

# **Integrating Development Aid with Human Right Issues: The case of Ethiopia**

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**Addis Ababa University  
School of Graduate studies  
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**March 2008**

**Addis Ababa**

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**A thesis submitted to the School of Graduate Studies of  
Addis Ababa University in Partial Fulfillment of the  
Requirement for the Degree of Masters of Laws /LLM/ in  
Law**

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**March 2008  
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## Acronyms

ACP	African Caribbean and Pacific
AFRODAD	African Forum and Network on Debt and Development
CIDA	Canada International Development Agency
CUD	Coalition for Unity and Democracy
DBS	Direct Budget Support
DFID	Department for International Development (UK)
DRD	Declaration on the Right to Development
EC	European Community
EPRDF	Ethiopian People Revolutionary Democratic Front
ESF	Economic Support Fund
EU	European Union
FAO	Food and Agricultural Organization
FDRE	Federal Democratic Republic of Ethiopia
GNP	Gross National Product
HPR	House of Peoples Representative
HRBA	Human Right Based Approach
HRBAD	Human Right Based Approach to development
IBRID	International Bank for Reconstruction and Development
ICCPR	International Convention on Civil and Political Right
ICESCR	International Convention on Economic Social and Cultural Rights
ICJ	International Court of Justice
IDA	International Development Association
IMF	International Monetary Fund
MDG	Millennium Development Goals
MFN	Most Favored Nation
NGO	Non Governmental Organization
ODA	Official Development Assistance
OECD	Organization for Economic Co-operation and Development
PASDEP	Program to Accelerate Sustainable Development to Eradicate Poverty
PBS	Protection of Basic Service Project

SDRPP	Sustainable Development and Poverty Reduction Program
TPLF	Tigray Peoples Liberation Front
UDHR	Universal Declaration of Human Right
UN	United Nations
UNCT	United Nations Country Team
UNDP	United Nation Development Program
UNFPA	United Nation Fund for Population
UNGA	United Nations General Assembly
UNICEF	United Nations Children Fund
USAID	United State Agency for International Development
WFP	World Food Program
WHO	World Health Organization
WTO	World Trade Organization

## ***Acknowledgement***

*Let my first heart felt thanks goes to my advisor Dr. Patris Vahard, a human right advisor in the Regional office of the UN High commissioner for Human Right, for the invaluable scholarly comment he has given me on each part of the draft.*

*I am also greatfull for my friend Rahel Berhanu who has been a constant inspiration all along my way to write this thesis*

*Fearing that I will court the risk of slighting any of the people who helped me, by inadvertent omission, let me say that thanks to all of you.*

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# Abstract

The 2<sup>nd</sup> half of the by gone century has witnessed the evolution of the concept of human rights to assume a universal jurisdiction. Today a violation of human rights in one part of the planet is a violation against international community. Not only individual states but also states functioning at the international level are duty bearers regarding human rights. In short individual states and international community are required to respect, protect and promote human rights in every part of the world.

The right to development is one of the recently emerging human rights. Tracing its ideological birth in Africa back in 1970s, the right to development proved to be one of the cherished rights of peoples and individuals, especially those living in economically poor countries to which Ethiopia squarely belongs.

Obligations attached to human rights in general and the right to development specifically required the international community (especially the economically developed ones) to extend aid of various forms to the peoples living in poor countries. One form of such aid is development aid.

Paradoxically development aid from the donors has a potential of affecting human rights in the recipient countries both positively and negatively.

Human rights status in a given recipient country has also a role in determining the effectiveness of development aid in that country.

The normative framework build upon human right law, the multidimensional effects of development aid on human rights and the instrumental value of human rights for aid effectiveness all induced this thesis to argue that donors should integrate human rights in to their development activities.

In this thesis I have argued that donors of Ethiopia should redesign their development policy in such a way that it accommodates human right consideration in a meaningful way.

# Chapter One

## Introduction

### 1.1. Back ground

We members of human family were fortunate enough to have distinguished visionaries in those early days, when the concept of human rights was alien. Through the extra ordinary imaginative power of their mind, these individuals (philosophers, scholars, politicians....) visioned the world where all people might enjoy certain basic and inherent rights simply by virtue of being human beings. Living in time and place which nearly mirrors Platonic “ allegory of cave,”<sup>1</sup> having such thoughtful and insight full vision, a vision of the world in which coordination rather than subordination, equality rather than inequality, non- discrimination rather than discrimination

., justice rather than injustice will prevail, is simply something more than extraordinary.

The vision of human rights was equipped with so excessive magnetic power that it was not confined to the minds of these unique visionaries. In spite of all obstacles all along its way, millions of people has picked up the torch of the vision and worked to transform it in to reality.

The international community had no choice but to be submissive to such dramatic vision. Profoundly as a natural response to the power of the vision along with the horrors of the 20<sup>th</sup> century, the international community finally pronounced the official birth of the vision at the end of the Second world War.<sup>2</sup> The United Nation Charter adopted in June 1945 made explicit reference to the concept of human rights <sup>3</sup> and send a clear

message that how governments treated their own people was not a matter of exclusive domestic jurisdiction but the proper concern of the international community.

Article 55 of the UN charter mandates the UN to promote universal respect for human rights along with other purposes. Member states of the UN commit themselves to take joint and separate action to achieve these purposes as per Article 56 of the Charter. Thus the Charter heralded the long struggle of the transformation of the vision to reality. Thanks to the visionaries, to the vision it self, to those who scarified their life to see the vision being translated to reality, the concept of human rights now becomes the desideratum of the international community.

Presently a violation of human right in one part of the world is a violation of human right in the remaining part. Human right is no more the concern of few individuals, groups or countries. It rather assumed a universal jurisdiction<sup>4</sup>.

As it has been mentioned previously the international community pledged itself to work for the universal respect of human rights via the UN Charter. Subsequent declarations and conventions of human rights, which transformed the vision of human rights in to legal norms, require member states to take steps individually and through international assistance and cooperation for the full realization of human rights.<sup>5</sup>

What is more, a significant part of the contents of the Universal Declaration of Human rights has evolved in to international customary law.<sup>6</sup>

It is also agreed that some basic rights like the prohibition of genocide, slavery and racial discrimination, the right to life, humanitarian norms concerning prisoners of war, and possibly self-determination of peoples and the prohibition on torture belong to the category of norms called *Jus cogens*, preemptory norms of general international law accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted.<sup>7</sup>

All these are to mean that fundamental human rights issues are the legitimate concern of international community. Each member of international community is responsible to ensure that there is respect for human rights all over the world.

While the idea of state sovereignty and non interference (concepts which champion the idea that how governments treat individuals in their jurisdiction is a matter of domestic affairs) in the internal affairs of other countries has long been an important principle of the international system, the last 50 years have witnessed considerable inroads on the notion of sovereignty, including growing recognition of the obligation of states not only to respect basic human rights within their own jurisdiction but to foster and protect them abroad.<sup>8</sup> Even though states are the primary duty bearers regarding human rights, presently there is little disagreement about the obligation of world of states to respect, protect and fulfill human rights all over the world. Nevertheless this principle in the majority of cases has been reduced to the pages of history when its implementation was sought. Blinded by other factors like national interest, security, strategic interest or etc, states have been seen reluctant to take action against repressive regimes.

Be as it may, this latter legitimate responsibility of states allows them to pursue active human rights policies and to use those as the general

framework for their foreign policy, development aid, and any other relevant policies.<sup>9</sup> Designing development aid policy in line with human right standards is at issue here.

