



**COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW
GRADUATES PROGRAM**

Master of Laws (LL. M) in Constitutional and Public Laws

**THE RIGHT TO CONSTITUTIONAL REMEDIES: COMPARATIVE
LESSONS FOR ETHIOPIA**

**A Thesis Submitted in Partial Fulfillment of the Requirements for the Award
of Master of Laws (LL. M) in Constitutional and Public Laws at School of
Law, College of Law and Governance Studies, Addis Ababa University**

By: Dires Gashaneh

**June, 2019
Addis Ababa, Ethiopia**

The Right to Constitutional Remedies: Comparative Lessons for Ethiopia

*A thesis submitted in partial fulfillment of the requirements for the Award of
Master of Laws (LL. M) in Constitutional and Public Laws at School of Law,
College of Law and Governance Studies, Addis Ababa University*

**By
Dires Gashaneh**

**Advisor
Dr. Wondemagegn Tadesse**

June, 2019

Declaration

I, DIRES GASHANEH, hereby declare that the thesis entitled as *'the Right to Constitutional Remedies: Comparative Lessons for Ethiopia'* is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that all sources used in any form are duly acknowledged.

Dires Gashaneh

Signature: _____

Date: _____

Advisor: Dr. Wondemagegn Tadesse

Signature: _____

Date: _____

Addis Ababa University
College of Law and Governance Studies
School of Law
Graduates Programs Board of Examiners
Thesis Approval Sheet

Dires Gashaneh’s thesis, entitled as “*The Right to Constitutional Remedies: Comparative Lessons for Ethiopia*” is approved by the undersigned members of the examining board.

	Board of Examiners	Signature	Date
Advisor	Dr. Wondemagagn Tadesse	_____	_____
Examiner	Dr. Mizane Abate	_____	_____
Examiner	Dr. Demelash Reta	_____	_____

Dedication

This Paper is dedicated to:

**The plucky Gamo Elders who waved high the worth of eldership when our country needs it
most!**

Acknowledgment

Above all, I extend my sincere thanks to my God. I wouldn't have been where I am now without the support of your mighty hands, "egeni leke lealem esme geberke lite!"

Unreserved thanks, with great sense of appreciation is due to my advisor, Dr. Wondemagegn Tadesse. I owe a lot for his priceless contributions to the betterment of this paper. Having him as my advisor is more than a privilege. Thank you Dr.

My parents, to whom the Lion (and the Cat) share of my successes belongs, also deserve more than what can I meant with words. Here, I confess my heartfelt thanks to them.

Let me also take this opportunity to extend my gratitude to my bad weather friend, Yirgalem Giremu. You are a friend that everyone wishes to have, thank you dear!

Finally, I am thankful to all my friends who were in my side all the times.

Table of Contents	Page Numbers
Acknowledgment.....	vi
Acronyms.....	x
Abstract.....	xii
Chapter One	1
1. General Introduction.....	1
1.1. General Background of the Study	1
1.2. Statement of the Problem	2
1.3. Objectives of the Study	4
1.4. Research Questions	4
1.5. The Research Methodology	5
1.5.1. Type of the Study.....	5
1.5.2. The Approach of Comparison.....	6
1.5.3. Sources of Data.....	6
1.6. Scope of the Study.....	6
1.7. Significance of the Study	7
1.8. Organization of the Thesis	7
Chapter Two.....	8
2. Enforcement of Human Rights and the Right to Constitutional Remedies	8
2.1. Enforcement of Human Rights in General.....	8
2.2. The Right to Effective Remedies	9
2.2.1. Terminologies - Effective Remedies, Constitutional Remedies and Legal Remedies.....	9
2.2.2. Conceptual Framework.....	9
2.2.3. Elements of the Right to Effective Remedies	11
2.2.4. The Right to Effective Remedies under International Instruments	17

2.2.5. The Right to Effective Remedies in National Frameworks	19
2.3. Why Constitutional Remedies?	22
Chapter Three	24
3. Enforcement of Human Rights and the Place of the Right to Constitutional Remedies under the FDRE Constitution.....	24
3.1. Human Rights under the FDRE Constitution.....	24
3.2. Enforcement of Human Rights in Ethiopia	25
3.2.1. Justiciability	26
3.2.2. Jurisdiction.....	27
3.2.3. Locus Standi.....	30
3.2.4. Reparations under the FDRE Constitution	31
3.5. Problems of the Existing Enforcement Mechanism – as Inspirations to the Quest for Constitutional Remedies	34
3.3. Possible Solutions	42
Chapter Four.....	43
4. The Right to Constitutional Remedies: Comparative Lessons for the FDRE Constitution	43
4.1. Introduction	43
4.2. Snapshots of the Constitutions	43
4.3. Comparative Lessons for FDRE Constitution.....	45
4.3.1. The Procedural Elements of the Right to Effective Remedies	45
4.3.2. Reparations	52
4.3.3. Establishing Victim Fund	53
Chapter five.....	55
5. Conclusion and Recommendations	55
5.1. Conclusion.....	55

5.2. Recommendations	56
Bibliography	57

Acronyms

ACHPR	African Convention on Human and Peoples Rights
ACHR	American Convention on Human Rights
Art.	Article
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CC	Constitutional Court
CCI	Council of Constitutional Inquiry
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPC	Civil Procedure Code of Ethiopia
CPRs	Civil and Political Rights
CRC	Convention on the Rights of the Child
Doc	Document
EC	Ethiopian Calendar
ECHPR	European
ESCR	Economic Social and Cultural Rights
FDRE	Federal Democratic Republic of Ethiopia
ff	and the following
GA	General Assembly
HOF	House of Federation
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice

ILC	International Law Commission
ICMW	International Convention on the Protection of the Rights of All Migrant Workers
NNPs	Nations Nationalities and Peoples
OHCHR	Office of High Commissioner for Human Rights
PIL	Public Interest Litigation
Para	Paragraph
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nation General Assembly
UNTS	Untitled Nation Treaty Series
SA	South Africa
SC	Supreme Court
SERs	Socio Economic Rights

Abstract

The right to effective remedies, recognized in numerous international instruments as a right, bears a vindication of other rights by providing victims of human rights violations with appropriate remedial schemes. When the right is guaranteed in national Constitutions, in which case it serves the enforcement of constitutional rights, it is called 'the right to constitutional remedies'. Owing to supremacy of constitutions, conferring such constitutional guarantees to the right to effective remedies induces better human rights enforcement. Coming to Ethiopia, in unorthodox manner to the impressive normative commitment it has shown in protecting human rights, the FDRE Constitution did not design enforcement mechanisms thereby leaving the right of victims of human rights violations to reparation at a peril. Being supported by comparative experiences of South Africa, India and Kenya that have thrived with the right to constitutional remedies, this paper argues for the introduction of the right to effective remedies in to the FDRE Constitution.

