individual would enable to access the way for realizing other rights. However, in the Ethiopian case, public servants do not enjoy the comprehensive benefits of the social security program. Unemployment, social health insurance, and child family benefits could not be implemented. Moreover, there are many of the ex-public servants have been left out with no social security benefit.

Although Ethiopia has adopted social health insurance for public servants, this social security system was not inclusive and adequate to embracing the whole public servants. Due to that fact, some public servants left out without social security coverage. The Ethiopian social security system was not also comprehensively employed the elements of social security, that enshrined under the Committee on Economic, Social and Cultural Rights, General Comment n.19. The state has failed to implement the obligation to fulfill and protect.³⁴⁵ Accordingly, the government has made directly or indirectly encroachment on the enjoyment of the right to social security of

³⁴⁴ Literally speaking in case where an employee faces temporarily loss of job it is obvious that s/he will be going to face income interruption. In that time of moment, these employee are not going to lose their income, rather they are going to also to lose a means to realize other rights enshrined under the ICESCRs covenant, such as the right to food, school of their children, life...etc.

³⁴⁵ According to Para 47 of general comment 19, the obligation to facilitate demand the states parties to take a positive measures to help individual and the community to enjoy the right to social security. This obligation include “legislative implementation; adopting a national social security strategy and plan of action to realize this right; ensuring that the social security system will be adequate, accessible for everyone and will cover social risks and contingencies”. The obligation to respect also focused on “The obligation to respect requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to social security. The obligation includes, inter alia, refraining from engaging in any practice or activity that, for example, denies or limits equal access to adequate social security.”

Available at: <https://www.global-healthrights.org/instrument/cescr-general-comment-no-19-the-right-to-social-security/> (Accessed on July 21 2018)

the public servants, by suspending the social health insurance legislation. Moreover, the government has failed to implement its obligation to facilitate. The government was expected to make adopt legislation for the implementation of the social security schemes that has been failed to provide: unemployment, child, and family benefits. Importantly, according to Para 82 and the following of the General Comment no.19, there is an obligation that imposed on the actors³⁴⁶ other than states. Accordingly, these non-states actors are under obligation to cooperate effectively with States parties regarding to the implementation of the right to social security. Since, there is a way that Ethiopia can claim assistance from these non-states actors for implementing the right to social security of the public servants, and there was a possibility of demonstrating the use of the maximum resource, a mere declaration of lack of available resource will not make free the states from its responsibility. Overall, the implementation of the right to social security of the public servants has failed to materialize comprehensively the elements of social security; hence, the status of the implementation of the right to social security of the public servants is weak.

³⁴⁶ According to Para 82 and the following of General Comment no. 19, the following organs considered as non states actor for the purpose of this paragraphs: the UN specialized agencies and other international organization concerned with social security(ILO,WHO,FAO, the UN Children's fund, the UN Human Right Settlement Programme, the UN Development Programme and ISSA (International Social Security Association) and WTO.

6.2. Recommendation

6.2.1. General

- ✚ The finding of this research has tried to show that the amount of social security benefit for public servants was not enough. Due to this fact, the beneficiaries of social security have been subject to live a harsh life, and to work tiresome work. Therefore, to avoid the problem of inadequacy of social security benefit, the government has to improve the size of the benefit. However, the improvement of the benefit should take into consideration the inflationary increase.
- ✚ Medicare or the social health insurance is one of nine minimum standards of social security schemes that enshrined under the ILO covenant no 102, 1952. Though Ethiopia is a member of the ILO, the state could not implement the social health insurance legislation for the last 9 years. As the outcome of that, the public servants are forced to spend a lot of amount money for the private health service. Therefore, the government has to implement the social health insurance proclamation.
- ✚ From the finding of the study, it is identified that the poor quality of the public health center, the inefficient of the professionals and inadequacy of medical tools were the main obstacle for the implementation of the social health insurance. Because of these problems several public servants has been failed to enjoy their right to social security. Hence, in order to assure the efficiency of the social health insurance program, there should be availability of medicine, equipment, and health professional.
- ✚ The physical access to social security benefit is one of the element that evaluate a given state social security system. According to this research finding, the benefit of the Ethiopian social security system was not physically accessible. Some of the beneficiaries have been forced to come to from a very long distance. Due to this fact, they have been forced to access their benefits through the difficult long journey and the uncomfortable pay station. Thus, the physical access of the social security benefit must be close and suitable to the place where the beneficiaries reside.
- ✚ The ILO covenant No 102, 1952 “minimum standard of social security” recognized the nine schemes of social security that need to be implemented by the states party to the covenant and a member of the ILO. Ethiopia is member to ILO. Among these minimum standards of social security schemes unemployment, child, and family benefit are the main. Ethiopia, for the reason that is not corroborated with the international and regional human right legal

instruments, could not implement these two schemes of social security. At the result of that, the public servants are facing problems. Especially, in the case where the public servant temporary loses his job, s/he could not feed their family, and could not send their children to the school. Therefore, to enable to solve these problems, the government has to facilitate the situation for enables to realize the unemployment benefit and child and family benefit. For that matter, the government has to facilitate a condition, which enables to contribute from both the employee and the employer. Moreover, additional means of the resource must be searched and available.