Tracing its legal foundation back to Article 55 and 56 of the UN charter, the general duty to cooperate for development among states seems to enjoy a general acceptance, not to mention the debate surrounding the nature and content of the duty. The Declarations adopted by the string of world conferences and summits of the 1980s and 1990s have all reaffirmed the right to development to be universal and inalienable.<sup>10</sup> One such declaration is the 1986 UN Declaration on the Right to Development.

Art 1 (1) of this Declaration states that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to , and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. Article 3 and 4 of the same document elaborates this right by articulating that the right to development brings the primary responsibility for the creation of national and international conditions favorable to the realization of the right , the duty to cooperate with each other in ensuring development and eliminating obstacles to development and the duty to take steps individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.

The International Convention on Economic, Social and Cultural rights, the Convention on the Rights of the Child, the African Charter on Human and Peoples Rights are some of the instruments to be recalled in giving a clue to the existence of a development cooperation obligation among states.<sup>11</sup>

For developed countries this entails certain general duties to provide financial and other appropriate assistance to the developing countries.<sup>12</sup> But this assertion is without undermining the problem associated with the exact content of the duty to cooperate and identifying the exact holder of the right as well as the specific bearer of the duty. Developed Countries are not comfortable with the idea of the existence of the duty to extend development assistance.

The legitimate concern of international community regarding human rights coupled with the duty of development cooperation among members of international community gave birth to the issue of integrating development aid with human right issues.

The complexity of globalization and the international system draws attention to the interdependence and interrelation of the various elements of the system. One of the most important shifts in international relations is that nowadays almost all issues have trans boundary effects.<sup>13</sup> It is with in the general framework of this trend that establishing a nexus between development assistance and human right issues is developed.

The tail end of the last century witnessed institutionalization of the link between development assistance and human rights, though using human right issues as conditions for development assistance has been debated for decades.

Some donors, making reference to their obligation to wards the promotion and protection of human rights globally, have been fond of referring human rights and/or democracy issues in their development assistance policies. Others have also considered human rights issues as some thing beyond their jurisdiction and continued to 'do business as usual', even with the most dictatorial regimes of the world.

Not to mention the inherent relationship between development and human right, development aid has potential impact on the status of human right in particular country. The impact may be positive or negative.<sup>14</sup>

The positive impact can be exhibited through support and stimulation of national interest for the promotion and protection of human right and process of democratization.<sup>15</sup> The idea is development aid partners may facilitate the national effort to bring an environment favorable to human rights. This is what some call positive approach, <sup>16</sup> which perceives development assistance as a concrete means of supporting the creation of conditions under which human rights and democracy can thrive.

On the other hand development assistance may play a negative role in the process of promotion and protection of human rights. This is what some prefers to call a negative approach of development assistance<sup>17</sup> in relation to human rights. The idea here is that development cooperation could be discharged without considering human right issues. In such cases development assistance activities may reinforce subversive activities regarding human rights. If a regime in power, for example, is not pursuing policies in the interest of the population or if it is notorious for involvement in or toleration of flagrant human rights violations, and is not open to dialogue, then development assistance is likely to contribute to maintenance of the *status que* in the country concerned, rather than promote change.

As a reaction to this negative impact of development aid on human rights, donors may resort to negative or punitive measures (sanctions) and as a result may reduce or suspend or terminate their development assistance activities in the recipient countries.

The recipient (usually developing) countries on the other hand have lamented such act of linking development cooperation and human right

(especially the negative approach) and considered such move as interference with domestic affair. This confrontation between the developed nations (northerners) and developing ones (southerners) took the stage of the East-West confrontation of the cold war era.

Ethiopia has been one of the least developing countries. Low living standards, recurrent droughts, famine, poverty have been some of the manifestations of our economy. Ethiopians have been indebted to the international community for its aid both in time of good and bad. The response of the international community to save the lives of millions of our citizens during the 1986 famine through Live Aid was still in our fresh memory. In addition to humanitarian assistance, the international community has been extending a large amount of development aid to Ethiopia annually.<sup>18</sup> Ethiopian economy is consuming more than a billion dollar per year from development aid.<sup>19</sup> Needless to say our economy is an aid dependent one.

The story of our human rights record has been also a night mare. Ethiopians have been suffered from repressive regimes. Even though the present status of human rights record in Ethiopia is a great departure from the past, massive and systematic human right violations are still common. A quick look at the periodical reports of national and international human right organizations is telling in this regard. Denying access to opposition blogs on the internet, restricting freedom of assembly, harassing opposition leaders, systematic and selected killings, jamming foreign based radio transmissions to Ethiopia, arbitrary detentions, torture and similar examples of human right violations are still not uncommon in Ethiopia.

Bing one of the least developing country and having a highly aid-dependent economy on the one hand and having a poor human right

record on the other hand, Ethiopia has hosted the debate surrounding development aid with human rights. Of course it has been a recurrent issue on the side of donors to debate the suspension or termination of aid to Ethiopia.<sup>20</sup>

The government of Ethiopia has always in the forefront to blame this effort of donors' community to integrate human rights with development aid.

The issue of integration development aid with human rights giving a particular emphasis to Ethiopia makes the subject of this dissertation.

## 1.2. Objective of the Thesis

The main objective of the thesis is to explore the place that development assistance activities of donors accord or should accord to human right related concerns. The study ~~try~~ <sup>try</sup> to locate the legal foundation, if any, for linking development aid and human right issues. Particular focus ~~will~~ be given to the case of Ethiopia.

## 1.3. Statement of the problem.

Developing countries, including Ethiopia have the right to development. Though the exact content and scope of such right is still subject to conceptual muddles, there is little disagreement among international community about the existence of the right to development. And this right, among others, commands the developed countries to extend development cooperation or aid to the developing countries. In short there is a duty to cooperate on the part of the developed world.

Equally true is international human rights instruments and customary international human right laws require every member of the international

community , including the developed countries, to ensure better protection or respect of human rights in the world. These obligations may demand for a variety of actions from donors community ranging from extending aid to the peoples of the recipient country to taking actions to rectify the violation of human rights in the latter.

Unfortunately most of the serious violations of human rights in the world have been occurring in the developing countries, a group to which Ethiopia belongs. As a form of response donors used to be seen to use aid or assistance as a trade -off to make sure that the recipient countries are up to their expectation of international human rights law.

The development aid relation between donors and Ethiopia is not an exception to this. Human rights concerns played a pivotal role, for example, in the decision of donors to suspend aid to Ethiopia two years ago, following the 2005 national election. There was also a strong debate among the public about the legitimacy of the donors in suspending aid; mainly on human right concerns. The action of the American congress to pass a certain human right act regarding Ethiopia recently also adds fuel to the debate.

This study tries to address whether or not the right to development specifically and human right in general provide a platform for donors to mainstream human rights in to their development activities in the recipient countries and if so to what extent they integrate human rights with their development aid policies, giving particular emphasis to the Ethiopian case.

## 1.4. Questions to be addressed

The main Questions to be addressed by this study include: do developed countries have obligation to monitor human right records of developing countries?, do they have an obligation to give development aid or assistance to developing countries?, if there is a duty to extend development aid, should this development aid be integrated with human right issues ?, should donors of Ethiopian government conditioned their development aid on human right records of the country?, and other related questions

## 1.5. Significance of the Study

In light of the conceptual and practical muddling surrounding the issue of integrating development aid with human right issues in Ethiopia, the study may of help to locate the legal base for such integration and to explore the approaches followed by some of the major donors of the country. More importantly I believe that the study would have an instrumental value in initiating further researches on the issue.