Chapter One

1. General Introduction

1.1. General Background of the Study

A right without remedies is not a right at all.¹ The legal maxim of Latin origin, ‘the saw ubi jus ibi remedium’ – ‘where there is a right, there is a remedy’, has now become integral to the universal human rights jurisprudence.² The principle pursues that rights must be accompanied by remedies that will redress their violations. Hence, a commitment towards the protection of human rights is not more than a printed claptrap unless their encroachments are reparable with effective enforcement mechanisms.³ The enforcement of human rights, as a result, measures the extent of their protection in a given state more than the width of the protective provisions does.⁴

In the realm of international human rights law, the right of victims of human rights violations to reparation is expressly guaranteed by numerous global and regional instruments.⁵ In a similar vein, human rights treaty bodies have insisted that the right to adequate remedies for victims of human rights violations is ultimately essential to say that rights are protected.⁶ Thus, States

¹ M.P. Jain, ‘The Supreme Court and Fundamental Rights’ in S.K. Verma and Kusum (eds), *Fifty Years of the Supreme Court of India—Its Grasp and Reach* (Oxford University Press, 2000) 76.

² A. Dicey, *An Introduction to the Study of the Law of the Constitution*, (10th eds., London: Macmillan 1959) 199.

³ NJ Udombana ‘Interpreting Rights Globally: Courts and Constitutional Rights in Emerging Democracies’ (2005) 5 *African Human Rights Law Journal* 47, 55.

⁴ Fali S. Nariman, ‘Judicial Aspects of Human Rights Protection in India’ (1992) 17 *International Legal Practitioner* 118, 22.

⁵ Within the United Nations' human rights system, See UDHR, art. 8; ICCPR, arts. 2 (3), 9(5), and 14(6); CERD, art. 6; CEDAW, art. 2(c), CAT, art. 14(1); CRC, art. 39; and for regional human rights instruments see ECPHR, art. 13; ACHR, art. 25(1); ACHPR, art.7/1/ (a) and Maputo Protocol, art. 25.

⁶ See, for example, HRC, General Comment No.31, Nature of the Legal Obligation on States Parties to the Covenant, (Un Doc. Ccpr/C/21/Rev.1/Add.13 2004); Committee of ESCR, General Comment N° 9, the domestic

Parties to these treaties are required to provide appropriate remedies for individuals whose rights are violated.⁷

The ways states provide for the right to effective remedies display remarkable nuances. Given the significant effect of making certain legal matters constitutional, the major difference between states in relation to human rights enforcement can be viewed principally in light of the constitutional attention they gave to the right to effective remedies. Accordingly, while some jurisdictions guarantee the right in their Constitutions, others do not. Viewed in this parlance, the 1995 Constitution of Ethiopia⁸ does not provide for the right to effective remedies in its content. In this paper, therefore, an attempt will be made to explore lessons for the FDRE Constitution from other constitutions that have recognized the right.

1.2. Statement of the Problem

The right to effective remedies, which is all about the vindication of other substantive rights in cases of their encroachment, can only be exercised with enforcement mechanisms in which procedural rules and institutional avenues are available to individuals whose rights are violated.⁹ Apropos the enforcement of human rights in Ethiopia, the FDRE Constitution provides the initial bench mark that everyone has the right to bring justiciable matters to and obtain decisions from courts and other quasi judicial bodies.¹⁰ Coupled with the wordings of Article 13/1 of same that mandates the judiciary to enforce the Human Rights Chapter, one may say that, under the FDRE Constitution, at least theoretically, human rights are enforceable by judicial and quasi judicial

application of the Covenant, (U.N. Doc. E/C.12/1998/24 (1998), Para.2; the Committee of CRC, General Comment No. 5, on General measures of implementation of the Convention (2003), Paragraph 24

⁷ Thomas M. Antkowiak, 'Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond, (2008) 46 Columbia Journal of Transnational Law 351, 6.

⁸ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No. 1, Federal Negarit Gazeta, 1st Year No. 1 (Here in after called the FDRE Constitution)

⁹ John C. Jeffries, 'The Right-Remedy Gap in Constitutional Law' (2000) 109 Yale Law Journal 87, 88.

¹⁰ FDRE Constitution, Article 37

bodies.¹¹ Besides, there are no coherent constitutional provisions that deal with reparations that may come out of the enforcement of the rights through constitutional litigations.¹²

Furthermore, because it is not regulatory enough on the matter, the enforcement of human rights in Ethiopia does not enable victims to seek for remedies based solely on the Constitution. Rather, it appears to be out of duty to resort to ‘legal remedies’¹³ where a petitioner is required to base his petition on ordinary legislations such as tort, criminal and administrative laws. This kind of enforcement mechanism shrinks the enforceability of the rights and, sometimes, may not even work for some rights that are not cascaded well to other ordinary laws. The FDRE Constitution therefore lacks a provision that saves its Chapter three from being reduced to a mere chimerical constitutional futility. Hence, in Ethiopia, the right to effective remedies is barely regulated and lacks a constitutional protection.

On the other hand, in some other jurisdictions, constitutionally set mechanisms of enforcing rights are provided in which a victim is allowed to seek remedies basing his claim on constitutional provisions. This is what is known as a right to constitutional remedies that entitles a petitioner to set in motion a constitutional litigation before the enforcing institution and seek remedies that are provided in the Constitution. It is here that should be noted that constitutionally based legal vindication is crucial in unparalleled manner.¹⁴

¹¹ Sisay Alemahu, ‘The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia’ (2008) 8 African Human Rights Law Journal 273, 93.

¹² Adem Kassie Abebe, ‘Human Rights under the Ethiopian Constitution: A Descriptive Overview’ (2011) 5(1) Mizan Law Review 41, 69.

¹³ The term legal remedies is here used to denote remedies that are found in ordinary legislation other than the Constitution in which case the remedies will be called constitutional remedies.

¹⁴ David Gartner, ‘Transnational Rights Enforcement’ (2013) 31 Berkeley J. Int'l L. 1, 4.

Being justified by the need to explore on remedial issues that have got a peripheral attention in the discourses of human rights¹⁵ and the desperate position taken by the FDRE Constitution in this regard, this study will explore constitutional experiences, in the area of the right to constitutional remedies, from other Constitutions that have recognized the right. The paper will collect lessons that the FDRE Constitution can absorb to rectify its incomplete and ill suited human rights enforcement mechanism.

1.3. Objectives of the Study

The general objective of the thesis is collecting lessons for the FDRE constitution from other constitutions that have the right to constitutional remedies. To this end, the thesis is amid:

1. To explore how the right to constitutional remedies serves as one way of enforcing human rights;
2. To study the place of the right to constitutional remedies under the FDRE Constitution human rights enforcement mechanisms;
3. To extract lessons for the FDRE Constitution from other constitutions with the right to constitutional remedies.