6.2.2. Legislative measures

✚ According to Para 67 of General Comment no.19, state parties to the ICESCRs, are obliged to adopt legislation for the implementation of obligation in relation with the right to social security. Moreover, the paragraph also instructed the states parties to take a measurement even to review the existing social security legislation, in case where the legislation does not compatible with the obligation that arising from the right to social security. Ethiopia is a member of the ICESCRs, and the state is obliged to implement the rights enshrined under the covenant. The right to social security is one right that found on article 9 of the ICESCRs. Moreover this right also recognized under the F.D.R.E constitution article 90/1/.

Therefore, according to Para 67 of General Comment no.19, Ethiopia has the obligation to review the existing social security-related legislation, because it does not compatible with the obligation that arose from the right to social security. Ultimately, this revision of legislation will lead to the incorporation of the left (unemployment and child and family benefits) social security schemes. Thus, the first measurement that expected from the government for the implementation of the unemployment and child and family benefit, is the enactment of new legislation. In addition, since Ethiopia adopts the social insurance social security system, for both benefits, the government has to facilitate the condition of the employee and the employer to make to contribution.

✚ This study has found that the social security protection of the public servants in Ethiopia was not comprehensive. The inaccessibility of social security coverage to the ex-public servants was the core issue. Due to inaccessibility of the social security coverage, they have been subjected to live a harsh, and miserable life, and some of were forced to do tiresome work. To end these impediments, there must be revision of legislation. According to general

comment no 19, Para 67, it has instructed the states parties to the ICESCRs to make legislation review, in case where the current legislation is incompatible with the obligation that arising from the right to social security. Moreover, article 41/5/ and 90/1/ of the FDRE constitution obliged the state to provide protection for those ex-public servants who has been failed to enjoying the right to social security. Thus, to reduce and avoid these problems the state has to realize the constitutional and the covenant rights of these individuals. There should be a separate legislation made by the state for the inclusion of the ex-public servants.

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Interview

Interview with Ato A Yalewe Durressa, an adviser to the general director of public servant social security, in Addis Ababa, Ethiopia (May 02, 2018);

Interview with Ato Buzayehu Walle, director of the directorate fund and investment at public servant social security, in Addis Ababa Ethiopia (May 4, 2018);

Interview with Ato Feretewehal Hailegiorgis, director of directorate legal service of public servant social security, in Addis Ababa, Ethiopia (April 26, 2018);

Interview with Ato Eregete Medebewe Joffe and others (10 peoples), victims of the pension proclamation legislation, in Addis Ababa, Ethiopia (April 29, 2018) and

Interview with Ato Tamiru Degole and w/rit Selamawite Tenaye, chief of staff of at social health insurance agency, in Addis Ababa Ethiopia (May 25, 2018)

Interview with a group of individual's civil servants (50), in Addis Ababa Ethiopia (May 17-27, 2018)

INTERVIEW GUIDE ON IMPLEMENTATION OF THE RIGHT TO SOCIAL SECURITY OF THE CIVIL SERVANTS' IN ETHIOPIA (FOR GOVERNMENTAL INSTITUTIONS, THE CIVIL SERVANTS, THE VICTIMS OF LEGISLATION AND THE SOCIAL SECURITY BENEFICIARIES)

NB

- a. The only purpose of this interview guide to extracts the information that is relevant to assess the status of the right to social security of the civil servants in Ethiopia.
- b. Information that has collected from the informants would only be employed to achieve the objective of the paper.

1. For public servant social security agency

1. How many social security schemes employed by Ethiopia, out of the nine, which are enshrined under ILO minimum standard, covenant No.102?.....
2. Do you think Ethiopia is implementing the social security system without difficulties?.....
3. What are the reason behinds for restriction or exclusion (if any) of some pension benefit and beneficiary?.....
4. Do you think that the benefit of social security is adequate?.....
5. Do you believe that the restrictions is proportional and justifiable?.....
6. What remedy have been taken by the government to minimize damage related to excluded social security beneficiary of public servants?.....

2. For the social health insurance government officials

1. What is the reason do you think for the suspension of the implementation of social health insurance?.....
2. Why do you think the reason that most people especial the civil servant resist to accept your proposal of social health insurance?.....
3. What is your next level of measurement regarding the suspended proclamation of social health insurance?.....

3. Question for the key informants (individuals)

For the victims of rough legislations

1. How money years do you have served as civil servant?.....
2. How do you express your feeling on the restriction of pension?.....
3. What are the things you have suffered due to this rough legislation?.....

4. Do you have any income or who can assist you?.....
5. What is your next hope?

For ordinary pension beneficiaries

1. How much pension benefit do you receive per month?.....
2. Do you have family?.....
3. Do you have extra income?.....
4. Do you think that the amount of the pension benefit is sufficient?.....
5. If not, what are other sources of income you use to cover your needs?.....

For the current civil servant

1. How long have you been working?
2. Did you give your consent for the membership of social health insurance? If not, why and why not?
3. Do you think that social health insurance is not important for civil servants?
.....
4. What adjustments do you think the government has to take to improve this system?.....