## 1.6. Scope

The scope of the study is limited to the role that development aid plays or should play the promotion, respect and protection of human rights. Consideration of or not of human right issues in relief or humanitarian aid and loans are outside the scope of the study. Of all the various forms of development cooperation, only development aid makes the subject of the study. The study focuses on the Ethiopian case and thus explore how some of basic multilateral and bilateral donors of the Ethiopian government view the human right issues in their development aid relationship with the latter. The study do this by analyzing human right instruments and policies.

## 1.7. Methodology

The methodology employed in this research is doctrinal. The study will highly depend up on secondary sources, analysis of provisions of human right instruments and policies of donors.

## 1.8. Organization.

The study has four parts. The first Part deals with introductory elements. The second part will explore the legal foundation of the link between development and human right issues. The third part will discuss the issue of integrating development aid with human rights. And the last part hosts discussion on the approaches of some of the donors of Ethiopian government.

# **CHAPTER TWO**

## **Human Right and Development in Ethiopia**

### **2.1 Country Background**

Having a population of nearly 80 million,<sup>21</sup> half of which lives under the national poverty line;<sup>22</sup> Ethiopia is a federal republic ruled by the Ethiopian People's Revolutionary Democratic Front Coalition.

Ethiopians ongoing political evolution was began with the end of Emperor Haile Selassie's reign in 1974 and the rise of the Dergue regime of Colonel Mengstu Halile Mariam.

Since the fall of the Dergue regime in 1991, the country's politics has been highly dominated by the present ruling party, EPDRF, a coalition of ethnic based political parties dominated by the Tigray People's Liberation Front (TPLF).

Until the recent national election in 2005, the ruling party had dominated almost 90% of the seats of the House of peoples Representatives (HPR). The May 2005 election, the first of its kind in terms of popular participation and number of seats won by opposition parties, caused civil -riots which resulted in serious violation of human rights, loss of life, property damages and disruption of socio - economic activities in the country.

Since then the human rights condition in the country has been, as viewed by many, deteriorating<sup>23</sup> and characterized by political instability,

and imprisonment of thousands of peoples, including the prominent leaders of the main opposition party called CUD.

The Ethiopian economy, struggling at the tail end of the list of world economics, has generally been disappointing. The recent human development report of UNDP ranked Ethiopia 169<sup>th</sup> among 177 states of the world. <sup>24</sup> Political upheavals, inappropriate policies, resource - population in balances are some of the man made factors for such low performance of the economy <sup>25</sup>. That being the case, Ethiopian economy has been highly depending on foreign aid. One recent study shows that foreign aid covers up to 40% of the total public expenditure.<sup>26</sup> Foreign aid may come form mainly bilateral donors, multilateral institutions and NGOs. According to a UNDP data, over the past few years bilateral sources have accounted for about 45% of the total aid and multilateral sources for 55 %<sup>27</sup> (excluding development aid channeled through NGOs)

## **2.2 Human Rights: Concepts and Standards**

Being the recent and perhaps modified version of what in earlier centuries called “natural rights,” the concept of human rights has been become the desideratum of modern society.

Analyses of the evolution of human rights would take us to the classical naturalist theories which stipulate the existence of rationally identifiable trans-cultural and trans-historical moral truths (natural moral orders). <sup>28</sup> This thought has been nurtured to give birth to the doctrine of natural law, the doctrine which expounds the existence of a natural moral code based upon the identification of certain fundamental and objectively verifiable human goods. <sup>29</sup> Put the other way the doctrine of natural law is based on the assumption that over and above particular systems of

positive law there is a higher law to which human beings can appeal and in terms of which they may judge the adequacy of existing systems.<sup>30</sup>

Developing out of the concept of natural law was the concept of natural rights, the doctrine which preached that individuals possess some rights whose existence is not contingent up on social or political recognition.<sup>31</sup>

The contemporary notion of human rights has been evolved form the theory of natural right. Underlying the contemporary notion of human right is the principle that members of human family all over the world have human rights simply because they are human beings. Here comes the disturbing question: what is meant by the concept of human rights?

In conceptual terms, human rights are derivative of the concept of a right. Thus in order to have a better understanding of the concept of human rights, it is quite logical to lend oneself to the analysis of the term "right."

The term right, in common parlance, refers to two things: what is right (the right thing to do) and a special entitlement that one has to something.<sup>32</sup> In the latter sense rights are claims or entitlements one has to some substance which he/she might assert, or demand, or enjoy, or enforce (exercising) against some individual or group by invoking some justification.<sup>33</sup> In a nutshell, rights are assertive claims to be made by individual or group of individuals against some other individual or groups.

One important point here is that the right holder should base his/her claim on some reason or justification. S/he might invoke some legal provisions or some rationally identifiable moral principles. Those claims which can be asserted by citing some legal provisions or can manage to

enjoy the recognition and protection of the law are called legal rights.<sup>34</sup> Questions as to their existence can be resolved by simply locating the relevant legal instrument or piece of legislation. Thus the existence of legal right is conditioned upon some form of legal recognition.

On the other side of spectrum lies what we call moral rights. These refer to claims whose existence is not depending on the social, political or legal recognition. These are claims which can be asserted by appealing to some moral principle.<sup>35</sup> Their existence can be justified by some trans – cultural, trans – historical, trans – legal moral truths. These moral rights may or may not be recognized by the action of legislator. If those what we call “moral rights” are recognized by law, they become legal rights. Thus a right may, at the same time, be moral and legal one.

Human rights fall under the latter category. They are right possessed by human beings and their existence is independent of any form of legal political or social recognition.<sup>36</sup>

This way human rights have been defined as basic moral guarantees that individuals or peoples in all countries and cultures arguably have simply because they are human beings.<sup>37</sup> Their source or justification is based on the moral account of the human nature, what it means to be a human being.<sup>38</sup> They are considered to be intimately connected to human dignity, a life worthy of living. For some they are rights without which there can be no human dignity.<sup>39</sup> Human rights are rights belong to humanity and do not depend for their existence on the legal and moral practices of different communities in which individuals belonged.

## **2.3 Duties in Relation To Human Rights**

Rights are related to responsibilities and duties for which respective duty-bearers can be held accountable. Although the precise obligations of states regarding human rights vary from treaty to treaty, generally speaking states can be regarded as obliged to respect, protect and fulfill rights contained within international human rights treaties.<sup>40</sup>

The obligation to respect simply refers to the obligation to refrain from state intervention, provided the latter is not admissible under any relevant legal limitations and reservation clauses.<sup>41</sup> This obligation requires states to make sure that none of its organs violate or impede enjoyment of human rights by their policies or actions. Unjustifiable interventions are considered to be violations of the human right in question. Thus, for example, the right of life corresponds to the states obligation not to kill.

The obligation to protect rights requires states to ensure that enjoyment by everyone without discrimination, of all their human rights is protected from abuse by third parties.<sup>42</sup> This obligation has to do with the horizontal violation of human rights by individuals and other non-state actors at all levels of society. The obligation, among others, involves encouraging individuals and organizations to respect the right of others, as well as imposing sanctions for violations of human rights committed by individuals or non-state actors.