1.4. Research Questions

The research will try to respond to the following questions:

1. How does the right to constitutional remedies serve as one way of enforcing human rights provisions?
2. What is the place of the right to constitutional remedies in the human rights enforcement mechanism of the FDRE Constitution?
3. What lessons can the FDRE Constitution take from other constitutions that have recognized the right to constitutional remedies?

¹⁵ See Pablo De Greiff (ed.), Introduction: Repairing the Past: Compensation for Victims of Human Rights Violations, in *the Handbook of Reparations* (2006) 13; Daryl J. Levinson, 'Rights Essentialism and Remedial Equilibration' (1999) 99 Columbia Law Review 857.

1.5. The Research Methodology

1.5.1. Type of the Study

As the study is to explore comparative lessons for the FDRE Constitution on the area of the right to constitutional remedies, it is limited principally to studying constitutional texts. Any reference to practical issues and cases are only tangential called for the purpose of illustration. Hence, the study is doctrinal research that employs comparative analyses method. There are many states that have guaranteed ‘the right to constitutional remedies’ in their Constitutions.¹⁶ The comparative exploration, however, will be limited to cover the Constitutions of India, South Africa (SA) and Kenya. The selection is principally based on the existence of remedial clauses in the content of the Constitutions and the comparability of the states with Ethiopia.

Basically, all the Constitutions with remedial clauses use essentially similar wordings. Amongst, the Kenyan Constitution has relatively the most comprehensive and complete prescription with regard to all the elements of the right to effective remedies and hence selected for that reason. The Indian Constitution, on the other hand, is the only one to use the word ‘constitutional remedies.’¹⁷ The Constitution is also unique that it regulates the sub national version of the problem in that it empowers the judiciary of the States of the Federation to enforce rights in concurrence with the federal Supreme Court.¹⁸ This gives much relevance for Ethiopia where the role of regional courts could be at stake.

Roughly looking in to the practice, SA is called to be the first nation that has adjudicated sufficient number of human rights cases in a comprehensive jurisprudence through recognizable processes.¹⁹ Most particularly, the state’s Constitutional Court is known to affirm the enforceability of SERs by surmounting the traditional non-justiciability prejudice posed against

¹⁶ Botswana, Sierra Lion, Kenya, Ghana, South Africa, Nigeria, Tanzania and India make the cult.

¹⁷The Constitution of India, as amended in 2007, Article 32

¹⁸ Ibid, Article 226/1

¹⁹ Eric C. Christiansen ‘Using Constitutional Adjudication to Remedy Socio-Economic Injustice: Comparative Lesson from South Africa’ (2008) 13 UCLA J. INT’L L. 369, 77.

them.²⁰ As a result, whenever there is a discussion about judicial enforceability of rights particularly in Africa, SA appears first as the most progressive country.²¹ Thus, the selection in favor of SA for this comparison therefore is justified by the status that the state has established in relation to the problem to be studied.

1.5.2. The Approach of Comparison

The comparison to be made in this paper is between some selected constitutions on a single subject matter – the right to constitutional remedies. On the other hand, since the study is doctrinal, the practice will not be investigated in full. But, for the purpose of elucidation and explanation, the context and the rough implementation of these remedial clauses would occasionally be touched. Hence, in this study, thematic approach of comparison with nonfunctional investigation method is employed.

1.5.3. Sources of Data

In this study, both primary and secondary data sources are used. Whereas the primary sources to be used are the respective Constitutions, legislations and judicial or quasi judicial decisions (decisions having the status of legislation) of the states to be compared, books, journal articles and other relevant literatures will be the principal secondary sources.

1.6. Scope of the Study

The study explores comparative lessons from others' Constitutions to the FDRE Constitution in relation to the right to constitutional remedies. Therefore, it is limited to the normative aspect of the problem. Furthermore, the comparison is limited to be between the FDRE Constitution and three other Constitutions; the Constitutions of India, SA and Kenya. Content wise, the discussion is limited only to remedies that can be accessed through constitutionally set human rights enforcement mechanisms.

²⁰ Christopher Mbazira, 'Enforcement of Socio-Economic Rights in South Africa: Strengthening the Reasonableness Approach' (2008) 26 *Nordisk Tidsskrift for Menneskerettigheter* 131, 33-34.

²¹ Bonolo Ramadi Dinokopila, 'The Justiciability of Socio-Economic Rights In Botswana' (2013) 57(1) *Journal of African Law* 108.

1.7. Significance of the Study

The thesis may have the following significance:

1. By delivering better and workable experiences of other jurisdictions to concerned bodies, the thesis may provide imputes to possible reforms of the FDRE Constitution.
2. It may also serve as a reference for academia studies pertaining to human rights law in general and their enforcement mechanisms, in particular.

1.8. Organization of the Thesis

The thesis is organized in five chapters. Chapter one covers the introductory notes and background information of the thesis. The general ways of enforcement of human rights in international and national set ups along with the right to constitutional remedies - as one way of doing so - is presented under Chapter two. Chapter three then discusses the enforcement of rights and the place of the right to constitutional remedies under the FDRE Constitution. To be followed by Conclusion and Recommendations under Chapter five, Chapter four will dwell on the actual comparison on the right to constitutional remedies of the selected Constitutions towards extracting lessons for the FDRE Constitution.

Chapter Two

2. Enforcement of Human Rights and the Right to Constitutional Remedies

2.1. Enforcement of Human Rights in General

Today, human rights have got a minimum of bi-level protections, national and international.²² In order not to be empty rhetoric, these protective provisions of each level provide mechanisms of enforcement.²³ Rights guaranteed in international human rights treaties are supposed to be enforced with appropriate measures of implementation.²⁴ Similarly, national legal frameworks establish several, mostly alternative ways of vindicating human rights.²⁵ Conceptually, the enforcement of human rights may be seen in two broader scenarios. Firstly, rights should, in as much as possible, be protected from violations so that their full enjoyment is kept guaranteed.²⁶ Secondly, if any violation is perpetrated against rights, victims should be effectively remediated. For the theme of this paper is the remediation of human rights violations with constitutional remedies, the implementation of human rights that are not violated will not make part of the discussion in hereunder.

Coming to remediation, as a means of securing the enforcement of human rights at times of violations, human rights instruments provide for the right to effective remedies and guarantee

²² Franciszek Przetacznik, 'Implementation of Human Rights According to Multilateral Treaties' (1983) 12 *Anglo-Am. L. Rev* 89.

²³ Peter Atudiwe Atupare, 'Legitimacy, Judicial Review and Human Rights Enforcement in Ghana' (2007) 3 *U. Ghana L.J.* 228,229.