The other obligation assumed by states in relation to human rights is obligation to fulfill rights. This obligation mainly mandates states to take positive action to achieve the full realization of rights. This obligation could be discharged through the adoption of legislative and other

measures, such as the provision of education and other public services and policies to ensure access for every one to basic needs.<sup>43</sup>

Regarding to economic, social and cultural rights, this obligation can be explained to mean that states are obliged to take all measures to achieve progressive realization of rights recognized in the ICESCR.<sup>44</sup>

## **2.4 Human Rights as Legitimate Concern of International Community**

Many centuries ago the vision of human rights had been lurked in dark corner of the minds of very few unique individuals who have an extra imaginative power. The writer would take the liberty to analyze the original status of human rights concept with people living in Plato's "*Allegory of Cave*."<sup>45</sup> Buried deep inside the long cave, the vision had enjoyed only a blurred sight of the world out there. But the darkness of the cave did not prohibited thoughtful and insightful visionaries from discovering this vision. These unique personalities have seen in their mind's eye a world in which all people might enjoy certain basic and inherent rights simply by virtue of being human beings,<sup>46</sup> a world without borders in which we members of human family might be treated equally without discrimination based on, gender, race, belief, social status, religion, nationality, etc, a world in which the suffering of fellow members of human family might be the legitimate concern of other members.

The visionaries had been induced to discover and champion the vision of human rights by different factors: religious belief, compassion, a sense of duty to care for brother and sister suffering in distress, philosophical discourse about the nature of human kind itself or natural law or the appropriate power of government, violence and upheaval or heat of anger

generated by a passionate sense of injustice being inflicted up on innocent or defenseless victims.<sup>47</sup>

With all contradictions and differences they have, the major religions of the world have underlined centrality of the worth and dignity of human life as well as the duty towards fellow individuals who suffer.<sup>48</sup>

Philosophical discourses, which have managed to trace the existence of some supra-legal order in the name of natural law, or law of God or Moral norm, from which inferred the existence of natural rights also played a pivotal role for the birth of the visions of human rights.

The long anti-slavery struggle aimed at freeing the enslaved,<sup>49</sup> early sporadic efforts to assist the oppressed and exploited in the name of justice,<sup>50</sup> a sense of duty to care for the wounded victims of armed conflict,<sup>51</sup> have also contributed much in the evolution of the visions of human rights.

The vision of borderless world in which members of human family enjoy equal treatment had to survive tremendous resistance all along its way to see the light of the day, to use my earlier analogy-to come out of Plato's "*Allegory of cave*," Nevertheless, the magnetic power of the vision and the determination of the visionaries were so great that international community started to lend its ear for the cause of the vision.

The II World War was considered as a watershed in the evolution of international concern for human rights. The horror and trauma of the two world wars, particularly the II World War, shocked humanity from its foundation. The second World War alone, it has been said, consumed the life of over 50 million members of human family.<sup>52</sup> The tragedies of Holocaust<sup>53</sup> was something more than terrifying for the international

community. The Holocaust displayed how a single state, hiding behind the shield of principle of national sovereignty, causes a devastating loss for humanity. The international community for the first time with shock and agony vowed that the type of Holocaust would no longer be repeated. The opening statement of the International Military Tribunal at Nuremberg by Justice Robert Jackson worth mentioning here:

*“The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that civilization can not tolerate their being ignored because it can not survived their being repeated.”<sup>54</sup>*

Such unparalleled atrocities committed against the members of human family and humanity in general Conveyed a clear message that the international community should not be a passive observer when a state violates some fundamental rights of its citizens under the guise of domestic jurisdiction.

People around the world had endured too much suffering, made too many sacrifices and witnessed too much of the staggering capacity of modern states to oppress, torture, and kill millions of their own fellow human beings on a global scale to ever simply return to an unchanged past. <sup>55</sup> The protection and promotion of rights of individuals was begun to see as a pre-condition to secure world peace.

Now as a result of the Second World War, it has become clear that a regime of violence and oppression within any nation of the civilized world is a matter of concern for all the rest.<sup>56</sup>

It was in this environment and understanding that the United Nations Conference on international organization was called at San Francisco in April 1945 and in June 1945, the delegates of the nations of the world heralded the adoption of the charter which creates the United Nations.<sup>57</sup>

The Charter contains explicit provisions regarding human rights. In the words of John P. Humphrey, "references to human rights run through the United Nations Charter like a golden thread".<sup>58</sup> The Charter makes respect and promotion of human rights as one purpose of the newly established organization, and requires state parties to take joint and separate action to promote such purpose.<sup>59</sup>

For the first time in history the international community made its intention clear that the issue of human right would no longer be confined to domestic jurisdiction. Thanks to the tireless effort of the visionaries, the oppressed people and those who scarified their life to see the realization of their vision, the issue of human rights was introduced in to international jurisdiction. To use my previous analogy, the UN charter heralded the news of the coming out of the vision of human rights from Plato's "*Allegory of cave.*" Never before in history or the annals of diplomacy had issues of international human rights been so openly discussed, strongly advocated, or made such an integral part of a negotiated agreement with formal obligations and enlarged responsibility.<sup>60</sup> The UN charter, one can say, takes human rights out of domestic jurisdiction.

Nevertheless on the liability side of the balance sheet is the domestic jurisdiction principle recognized by Article 2(7) of the Charter, which reads:

*“Nothing contained in the present charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require members to submit such matters to settlement”*

The inclusion of this clause in the Charter armed the opponents of human rights with necessary ammunition to block intervention of international community to suppress issues of human rights in domestic affairs. Some commentators went to the extent of saying that the delegates of San Francisco Conference cynically and capriciously took away with one hand what they have given with the other.<sup>61</sup>

This apparent contradiction between the international human right clause and national sovereignty clause as enshrined in article 1 and 2 of the Charter respectively had set the stage for innumerable debate and struggle to come. Of course, to date it is not uncommon to see dictatorial governments raise the national sovereignty clause of the Charter to defeat accusation from international community regarding human rights.

Perhaps the first real test case between international human rights clause and national sovereignty clause of the charter was presented before the General Assembly in 1946.

In this case the delegates of India to the first session of the UN, accused the government of South Africa of grossly violating the human rights of Indians and black peoples in total contradiction of the human right clauses of the Charter and asked the General Assembly to take action.<sup>62</sup> The delegate of South Africa immediately reacted by saying that his country was protected by Art. 2(7) of the Charter and further stated that

the treatment of Indians, coloreds and mixed races was purely and simply matter of domestic jurisdiction.<sup>63</sup> After a long debate, the General Assembly passed a resolution condemning the act of South African government with a two-third majority though countries like USA, Britain, Canada and Australia stood on the side of the position of South Africa.<sup>64</sup>

This case marked a revolutionary departure and signaled to all governments in the world that the members of the United Nations would no longer be silent on this question or be swayed by the traditional argument that how a nation treated its own people was somehow exclusively its own business.

After countless struggles, discussions and debates, the United Nations had proclaimed the vision of human rights on behalf of all peoples in the world in the name of Universal Declaration of Human Rights (UDHR) in 1948, to use the words of the then First Lady of USA Eleanor Rosvellet “the international Magna Carta of all human beings everywhere.”<sup>65</sup>

The Universal Declaration of Human Rights through its various provisions dealing with exclusively human rights issues re-affirmed that human rights were matters of legitimate international concern and no longer within the domestic jurisdiction of nation states as in the past.

Ever since the adoption of the UDHR, the effort of introducing the issue of human rights in to the international jurisdiction not only by words but also by deeds was faced by international political realities, notably the Cold War, which is characterized by the ideological struggle between the West and East.

The Cold War reinforced the reluctance of states after 1948 to submit to international regulation of human rights, and consequently, not with

standing the UDHR, human rights returned to the margins of international politics in 1950s.<sup>66</sup> The ideological and geographical struggle between the two super powers of the time, USA and USSR, made the effort of the United Nations to adopt binding treaties for human rights difficult.<sup>67</sup>

Finally in 1966 the international community managed to adopt the two binding covenants, ICCPR and ICSEER, which together with UDHR become known as International Bill of Rights. For the first time in history international community have internationally agreed minimum standards for a life of dignity.