²⁴ Przetacznik (n 22) 92.

²⁵ Beth Van Schaack, 'The Civil Enforcement of Human Rights Norms in Domestic Courts' (2000) 6 *ILSA J. Int'l & Comp. L.* 295, 296.

²⁶ The International Commission of Jurists, 'The Right to a Remedy and Reparation for Gross Human Rights Violations', (Practitioners Guide No 1, 2006) 18.

victims to pursue and obtain appropriate reparations. As a result, the right to effective remedies is now an indispensable part of human rights packages of international and national human rights systems.²⁷ In the following sections, the contents of the right to effective remedies will be explored along with its normative statuses.

2.2. The Right to Effective Remedies

2.2.1. Terminologies - Effective Remedies, Constitutional Remedies and Legal Remedies

The phrases the right to effective remedies and the right to constitutional remedies are essentially equivalent. Each refers a right that entitles victims of human rights violations to reparation. Their difference is associated with the instrument in which the right is guaranteed. The expression ‘the right to effective remedies’ is common in international human rights instruments and discourses. Whereas, when the right to effective remedies is provided in national Constitutions, the expression ‘the right to constitutional remedies’ is appropriate. The discussion of the ‘right to constitutional remedies’ therefore sticks to texts of a constitution as to what it says about the components of the right to effective remedies. Hence, the right to constitutional remedies can be described as a right that guarantees the enforcement of constitutional rights.²⁸ In effect, the right to constitutional remedies guarantees the enforcement of other substantive rights through constitutional adjudication. Likewise, the phrase ‘legal remedies’ is used in this paper to represent remedies that are available in ordinary laws such as tort law, criminal law, administrative law. Throughout this paper, the phrases are used as are appropriate in each particular discussion.

2.2.2. Conceptual Framework

From the outset, the right to effective remedies is a right to enforce other rights.²⁹ Jurisprudentially, in both international and national human rights systems, the right to effective

²⁷ Avitus A Agbor, ‘Pursuing the Right to an Effective Remedy for Human Rights Violation(s) In Cameroon: The Need for Legislative Reform’ (2017) 20 PELJ 3.

²⁸ Gerald L. Neuman, ‘Human Rights and Constitutional Rights: Harmony and Dissonance’ (2003) 55 Stan. L. Rev. 1863, 5.

²⁹ Agbor (n 27) 2

remedies has received a nominal attention and the contents of the right is least developed.³⁰ It is after decades of the coming of UDHR that a shift in focus in human rights discourses towards remediation of human rights violations was witnessed. This progress was partly pursued by the emergency of several soft laws, including at UN level, amongst which the Basic Principles³¹ where lists of remedies are provided, is mentionable.

In understanding the scope of the right, binding legal instruments are less helpful in that they are reticent in defining what the right to effective remedy constitutes. The jurisprudence of human rights law did also gave peripheral attention for the discussion of the contents of the right. However, there are some soft laws and literatures that tried to frame the content of the right to effective remedies. Amongst, the General Comments of the HRC and the Basic Principles mentioned above are helpful. The HRC, in explaining Article two of ICCPR, stated that:

The exercise of this right to an effective remedy must be determined by competent judicial, administrative or legislative authorities ... Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights... Article 2, Paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated ... The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.³²

A proximate expression is also found in the Basic Principles. It explains the right to effective remedies as a duty to ‘provide equal and effective access to justice, adequate, effective and prompt reparation for harm suffered....’³³ Even though these instruments are not binding documents, they nevertheless have already exerted impacts on the jurisprudence of the right to

³⁰ Dinah Shelton, ‘Remedies in International Human Rights Law, 2ndedn (oxford: oxford university Press, 2005) 467.

³¹ The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (here in after called the Basic Principles), G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005).

³² HRC General Comment 31, Para. 13.

³³ The Basic Principle, (n 28) Guideline No. XII

remedies and are too helpful to understand the contents of the right.³⁴ Accordingly, it is clued in these explanations that the right to effective remedies has two basic components, procedural and substantive. This will be covered in the discussion coming in order.

2.2.3. Elements of the Right to Effective Remedies

2.2.3.1. Procedural Elements

The procedural aspect of the right to effective remedies is about the right to access courts or other enforcing institutions to raise human rights concerns.³⁵ Accessibility, in turn, requires the availability of institutions mandated to entertain cases and sets of procedures through which the institutions operate. Thus, rules settling issues such as jurisdiction, standing and justiciability constitute procedural parts of the right to effective remedies.³⁶

The issue of jurisdiction has to do with the identification of the appropriate institution accorded to receive and entertain cases. In this regard, for courts are the bulwark against abusive governmental practices including on human rights violations, the judiciary is preferred to be the ultimate protector and enforcer of human rights.³⁷ Perhaps, the objective of all courts is the protection of constitutional rights and freedoms.”³⁸ Institutionally speaking, therefore, the judiciary is favored to enforce human rights with the view of providing effective remedies. Within the judiciary particular jurisdictional determination is left always to be determined by state’s Constitutions and other ordinary laws.

³⁴ Antkowiak (n 7) 363.

³⁵ OHCHR, Rule-of-Law Tools for Post Conflict States: Reparations Programmes 6 (2008) 32.

³⁶ Tsegaye Regassa, ‘Making Legal Sense of Human Rights: the Judicial Role in Protecting Human Rights in Ethiopia’, (2009) 3(2) Mizan Law Rev. 289, 309.

³⁷ Lawrence Friedman, ‘Turning to the Courts: Human Rights before the Bench’ (Book Review), Harvard Human Rights Journal, Vol. 13 (2000) 316.

³⁸ Khalnar Hajiyev, ‘The Role of the Constitutional Court and Ordinary Courts in the Protection of Human Rights’, Paper Presented on a Conference on ‘Human Rights Protection Systems (Bishkek conference, November 2002) 3.

The other procedural matter that makes part of the right to effective remedies is standing – the capacity to file a suit or a petition. It is inextricable with the right to access to justice through which the right to effective remedies is exercised.³⁹ The traditional conception of standing requires that a person may approach judicial and quasi judicial institutions only when he shows his interest out of the case.⁴⁰ This demands a petitioner to be victim, the one who has suffered out of the act.⁴¹ In human rights cases, the general preferred approach for the better exercise of the right to effective remedies is to have a more liberal rule that is not overly strict and narrow to the extent of unduly denying potential litigants an access to justice.⁴² This requires standing rules to allow for PIL in which a person or organization may institute a case on behalf of another person or mass of people with similar grievances without being required to show personal interests in the case.⁴³ PIL for human rights cases is even more important particularly in developing countries where most victims cannot afford to enforce their rights by their own resources.⁴⁴ Furthermore, this kind of liberal approach has got a philosophical support in that everyone may be said to have an interest in the enforcement of human rights of anyone.⁴⁵

Similarly, justiciability, a question of which issues are susceptible⁴⁶ to be adjudicated by a court, constitutes one element of the right to effective remedies. This is because it is only up on

³⁹ VRK Iyer, *Justice at the Crossroads*, (1992) 59; Sisay, (n 11) 290

⁴⁰ Cheryl Loots, 'Standing To Enforce Fundamental Rights' (1994) *South African Journal On Human Rights* 49.