In the following years the United Nations passed different resolutions which gave mandate for the Human Right Commission of the UN to discuss and give recommendation on human rights violations in particular countries.<sup>68</sup>

The 1970s also saw the explicit introduction of human right issues in foreign policies of individual countries. Heralded by the bold step taken by President Jimmy Carter of US America to proclaim human rights as a central component of United States foreign policy,<sup>69</sup> Netherlands and Norway went the same way<sup>70</sup>

The collapse of the communist block in the closing years of the 1980s heralded the end of the cold war, the event which created fertile ground for the international human rights.

The final document of the Second international human rights conference held at Vienna in 1993 made clear the unanimous stand of international community to declare that human rights are direct and legitimate

concern of international community and do not belong exclusively to the internal affairs of the state concerned.<sup>71</sup>

More dramatic change in the introduction of human rights in to international relations has been manifested by the growing determination to hold some of the worst abusers of human rights individually responsible for their crime.

The establishment of the International Criminal Tribunals for former Yugoslavia and Rwanda in 1993 and 1994 respectively <sup>72</sup> and the International Criminal Court in 1998 were major achievements to realize the verbal commitment of international community to human rights.<sup>73</sup>

With the ever-growing value placed up on human rights, members of the international community have been less and less willing to allow themselves to remain impotent by standers, turning their backs on victims who suffer in their midst and letting gross and systematic violations of human rights continue unchecked.<sup>74</sup>

The traditional doctrine of sovereignty lacks its ideological power to deny issue of human rights a universal jurisdiction. Today human right issues have been featured in foreign policies of most developed countries of the North.<sup>75</sup>

What is more, most donors countries of the world; at least in principle, are linking their development assistance to the issue of human rights. The integration approach to human rights has been become the rule of the day in international relations. The next chapter will explore such contemporary effort of mainstreaming human rights in to development aid.

## 2.5. Human Rights in Ethiopia: A Quick Portray

### I. Legal Framework

Human rights have become part of the legal and political discourse of the present Ethiopia. The 1995 constitution, which is the fourth written constitution that the country witnessed, makes the principle of human rights as one of the *jural postulates* of the country. The constitution sanctified human rights. Listing a total of more than thirty types of rights, the Ethiopian constitution has incorporated the fundamental rights and freedoms which have their base in the UDHR, different international human right instruments and customary international human rights law.

Article 10 of the constitution makes human rights as the basic principle, read as follows.

1. *Human right and freedoms emanating form the nature of man kind, are inviolable and inalienable.*
2. *Human and democratic rights of citizens and peoples shall be respected.*

Accordingly all categories of rights included under chapter 3 of the constitution, be they civil and political, socio – economic or collective rights, are inviolable and inalienable. The constitution accords equal status for all categories of human rights.

Article 13(2) of the constitution requires the interpretation of the human rights provisions to be in conformity with the principles enshrined in the international human right instruments. Thus international human right treaties adopted by Ethiopia are to serve as guidelines in interpretation. Sub article 1 of the same provision imposes obligation to respect and

enforce human rights on all federal and state legislative, executive and judicial organs at all levels,

One last point worth mentioning here is that the constitution gives the power to interpret the constitutional provisions (including the human right provisions) to a political body called House of Federation.<sup>76</sup> This has a far reaching practical consequence on the direct application of human right provisions by courts of law.

On the international level, Ethiopia has become a party to many of the important international human rights treaties. The country ratified the two covenants (ICCPR and ICESCR) of 1966, the Convention on the Elimination of All Forms of Discrimination Against Women, the African Charter on Human and Peoples Rights, Convention on the Elimination of Racial Discrimination, Convention on the Prevention and Punishment of the Crime of Genocide, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or punishment, Convention on Children Rights and others.<sup>77</sup> All these conventions and treaties are integral part of the domestic laws of Ethiopia by virtue of Article 9 (4) of the constitution.

Be as it may, the general analysis of the issue under discussion leaves one no space enough to argue that the legal framework of human rights in Ethiopia is not well established. Not to mention some of the puzzles facing the implementation state of human rights, Ethiopia has established a strong legal set up for human rights.

## **II. Institutional Framework**

No less important for the realization of human rights in one country is the institutional set up through which human rights norms are implemented.

Not less to say having an independent, effective and vibrant judiciary organ is a basic engine for the protection and implementation of human right. The FDRE constitution established a two layer judiciary system: Federal and state judiciary.<sup>78</sup> Risking the obvious limitation of compromising what is stated in paper with what is being actually done, the constitution states that the judiciary is independent. Nevertheless the independence of the judiciary has been questioned by many. The recent trial of CUD (Coalition for Unity and Democracy) leaders was subjected to intense criticism from both inside and outside.<sup>79</sup>

The constitution also mandates the House of peoples Representatives to establish Ombudsman and Human right commission, which were established in 2000 by proclamation no 211/2000 and 210/ 2000 respectively.<sup>80</sup>

## **III Implementation**

The implementation of the human rights provision of the FDRE Constitution has been sapped by the Judicial timidity of our courts and the lack of commitment on the part of the government to live up to its human rights obligation. There is little disagreement among local and international community about the deteriorating conditions of human rights in Ethiopia after the 2005 national election. The mass detention of tens of thousands of individuals in November 2005 as reaction to the political crisis, the widely criticized trial of the leaders of the main

opposition party, arbitrary detention of individuals, targeted killings (especially in Oromia and Somali regions), restriction on the right to assembly, trafficking in persons, arbitrary interference with privacy of individuals and groups, the unofficial embargo of dissemination of information in the country, are few<sup>81</sup> to exemplify the lack of political will to discharge human right obligations.

Due to the constitutional provision which gives the power to interpret the Constitution to the House of Federation Council, Courts have been suffered from a “phobia” of applying human right Provisions of the constitution to dispose human right cases; though there is no legal limitation, at least, prohibiting them to do so.<sup>82</sup>

## **2.6. Development and Human Rights**

### **I. Development as Human Right.**

#### **A) Overview**

Ever since the adoption of the two covenants, ICCPR and ICESCR, the jurisdiction of international human rights law have witnessed the proliferation of specific instruments dealing with specific human right issues. The right to development was born out of such process of broadening the horizon of human rights.

Claimed to have an African origin<sup>83</sup> the right to development traced its historical foundation to the claim stages by the newly developing countries emerged out of the process of decolonization back in the 1960s and 1970s. These countries, campaigned for the creation of a more just international economic order, declared development to be a human right and used United Nations mechanisms to try to influence international economic relations and the international human rights system<sup>84</sup>

But this proposal of new international economic order in the attainment of which the African countries have played a role of first importance, has come up against strong resistance from the developed countries, anxious to defend their gains and to protect their future interests.<sup>85</sup>

In 1981, the right to development managed to claim a legal status in Africa. The African charter on human and people's right became the first human right instrument in recognizing the right to development as human right <sup>86</sup>

On the international level, after deliberations and discussions which spanned decades the UNGA adopted the Declaration on the Right to Development in 1986. <sup>87</sup>

The Declaration was adopted by an overwhelming majority with the United States being the only country dared vote against it and eight countries (Denmark, Finland, Federal Germany, Iceland, Israel, Japan, Sweden, and Great Britain) abstained,<sup>88</sup> mainly on the fear that this right demands a correlative duty on the part of the developed countries.

Of course the single dissenting vote by the United States set back the process by several years, during which the international community could have tried to translate such a right to development in to a reality. <sup>89</sup> Philosophical, legal and political issues in relation to the foundational basis of such right, clarification of its nature and content, identification of the right- holders and duty -bearers ,and its justifiability and other related issues continued to plague the effort of realizing such rights in the years following the adoption of the declaration.