⁴¹ Agbor (n 27) 42.

⁴² L Chiduzo and PN Makiwane, 'Strengthening Locus Standi in Human Rights Litigation in Zimbabwe: An analysis of the Provisions in the New Zimbabwean Constitution' (2016) (19) *PELJ* 4.

⁴³ Sisay (n 11) 290.

⁴⁴ Surya Deva, 'Public Interest Litigation in India: a Critical Review' (2009) 1 *Civil Justice Quarterly* 24.

⁴⁵ Adem K Abebe, 'Towards More Liberal Standing Rules To Enforce Constitutional Rights In Ethiopia' (2010) *African Human Rights Law Journal* 408, 30.

⁴⁶ Ariell. Bendor, 'Are There Any Limits to Justiciability: the Jurisprudential and Constitutional Controversy in Light of the Israeli and American Experience' (1997) 7 (2) *IND. INT'L & COMP. L. REV.* 312.

ascertaining that the matter is justiciable that enforcing bodies proceed to look at the merit of cases.⁴⁷ With their nature, human rights are justiciable.⁴⁸ However, in human rights discourse, separate discussions on the justiciability of CPRs and SERs are common.⁴⁹

The distinction is principally in such a way that puts SERs as non justiciable as opposed to CPRs.⁵⁰ This position bases on arguments associated with the unclear and uncertain nature and scope of SERs.⁵¹ However, through time, this understanding has been challenged by showing that the factors mentioned to attribute SERs as non justiciable are neither limited to SERs but also to CPRs nor could render them non justiciable.⁵² Hence; the differences between these two categories of rights are of merely degree and not nature that there is no reason to keep SERs as non justiciable.⁵³ As a result, the non justiciability argument against all rights and particularly of SERs has now lost its vigor.⁵⁴ Thus, some SERs are justiciable as some CPRs are and the justiciability of some SERs may be difficult as that of some CPRs.⁵⁵ Hence, to guarantee the right effective remedies, human rights should be made justiciable.

⁴⁷ Richard H. Fallon, Jr., 'the Linkage between Justiciability and Remedies: Their Connections to Substantive Rights (2006) (92) Virginia Law Review 633, 34.

⁴⁸ Ann M Piccar, 'Justiciability of All Human Rights: Scottish Independence as Redress for British Human Rights Abuses' (2015) 27 Florida Journal of international Law 333, 56.

⁴⁹ Katarina Tomasevski, 'Justiciability of Economic, Social and Cultural Rights' (1995) 55 I.C.J. Rev. 203.

⁵⁰ Ibid

⁵¹ C. Courtis, The Right to Food as Justiciable Right: Challenges and Strategies (2007) 1 Revista Internacional de Direito e Cidadania 18.

⁵² Mbazira (n 20) 134.

⁵³ Courtis (n 51) 18

⁵⁴ Bruce Porter, Justiciability of ESC Rights and The Right to Effective Remedies: Historic Challenges and New Opportunities Beijing, an essay, (March 31, 2008) 1.

⁵⁵ Tomasevski (n 49) 203.

Consulting international instruments, the international human rights law regime has apparently moved towards making all rights justiciable.⁵⁶ A State party to these instruments, therefore, is duty bound to endorse the justiciability of all rights so to say that it has guaranteed the right to effective remedies.

2.2.3.2. The Substantive Element

A victim who, observing the aforementioned procedural rules, won a certain human rights claim before the competent body finally expects rewards in his favor. This is what constitutes the substantive aspect of the right to effective remedies which is usually called ‘reparation’.⁵⁷ The soft laws consulted above are helpful here also. The Basic Principles elaborated that reparation may be in the forms of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁵⁸ Similarly, the International Law Commission’s Article on States Responsibility for Internationally Wrongful Acts⁵⁹ explained reparations as ‘full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination...’⁶⁰ Many more instruments proximately adhere to similar understandings of forms of reparations.⁶¹ Without restricting other possible additions to the list⁶², let us briefly discuss some common forms of reparations hereunder.

⁵⁶ Fikre Tinsae, ‘Justiciability of Socio-Economic Rights in Ethiopia: Exploring Conceptual Foundations and Assessing the FDRE Constitution and Judicial Perspective’, (2018) 9 Beijing Law Review 322, 30.

⁵⁷ Antoine Buyse, ‘Lost and Regained: Restitution as a Remedy for Human Rights Violations in the Context of International Law’ (2008) 5 Leiden Journal of International Law 1.

⁵⁸ The Basic Principle, Guideline IX/18

⁵⁹ The International Law Commission’s Article on States Responsibility for Internationally Wrongful Acts (UN Doc A/56/10 2001), (here in after called ILC Article)

⁶⁰ Ibid, Article 34; see also: ‘James Crawford (ed.), The International Law Commission’s Articles on State Responsibility: Introduction, Text and Commentaries (Cambridge: Cambridge University Press 2002).

⁶¹ See, also, HRC, General Comment No. 31, Paragraph 13 which states that ‘where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations’; the Committee against Torture, General Comment No. 3, implementation

1. Restitution

It generally refers bringing the victim back to his original situation in which he/she has been before the commission of the wrongful act.⁶³ It is an attempt to turn the clock back to the point where it was before the violation.⁶⁴ The ILC Article has defined restitution as a measure of ‘re-establishing the situation which existed before the wrongful act was committed.’⁶⁵ If a certain violation necessitates so, institutions in charge of enforcing the right may give appropriate order/orders which enable the restitution process. It may, for instance, be declaration of a right, restoration of liberty (an order of habeas corpus), restoration of employment or an order of injunction of the existing violation.

2. Compensation

Another common form of reparation, compensation, refers an award of pecuniary or non pecuniary nature equivalent to the gravity of violations which is economically quantifiable.⁶⁶ Referring to the same source, the ILC Article defines compensation as ‘any financially assessable damage including loss of profits insofar as it is established.’⁶⁷ When compensation is feasible as a remedy for certain human rights litigation, any appropriate order that ends to compensate the victim may be given in the form of orders such as; order of payment of lost

of Article 14 by States parties, (UN Doc CAT/C/GC/3 2012), that explains redress as a term that encompasses the concepts of ‘effective remedy’ and ‘reparation’ in the forms of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention .

⁶²There are other but interrelated forms of reparation than those listed in the Basic Guideline that we common in human rights vindication. Declaratory relief, information and investigation and collective remedies are mentionable.

⁶³ The International Commission of Jurists, ‘The Right to a Remedy and Reparation for Gross Human Rights Violations’, (Practitioners Guide No. 2 Revised Edition, 2018) 8.

⁶⁴ Buyse (n 57) 1.

⁶⁵ ILC Article, Article 35

⁶⁶ International Commission of Jurists Practitioner Guide No. 2 8

⁶⁷ ILC Article, Article 36

opportunities, payment of possible gains, payment of costs of legal or expert assistance, medicine and medical services, costs of psychological and social services and moral damages.

3. Rehabilitation

In the process of remedying a victim of a certain violation of human rights, the ceasing of the violation and restoring the old situation may not suffice. A medical and psychological care may appear to be necessary to properly re build the status of the victim. This is what known to be rehabilitation. The Basic Principles explained the concept in similar way as ‘physical and psychological care as well as social and legal services.’⁶⁸

4. Guarantees of Non-Repetition

From the perspective of the victim as well as other potential victims, the assurance that a violation of human right will not be re perpetrated may needs to be pledged. Guaranteeing that the violation will not be posed anymore is taken as another form of reparation for human rights violation. To this effect, appropriate measures in terms of invalidation orders of unconstitutional laws and practices, institutional reforms, strengthening judicial independence, the protection of human rights defenders, human rights training, the promotion of international human rights standards and availing psychological and social services could be ordered.⁶⁹

5. Satisfaction

Based on the nature of the violation and the right violated, satisfaction may come to be appropriate to remediate the victim. To the Basic Principles, this remedy can be awarded by ordering any of the measures ranging from those aiming at a cessation of violations, to truth seeking, criminal conviction of violator, the search for the disappeared, the recovery and reburial of remains, public apologies, judicial and administrative sanctions, commemoration of victim and official restoration of dignity.⁷⁰

In general, when human rights violations are ascertained before it, the body in charge of enforcing the right can decide an order or sets of orders as are appropriate to remediate the

⁶⁸ The Basic Principle, Guideline IV/21

⁶⁹ Ibid, Guideline VIII /23; the International Commission of Jurists (n 59) 8

⁷⁰ The Basic Principles, Guideline VIII /23; the International Commission of Jurists, Article 9

victim. Usually, the word remedy is complemented with suffixes like ‘prompt’, ‘full’ or ‘effective’. This is to emphasize that reparations must, in so far as possible, wipe out all the consequences of the illegal act and reestablish the situation that would have existed had that act not been committed.⁷¹ Thus, the focus is on the appropriateness of the remedy to be measured with its ability of serving the remediation process towards making corrective justice. Likewise, the right to effective remedies is always secondary.⁷² It presupposes the prior existence of another substantive right and a violation thereto. In other words, the right to a remedy is a secondary right, deriving from a primary substantive right that has been breached.⁷³ Meaning, in the absence of violation of other substantive rights, the right to effective remedies will never come in to picture.

2.2.4. The Right to Effective Remedies under International Instruments

Since the coming in to effect of UDHR, the first international instrument to articulate on the right to effective remedies, several human rights treaties set various methods through which human rights are to be enforced.⁷⁴ These enforcement mechanisms of the international instruments follow two approaches. One, by virtue of states responsibility of international law, the instruments put obligations on States Parties to enforce the rights in their domestic set ups.⁷⁵ The human rights duties of States Parties imposed by this virtue are generally understood as the obligation to respect protect and fulfill.⁷⁶ Two, the instruments design international institutions

⁷¹ Permanent Court of International Justice, *Chorzów Factory (Merits) (Germany v. Poland)*, (13 September 1928), Series A, No. 17 47.

⁷² Agbor (n 27) 10.

⁷³ Zegveld L ‘Remedies for Victims of Violations of International Humanitarian Law’ (2003) *IRRC* 497-503.

⁷⁴ See n 5

⁷⁵ Vienna Convention on the Law of Treaties, (1969) Done at Vienna on 23 May 1969, entered into force on 27 January 1980. UNTS Vol. 1155, p. 331, Art. 26; HRC, General Comment 31, Paragraph 13; Vienna Declaration and Program of Action (1993) UN Doc A/CONF.157/23 Paragraph 1.

⁷⁶ A. Eide, ‘Economic, Social and Cultural Rights as Legal Rights’, in A. Eide *et al.* (eds.), *Economic, Social, Cultural Rights: A Textbook* (Dordrecht 1995), 21, 35–40.

and procedures before which human rights can directly be enforced in international forums. These international implementation mechanisms are put in varieties of forms such as diplomatic initiative, interstate complaint procedure, reporting procedures, monitoring procedures, special rapporteurs, early warning systems and individual complaint procedures that in one or another ways complement the remediation of human rights violations.⁷⁷

These two approaches are designed in such a way that gives priority to the domestic enforcement procedures and it is the deficiencies in the traditional framework of state responsibilities that have necessitated the creation of international institutions and procedures.⁷⁸ Hence, the international enforcement mechanisms are designed to complement the domestic implementation measures and it is in case of failures by States Parties that the international enforcement avenues serve as a ‘safety net’ to victims.⁷⁹

The relevance to the enforcement of constitutional rights of these international instruments emanates mainly from the virtue of states responsibility. That is, State Parties to these international instruments, as way of compliance to their international human rights duties, are supposed to provide for effective remedies for human rights that they have protected in their national constitutions. This is particularly true because all the major human rights treaties provide for the right to effective remedies as a means of guarantying the enforcement of rights in cases of violations.⁸⁰ Thus, national human rights frameworks are supposed to enforce human rights including by guarantying the right to effective remedies.

⁷⁷ Dinah Shelton, ‘Enforcement and Remedies’, in Scott Sheeran and Sir Nigel Rodley (eds), *Rutledge Handbook of International Human Rights Law* (Rutledge 2013) 665 -678.

⁷⁸ Ibid, 665.

⁷⁹ Smith R, ‘Human Rights in the United Nations’, in C. Heyns and K. Stefiszyn (eds.), *Human Rights, peace and justice in Africa*: (Pretoria University Law Press 2006) 191.

⁸⁰ Dinah Shelton, ‘Righting Wrongs: Reparations in the Articles on State Responsibility’ (2002) 96 *American Journal of International Law*, 833–56.