The end of the East – West ideological confrontation, the cold war, created a conducive environment for international community to build consensus on the right to development. The 1993 Vienna Declaration and Program of Action negotiated at the second international human right conference in Vienna, enjoyed a unanimous adoption by all 171 member states including the United States.<sup>90</sup> The declaration reaffirmed the right to development as established in the declaration on the right to development as a universal, and inalienable right and an integral part of fundamental human rights.

In the Millennium Declaration of 2000, the state parties committed to make the right to development a reality for every one.<sup>91</sup> Of course one of the eight goals endorsed by world head of states at the Millennium summit, pertains to this right of development<sup>92</sup>

## **B) Nature of the Right to Development**

The Declaration of the Right to Development (DRD) in its very first Article defines the right to development as follows:

*“The right to development is an inalienable human aright by virtue of which every human person and all peoples are entitled to participate in and contribute to and enjoy economic, social, and political development in which all human rights and fundamental freedoms can be fully realized.”<sup>93</sup>*

The former UN independent expert on the right to development, Proff Arjun sengupta, describes the three element of this definition article as follows (a) there is an inalienable human right called the right to development, (b) there is a particular process of economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized; and (c) the right to

development is a human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy that particular process of development.<sup>94</sup> Accordingly he defines the right to development as the right to a particular process of development in which all human rights and fundamental freedoms can be fully realized<sup>95</sup>

Thus countries of the world may follow different processes of development through which they can develop. But they have to ensure that the particular process of development they follow is the one in which all human rights and fundamental freedoms can be fully realized. What is being considered as human right is not development *per se*, but among the many ways of development, the particular process of development in which all human rights can be realized. This calls for right – based development process i.e. development process which is consistent with human rights standards.

Another important point about the nature of the right to development, as inferred from the definition articles of the DRD, is its multidimensional aspect in that development is a comprehensive process that goes beyond economic growth to cover social, cultural and political fields. The African Charter on Human and People's Rights was the first legal instrument to recognize this comprehensive nature of development<sup>96</sup>

Another perhaps more controversial, feature of the right to development is its dualistic nature in that it is both individuals' and peoples' right. The traditional approaches to human rights law are such that individuals are the bearers of human rights. But the evolving view of human rights law preaches that not only individual but also groups can be right holders. As envisaged from the DRD, the right to development makes itself available for both "peoples" and individuals. The Africa Charter on

Human and People Rights recognizes the right to development as “peoples” rights <sup>97</sup>

Both the Declaration and the African charter hold that the primary duty holders of the right to development are the states. <sup>98</sup> They also imply that the community of states has a duty to cooperate for the realization of the right to development.<sup>99</sup> Thus individual states and states operating at the international level are the duty bearers in relation to the right to development.

Accordingly the right to development can be invoked by the entire people of a particular country which in the current international understanding means a state against the community of states, particularly developed states.

And logically this can be interpreted as inclusive of the right to development assistance or development cooperation on the part of developing countries. Of course this fear of interpreting the right to development as the right to development assistance with a correlative duty of extending assistance on the part of developed states has made the latter reluctant to give legal recognition for such right.<sup>100</sup>

### **C) Legal status of the right to development**

Leaving the question of legal status of the right to development makes the discussion on such right abruptly incomplete. The question is: is the right to development a legally enforceable right?

As it has been mentioned in the previous section, the African charter on Human and People’s Right recognizes this right as one human right. The Charter is a binding treaty for state parties. Thus, as far as state parties

to African Charter are concerned, the right to development is a legally enforceable right. The same is true for the FDRE constitution.<sup>101</sup>

However the story at the international level is different. The Declaration on the Right to Development and subsequent UN Declaration and Resolutions including the millennium Declaration which make explicit reference to the right to development, are not legally binding instruments.

Of course it is true that the international community through a legitimate process of consensus building accepted the right to development as human right.<sup>102</sup> But this right has not yet been translated to a legally enforceable right to legal right. From a legal point of view the right to development can be described as soft law.<sup>103</sup> In other words it has not reached the status of law at international level.

But this lack of legally binding effect does not undermine the moral and political forces for the realization of such right. What is more, the right to development calls for the conducive environment through which all human rights recognized by the international bill of rights can be realized. That being the case, tracing the legal foundation for the right to development in to such legally binding international human rights is not difficult.

## **II. Development as Freedom**

The development discourse has witnessed three or four paradigms, since the Second World War. Although a consensus has emerged that development at least in principle, aims at improving the well – being of the people, there have been arguments on how such development can be achieved in operational terms and the policies to go there.<sup>104</sup> In the years

following the Second World War, development was identified with the growth of per capita real income.<sup>105</sup> This paradigm was based on the assumption that poverty is a mere lack of income, something that development in the form of economic growth and industrialization would eradicate. According to this approach, human rights; especially socio - economic rights, can be rightly traded off to achieve development. The incomprehensive nature of this development paradigm and its lack of space to accommodate the interests of the marginalized parts of the society along with the reality that increasing per capita income was found insufficient to secure the fulfillment of certain minimum requirements for improved living condition of the people eventually led to the end of its hey days.<sup>106</sup>

Then came the second approach which was formulated in terms of basic needs. This paradigm, famous in 1970s, dictated that development policy should aimed specifically at increasing the provisions of basic needs such as adequate food, shelter, clothing, safe drinking water, sanitation, public transport and health, educational and cultural facilities.<sup>107</sup> The basic needs approach was at odd with some of the human right principles because it viewed the peoples as passive objects of choice made on their own behalf.

The 1990s saw the human development approach with the essence that development should aimed at achieving human development out comes such as long and healthy life, accumulation of knowledge and decent standards of living.<sup>108</sup>

The capability approach, which has been conceptualized by Amartya Sen, is the rule of the day presently. In his seminal work entitled "Development As freedom", Sen argues that expansion of human freedom should both be viewed as the primary end and the principal means of

development. <sup>109</sup> Sen's conception of development as freedom built around the two terms: capabilities and functioning. <sup>110</sup> For him living may be seen as a set of interrelated functionings, consisting of beings and doings which a person may value. <sup>111</sup> The value functionings include such things as: being adequately nourished, being in good health, avoiding premature mortality, having self respect, taking part in the life of the community and etc. He argues that these functionings are constitutive of a person's being and that any assessment of well – being has to take the form of an evaluation of these constituent elements and he defines the capability set as the alternative combination of functionings which are available for a person to choose. <sup>112</sup>

In other words it reflects a person's freedom to choose between different ways of living. Then he asks us to design indicators to represent the freedom to choose from alternative combinations of functionings (ways of living). <sup>113</sup> He tells us that each achievement indicator in the space of functionings would correspond with an indicator of freedom in the space of capabilities and when these freedoms are claimed and recognized as rights, the wellbeing of people is identified with their level of enjoyment of all these rights. <sup>114</sup> Thus, Sen concludes, development should aim at enlarging the freedom of person or achieve alternative functioning combination (to have well – being) <sup>115</sup>

According to this approach development is the improvement of the wellbeing of peoples through the realization of the fundamental rights and increasing the standard of living, based on the human rights norms.

Amartya Sen's work emphatically declared the conceptual marriage between development and human rights. The UNDP bases its human development report of 2000 on the conception of development to expand the choices of peoples to lead the lives which they value when it started

to evaluate development in terms of what is known as human development index by using non – income indicators of poverty.<sup>116</sup>

### **III. The Quest For Human Right Approach to Development**

The conceptual link between development and human rights as well as the emergence of development as human rights makes the ground fertile for the birth of a concept called a human right based approach to development (HRBAD). HRBAD aimed at creating an operational space for absorption of the rights agenda with in the development policy frame works.<sup>117</sup> It calls for the application of human right standards to evaluate development policies and projects. Human right standards would serve as a road map towards the objectives of development is the underlying principle.