2.2.5. The Right to Effective Remedies in National Frameworks

As noted above, a right without a remedy is not a right at all.⁸¹ Hence, philosophically, any instrument providing for a normative protection of human rights must provide for appropriate remedies that will warrant the reparation of any violation. As a result, the right to effective remedies should make part of the human rights packages of states. Cognizant of this, the principle ‘where there is a right, there is a remedy’ is now developed in domestic laws of both common and civil law countries.⁸² Apart from this, there is also another ‘legal’ factor that adds to states’ duty to incorporate the right to effective remedies. That is their international obligation that imposes duties on States Parties to international human rights instruments to provide for the right to effective remedies. Thus, the argument that states must provide for the right to effective remedies is supported by these two interrelated factors. As a result, the right to effective remedies should exist in national legal frameworks to guarantee the enforcement of rights protected both under the ratified international instruments and national laws.

The ways states provide for the right to effective remedies vary depending on the instruments in which they guaranteed the right. In this respect, reckoning the supremacy of Constitutions in states’ legal frameworks, the principal references to understand the national protection of the right to effective remedies are the respective Constitutions.⁸³ Looking at the relevant constitutional vernaculars of states uncovers that states may provide for the right to effective remedies either in their Constitutions as constitutional remedies or in ordinary legislations as legal remedies.⁸⁴ This put the matter in a broader spectrum that human rights are domestically enforced either with the enforcement of constitutions when there are constitutional remedies or with the enforcement of ordinary legislations when there are legal remedies. The first approach is

⁸¹ See n 1

⁸² Starr, S.B. ‘the Right to an Effective Remedy: Balancing Realism and Aspiration’ in Mashood A. e al (eds.) *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate 2010) 477, 80.

⁸³ Tsegaye (n 36) 311.

⁸⁴ M. Chief Bassiouni, ‘Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions’ (2008) (3) *Duke Journal of Comparative & International Law* 235, 39.

called direct application while the second one is understood as indirect application.⁸⁵ Hereunder, brief outlines of these two mechanisms are in order.

1. Enforcement of Human Rights with Constitutional Remedies - Direct Application

While it initially was concerned with the institutional organizations of states, the development of constitutionalism through time displays a remarkable humanistic paradigm shift towards making human rights at the centre of Constitutions and constitutional law.⁸⁶ Consequently, now, the heart of the constitutional order of any modern state is human rights.⁸⁷ In effect, a constitution is expected to provide for the protection and enforcements of human rights. Indeed, several Constitutions articulate domestic enforcement mechanisms of human rights in the name of ‘constitutional remedies’ or other equivalent wordings. As noted above, the Indian constitution calls it ‘the right to constitutional remedies’⁸⁸ while many other Constitutions incorporates the right under headings such as ‘enforcement of protective provisions’⁸⁹, ‘enforcement of bill of rights’⁹⁰, ‘protection of rights by courts’⁹¹, ‘enforcement of rights’⁹², ‘special jurisdiction of a court...’⁹³, ‘preservation and enforcement of rights’.⁹⁴ This kind of constitutional position pre sets the direct application of human rights provisions of constitutions in which constitutional

⁸⁵Tsegay (n 36) 311.

⁸⁶ OHCHR, ‘Human Rights and Constitutional Making’ (New York, HR/PUB/17/5, 2018)10

⁸⁷ Stephen Gardbaum, ‘Human Rights As International Constitutional Rights’ (2008) 19(4) the European Journal of International Law 749, 52.

⁸⁸ See n 17

⁸⁹ Constitution of Botswana, (1966) Article 18; Constitution of Sierra Lion, Article 28

⁹⁰ Constitution of Kenya, (2010), Article 22.

⁹¹ Constitution of the Republic of Ghana (Amendment) Act, (1996), Article 33.

⁹² Constitution of the Republic of South Africa, (1996), Article 38.

⁹³ Constitution of the Federal Republic of Nigeria, (1999), Article 46; Constitution of Kenya, Article 23

⁹⁴ Constitution of the United Republic of Tanzania, (1977), Article 30/3.

remedies can be sought by victims through constitutional complaint.⁹⁵ Such constitutional clauses that set forth the enforcement of constitutional rights are regarded as the right to constitutional remedies.

2. Enforcement of Human Rights with Legal Remedies - Indirect Application

Rights, including the right to effective remedies, recognized in international instruments are sometimes articulated in ordinary legislations other than constitutions.⁹⁶ As a result, especially in cases where there is no specific human rights cause of action, it is inevitable to infiltrate to other areas of law and initiate legal proceedings, which are essentially human rights claims by their nature, to enforce human rights.⁹⁷ In such occasions, the level of domestic protection of human rights depends on the application by courts of ordinary laws.⁹⁸ With such procedures, States provide legal remedies to violations within their territories by criminal prosecutions, administrative remedies, and civil redresses in addition to or in lieu of a constitutional enforcement, if any.⁹⁹ Still, such mechanisms are based on a constitutional predetermination to this effect.¹⁰⁰ In these cases, human rights provisions will get an indirect application and be enforced through the instrumentality of ordinary laws.¹⁰¹ In this system, ‘constitutional human rights provisions serve as threshold of public behavior and as a guidance of decision making by permeating the whole system from behind rather than being claimed directly.’¹⁰² Here, even

⁹⁵ Tsegaye (n 36) 311.

⁹⁶ OHCHR, ‘Human Rights and Constitutional Making’ (n 86) 24

⁹⁷ Janina Boughay, ‘the use of administrative law to enforce human rights’ (2009) 27 AJ Admin L 25.

⁹⁸ R. Hayfron-Benjamin, ‘Courts and the Vindication of Human Rights in Africa’ (1982) 72 Law & Justice - Christian Law Review 31, 33.

⁹⁹ Schaack (n 25) 6.

¹⁰⁰ Ibid

¹⁰¹ Tsegaye (n 36) 309.

¹⁰² Ibid

though all laws are towards human rights protection, the roles of some laws such as tort law, administrative law and criminal law are bold.¹⁰³

2.3. Why Constitutional Remedies?

It is true that at least some human rights may be enforced without the right to constitutional remedies. It then triggers a question why should the right to constitutional remedies be advocated for? The answer has to do with the peculiar calibers of having constitutional remedies as opposed to other forms of vindications. This section will touch up on points that make the argument in favor of the right to constitutional remedies point full.

Firstly, Constitution plays unparalleled roles in human rights enforcements.¹⁰⁴ For its supremacy, rights are most securely protected at a national level when they are entrenched in constitutions as fundamental constitutional norms.¹⁰⁵ Further, the protection gets upgraded when the Constitution guarantees their enforcements than leaving it ordinary legislations.¹⁰⁶ Likewise, there is something inherent constitutional about human rights including the right to effective remedies.¹⁰⁷ Thus, providing remedies at the highest domestic level contribute to effective enforcement of rights within the principle of Subsidiarity in the overall human rights vindication systems.¹⁰⁸ Furthermore, constitutions that always have provisions providing for protections of human rights should design parallel enforcement schemes so that the substantive protections are not reduced to mere constitutional rhetoric.