Normative and instrumental as well as analytical justifications are available for aspiring for HRBA. The normative justification reminds us that human rights are norms that should be respected by development actors both at national and international level.

What is more, recognizing the right to development obliges states to make sure that the process as well as the aim of development should be targeted to realize such right.

Instrumentally it can be argued that a human right based approach to development can serve to reduce abuses of power and entail progress in the achievement of targets and goals while avoiding conflicts and minimizing the risk of set backs. The analytical rationale is based on the conceptual marriage between development and human rights which I have discussed previously.

Unlike the previous paradigms of development, this approach explicitly recognizes multi dimensional nature of poverty especially the human right dimension of poverty. It affirmed that poverty is caused by the denial of human rights and is it self a denial of human rights. And the only way to come out of such poverty is to adopt a development which is a right based. The HRBA, basically, consists of the integration of human rights principles and standards into all stages in the programming process, assessment and analysis, objective setting, design of capacity development strategies, implementation, and evaluation. <sup>118</sup>

This approach states that process of development is as important as the outcome, and the process largely determines the type of outcomes resulting from development activities. Today the major UN agencies, donors, NGOs, are in the process of integrating human rights into their development activities.<sup>119</sup>

The HRBA can best be explained in terms of its constitutive guiding principles: linking human rights with development policies, participation, accountability, non-discrimination and equality and empowerment.<sup>120</sup>

The first principle requires development actors, both at national and international level, to explicitly recognize the conceptual as well as the normative link between human rights and development activity. <sup>121</sup> The fact that human rights are for development and development is for human rights should be underlined.

The second principle is participation. The international human rights normative frame work advocates the right to take part in the conduct of public affairs. And a democratic social order based on constitutionalism

and free and fair election is an essential prerequisite for enjoyment of this right. A HRBA requires an active and informed participation of all stake holders in any development activities in the designing, assessment, decision-making and complementation of the same.<sup>122</sup> More specifically this approach accommodates enough space for the voice of the hitherto neglected groups, i.e. poor and disadvantaged people. It calls for specific mechanisms and detailed arrangements at different levels of decision making that help to overcome the impediments that the poor and marginalized groups in general, face in playing an effective part in the life of the community.

Accountability is another guiding principle of HRBA. This focuses on the relationship between right holders and duty bearers and refers to the ability to hold duty-bearers to account for actions or lack of action to fulfill their obligations to the right holders.<sup>123</sup>

The duty-bearers, both at national and international level, should be responsible for negative impact of their development activities on human rights of the right holders.

To ensure accountability, right-based programming starts by assessing specific obstacles that duty bearers face to exercise their obligations and formulating development strategies to remove such obstacles.<sup>124</sup>

The fourth principle underlying a HRBA is equality. The principle of equality, along with its negative form of expression non-discrimination, is one of the most fundamental principles of international human rights law. This principle condemns any distinctions or preferences based on race, religion, national origin, language, gender or any other illegitimate grounds, which have the effect of nullifying individuals or people's equal opportunity. The HRBA, thus, calls for the integration of principles of equality and non-discrimination in any development policy or program. It

requires that laws and institutions that foster discrimination against some individuals or groups be eliminated. Besides it requires adopting development policies which targets the worst-off groups in order to off-set the impact of past discrimination. Thus it mandates the spending of more resources in the activities with the greatest potential to benefit these vulnerable groups.

The last principle is empowerment. This refers to the process by which the right holders improve their capacity to claim and exercise their rights.<sup>125</sup> In order to effectively enjoy their rights, individuals and groups should be empowered, i.e. their capacity to demand should be broaden. HRBA requires starting any development program by analyzing what specific capacities are needed to claim and exercise rights in that particular situation.

#### **IV. Mainstreaming Human Rights in to Development policy of Ethiopia**

Facing the reality of having a country which is ranked 169 out of the 177 countries,<sup>126</sup> the Ethiopian government makes poverty reduction the overarching objective of its development policy. This section is devoted to explore the question: to what extent human rights are integrated to the poverty reduction policy of the Ethiopian government.

Gone are the days when poverty was considered as a strictly economic domain. The notion of poverty has undergone a number of phases in its conception. The 1970s were the time when poverty was viewed largely in economic terms.<sup>127</sup> According to this way of understanding poverty was related to the income level accruable to individuals and house holds for daily subsistence.<sup>128</sup> This income level based of poverty has no place to accommodate other non-income indicators of poverty. As a result it

appeared that the prevailing economic order had resulted in an even wider gap between rich and poor countries internationally and in a widening disparity internally.<sup>129</sup>

As a response of this failure, the second conception of poverty was emerged. The United Nations development program (UNDP) evolved the Human development index and latter the Human poverty index, which encompasses the social dimensions of poverty.<sup>130</sup>

The works of the likes of Amartya Sen led to the emergence of the third conception of poverty which views poverty not only from economy and social perspective but also from political dimension. This approach considers poverty as lack of basic capabilities such as illiteracy, malnutrition, abbreviated life span, poor maternal health, adequate shelter, access to justice, taking part in the life of community and earning livelihood.<sup>131</sup>

These evolution of the conception of poverty, gradually but steadily brought the definition of poverty very close to human right discourse. Presently the consensus is that poverty is simply a non fulfillment or violation of human rights, as lack of economic, Political, socio – cultural and protective capabilities map in to violations of economic, political and social rights. That being the case, poverty reduction is no longer a charity but an obligation. It is not just a development goal but also the obligation imposed on states and international community through the norms of international human rights. The implication is that there is a strong need to design and implement poverty reduction policies or strategies in conformity with human right standards: human right approach to poverty reduction.

Having said this about the conceptual link among poverty, poverty reduction and human rights, let me turn to the question that I posed at the beginning of this section. Benefiting from the widely reported failure of Structural Adjustment Program of 1980s & 1990s, the two giant international financial institutions, IMF and World Bank adopted nationally owned participatory poverty reduction strategies as part of the debt relief conditionality under the Enhanced Highly Indebted Poor Countries Debt Relief Initiative.<sup>132</sup>

A poverty reduction strategy paper, since then, has been a condition for the World Bank and IMF, poverty reduction programs.

The Ethiopian governments finalized the preparation of the poverty reduction strategy paper called Sustainable Development and Poverty Reduction Program (SDPRP) by end July 2002 and submitted the document to the World Bank and IMF, and get it approved by the latter.<sup>133</sup> The Country has also managed to prepare and adopt the 2<sup>nd</sup> generation of poverty reduction strategy paper called PASDEP (Program to Accelerate sustainable Development to Eradicate Poverty), which is currently Under implementation.<sup>134</sup> The Ethiopian poverty reduction strategy paper (SDPRP), like others, is guided by few core principles: a country driven (ownership), result oriented, comprehensiveness, partnership oriented and long term perspective.<sup>135</sup> Of course it can be said that the SDRP constitutes the whole menu of development policy of Ethiopian government.

The guiding principle of a HRBAD can provide a roadmap here to evaluate whether or not poverty reduction policy adopt a human right approach. Based on these constitute elements of the HRBAD, which have been discussed in the previous section, the Office of the High

Commissioner for Human Rights of UN prepared a Draft Guidelines on integrating human rights in poverty reduction strategies. According to these guidelines mainstreaming human rights in to poverty reduction policy requires:

- Explicit recognition of the link between poverty reduction and human rights;
- Promotion of equality and non-discrimination, giving particular attention to the disadvantaged groups;
- Promotion of participation and empowerment in the process of designing and implementing of the poverty reduction policies.
- Setting clear indicators and benchmarks for the oppressive realization of human rights; and
- Monitoring and accountability of the state and other duty bearers through administrative, political, judicial, quest-judicial or civil society processes. <sup>136</sup>

Judging the Ethiopian poverty reduction policy by these guidelines is the best way to do justice for the effort of answering our original question.

To begin with the Ethiopian poverty reduction policy fails to view poverty reduction as an issue of human right. The quick look at the main objective of the program makes it clear that human rights are sidelined. It seems that the policy views human rights issues as an instrument for combating poverty reduction rather than as an end by itself when it states that “a democratic society . . . which ensures good governance (concepts which share too much in common with human rights) is a vital instrument for combating poverty and backwardness”<sup>137</sup> Even though the policy makes mention of human rights in its section dealing with good governance, democracy, empowerment, there is no indication that the policy explicitly recognize the conceptual as well as the normative link of

poverty reduction and human rights. Thus one has no choice but to conclude that the important principle of integrating human rights with poverty reduction-viewing poverty reduction as an obligation on the part of the government imposed by national and international human right instruments is missing from the poverty reduction policy (development policy) of the Ethiopian government. The perverse implication is that the policy does not prohibit the government from trading off human rights to achieve other development objectives, for example economic growth. But it does not mean that the Ethiopian poverty reduction policy totally ignored human right issues. Among the guidelines of integrating human rights with poverty reduction policy discussed above, equality and non discrimination, participation and empowerment are being dealt with the policy document, though not to the extent which is required by the integration approach.

The principle of participation can be seen in light of the consultation process of the policy which was under taken in August 2001.<sup>138</sup> Some critical observation can be made to assess whether or not the consultation process maps in to genuine and informed participation of all the stakeholders. The fact that the consultation process was conducted in three days duration <sup>139</sup>in a country of nearly 80 million people, cast a doubt on the effectiveness of the process. What is more, the turn out of the participants was not greater than 10,000.00 in all woreda, regional and federal levels. <sup>140</sup> It would be a mockery of truth to say that this number of participants represent the nearly 80 million people of the country. So even if it was widely argued on the part of the government of Ethiopia that the preparation of the policy was conducted through the participation of all stakeholders, the time duration and the number of participants induced us to question the genuineness of its participatory component.

The good governance, democracy empowerment and decentralization components of the Ethiopian poverty reduction policy<sup>141</sup> which can be achieved through promoting peaceful conflict resolution, respect for human rights law and order, transparency and accountability in government are some of the entry points to the task of mainstreaming human rights in to development policy of the country.

As a sort of concluding remark, one has every reason to argue that Ethiopian poverty reduction strategy paper failed to draw concrete links between the development frameworks and human rights standards. In other words human right approach to poverty reduction is not treated as a core principle. The general absence of the language of human rights in the section of the policy document which deals with governance, juridical, legal reform, democracy is a telling fact that the government is intentionally shying a way from the integration approach.

# **CHAPTER THREE**

## **Integrating Human Rights with Development Aid**

### **3.1 Overview**

The previous chapter has labored much to explore the conceptual as well as legal link between human rights and development to come to the conclusion that integrating the two is not just an alternative but an obligation. Of course, for Ethiopians this obligation is a legally enforceable one, in light of the fact that the right to development is recognized as one of human rights by African charter on Humans and people's right, to which Ethiopia is a party and the FDRE constitution. Despite this, the same chapter discovered that the current development policy of the Ethiopian government does not give room for the integrating approach

Integrating human rights with all levels of development process which is the paradigm of the time logically entails the need for integrating human rights with development aid. This, among others, provides space to build a normative framework for the integration of human rights with development cooperation.

At the risk of stating the obvious, in terms of its objective, nature and effectiveness, the concept of development cooperation has been muddled with a wealth of controversies.

Assuming its modern sense in the mid of the by gone century,<sup>142</sup> development aid has under gone many changes. The technical assistance of the early years was followed by the community development support in the 1950s, aid to fill trade and investment gap in the 1960s, aid to provide basic human needs in the 1970s, aid to structural adjustment and debt relief in the 1980s, humanitarian assistance in combination with support for rehabilitation of countries after the civil war of the 1990s, and at the turn of the 20<sup>th</sup> century aid for human development.<sup>143</sup> Despite the frequently changing objectives of development and the flow of tens of billions dollars from donors to recipient countries in the forms of aid, the fact remaining unchanged is that aid has failed. <sup>144</sup> One does not need to go far to substantiate this conclusion. Though Ethiopia has been one of the earliest developing countries to benefit from aid in the modern sense<sup>145</sup> and despite the fact that aid flows to the extent of covering up to 40% of the governments public expenditure<sup>146</sup>, our economy is still going through the floor and still we do have an aid parasite economy.

The failure of development aid to achieve its target development, has been attributed to so many factors ranging from promoting the commercial interest of donors rather than meeting developmental needs of recipients<sup>147</sup> through the stop-start nature of aid flow to lack of national leadership of the development agenda and mutual accountability.<sup>148</sup>

The close analysis of the factors which have been pointed as causes for the low level of aid effectiveness would unravel the fact that they are, in one way or another, related to human right issues. Ownership of the development policy, for example, has to do with the right of the peoples of the recipients to choose their own model of development, which is one manifestation of the right to development. And the issue of accountability deals with the modalities by which the duty bearers can be accountable

to the right holders for the violation of human rights. The same is true with the sustainable flow of aid in the sense that the right to development demands uninterrupted flow of development assistance from the international community.

Thus it does not require to task ones mind much to establish the instrumental value of integrating human rights with development aid to make the latter effective.

What is more, development aid may play a negative role in the realization of human rights. The projects financed by foreign aid may be effective tool of violating human rights. The conditionalities and other macro-economic requirements attached to the procurement of development aid may, sometimes, be in an absolute contradiction with the human rights standards. Hence these will be another ground to justify the need to bother about the integration approach.

The remaining sections of this chapter will try to address the needs, modalities and operationalization of mainstreaming human rights in to development aid, making particular emphasis to Ethiopia.

## **3.2 Development Aid: From Charity to Obligation**

One of the most controversial issues regarding the right to development is whether it entitles developing countries to claim assistance from developed countries\_ whether receiving development assistance is a right? Or whether developed countries have obligation to provide assistance for developing countries?

The developing countries tends to view the right to development as creating an entitlement to a transfer of resources in their favor in the form of foreign aid, more favorable terms of trade debt relief and equitable globalization.

On the other side the developed countries, feeling being targeted, oppose any idea of legal obligation to transfer resource from the north to the south. For most of them the right to development entails nothing more than the moral commitments to be carried out as each country sees fit. They do not have the problem of considering development as right of the undeveloped. But they reject the idea of viewing this right as entailing any specific legal obligation of individual states vis-à-vis any other particular state.

Even among developed countries, some have problem of considering development as right, let alone recognizing the existence of the obligation to assist. The position of USA substantiates this. While the US has accepted the right to development via key documents, like the Vienna Declaration, Millennium Development Goals; its administration officials reject any responsibilities that could arise from an application of the right to development and generally vote against resolutions that would advance the right to development, on the rationale that the US understood such right to mean that each individual should enjoy the right to develop his/her intellectual or other capabilities to the maximum extent possible through the exercise of the full range of civil and political rights.<sup>149</sup> Thus, for US, it is impossible to talk about nations (group of peoples) right to development, and consequently the right of developing nations to get assistance or aid from the developed one.