¹⁰³ Lord Bingham of Cornhill, 'Tort and Human Rights', in P Cane/J Stapleton (eds), *the Law of Obligation, Essays in Celebration of John Fleming* (1998) 4.

¹⁰⁴ Gartner (n 14) 4.

¹⁰⁵ Sisay (n 11) 277.

¹⁰⁶ Allan, T.R.S, 'Constitutional Justice: a Liberal theory of the Rule of Law' (Oxford: Oxford University Press 2001) 37.

¹⁰⁷ Gardbaum (n 87) 52.

¹⁰⁸ The Committee of Ministers of Council of Europe, 'Guide to good practice in respect of domestic remedies', (18 September 2013), 45.

The other merit of having constitutional remedies comes to picture in scenarios where some constitutional rights do not have substitutes in ordinary legislations.¹⁰⁹ In such cases, the rights cannot be enforced by the enforcement of any ordinary law. A constitutional remedies, on the other hand, serves as safety resort for it provides appropriate enforcement mechanisms for all constitutional rights including rights that are not cascaded well to ordinary legislations. The possibility that ordinary legislations may not provide adequate remedies do also counts on the need to have the right to constitutional remedies.

Again, owing the fact that it generally is secondary with its nature, the right to constitutional remedies sees the better of other enforcement mechanisms. That is, if the ordinary enforcement mechanisms are inadequate, constitutional compliant is usually allowed.¹¹⁰ The right to constitutional remedies, this way, is efficient mechanism of enforcement that will set off the weakness of other systems. Of course, the argument in favor of the right to constitutional remedies is not nihilist about other forms of enforcements. It rather is to mean that the right to constitutional remedies should better exists in states' human rights systems as an alternative to other human rights enforcement mechanisms.

¹⁰⁹ Sisay (n 11) 284.

¹¹⁰ Danwood Mzikenge 'state responsibility for human rights' in Mashood A. et al (eds.) *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate 2010) 397, 408.

Chapter Three

3. Enforcement of Human Rights and the Place of the Right to Constitutional Remedies under the FDRE constitution

3.1. Human Rights under the FDRE Constitution

The FDRE Constitution brought a huge breakthrough to human rights.¹¹¹ It dedicated one third of its content (Articles 13 through 44) to guarantee an impressive array of constitutional rights.¹¹² Beyond making an extensive list of guarantees towards them, the Constitution did also elevated the protection of the rights by assimilating ratified international human rights instruments as domestic laws¹¹³ with a further significant role of serving as interpretation guides.¹¹⁴ The Constitution is also uniquely mentioned as radical for guaranteeing to NNPs the right of self determination up to unconditional secession under its Article 39.¹¹⁵ Furthermore, the Constitution incorporated SERs though in lesser number of Articles compared to CPRs.¹¹⁶ Additionally, in the National Policy Principles and Objectives Chapter of the Constitution, there are provisions which have direct relevance to the protection and interpretation of human rights.¹¹⁷ Doing so, it

¹¹¹ Adem (n 12) 43.

¹¹² See Articles 13- 44 of the FDRE Constitution

¹¹³ FDRE Constitution, Article 9/4

¹¹⁴ FDRE Constitution, Article 13/2.

¹¹⁵ Meressa Tsehaye and Seife Hailu, 'Minority Empowerment, Self-Determination Rights and Sub-National Constitutionalism in Tigray National Regional State: An Analysis of the Kunama Community Case' (2014) 31 *Journal of Law, Policy and Globalization* 68.

¹¹⁶ The ESCRs are articulated principally in a single Article 41.

¹¹⁷ See Chapter 10 of the Constitution.

surpassed many Constitutions of other states that do not give an equal place to the SERs with CPRs.¹¹⁸

The extensive stipulation the Constitution provides for human rights, the place that it gave for international human rights instruments, the special and more stringent amendment procedure that it set for the amendment of its human rights Chapter and the likes altogether prove that the Constitution provides a robust normative protection for human rights. The problem however is with implementation. ‘As it appears to be usual in major areas of human behaviors, enforcement remains to be highly spotty while there is basic agreement on what is acceptable or not.’¹¹⁹ In academia too, discourses on substantive rights occupy a privileged place as opposed to remedies that have been set aside as mundane concerns.¹²⁰ The forthcoming sections, hence, will discuss the framework of human rights enforcement under the FDRE Constitution.

3.2. Enforcement of Human Rights in Ethiopia

As has been noted above, constitutions are the ultimate documents to be consulted to understand the enforcement of human rights in a certain state. In this regard, the FDRE Constitution does not establish a human rights enforcement mechanism and hence victims of human rights violations are left to be satisfied by legal remedies through the application of ordinary laws. Thus, in Ethiopia, the right to effective remedies does not have a constitutional place. However, there are provisions that are highly relevant to discussions pertaining to the right to constitutional remedies. The Constitution, though not comprehensively, touches up on some of the elements of the right to effective remedies. In this section, a critical analysis of those provisions of the Constitution will be presented. The discussions will be delivered in separate sections each of which constitutes elements of the right to constitutional remedies. Then, in the final section of

¹¹⁸ There are some Constitutions such as the Constitution of Botswana that do not incorporate SERs. Some other Constitutions including the Constitution of India, Lesotho, Ghana, Uganda and Nigeria put SERs as national policy directives and principles. Beyond, there are Constitutions that protected SERs as fundamental rights under which the FDRE Constitution falls.

¹¹⁹ Beth Stephens, ‘Expanding Remedies for Human Rights Abuses: Civil Litigation in Domestic Courts’ (1997) (40) *German Y.B. Int’l L.* 117, 119.

¹²⁰ Levinson (n 15) 857.

this chapter, the problems of human rights enforcement mechanism of Ethiopia that are principally resulted from the absence of the right to constitutional remedies will be presented visa vise the weaknesses of the indirect application approach.

3.2.1. Justiciability

One aspect of the procedural elements of the right to effective remedies is justiciability of human rights. Justiciability, in turn, requires the enforceability of human rights before judicial and quasi judicial bodies. Coming to the FDRE Constitution, Article 37/1 grants everyone the right to bring any ‘justiciable’ matter to judicial and quasi judicial bodies and seek decisions there from. Beyond granting the right to access to justice, this provision does not give a clue as to which matters are justiciable and which are not.

On the other hand, Article 13/2 that dictates the interpretation of human rights provisions to be in line with the international human rights instruments adopted by Ethiopia has relevance here. The justiciability of human rights, as has been noted above, has got unanimity under international instruments.¹²¹ In this regard, the instruments’ position is in favor of the enforceability of all rights including the so called SERs¹²² the justiciability of which is much contested than their civil and political counterparts. Importing this position of the international human rights instruments to the FDRE Constitution via Article 13/2 coupled with the absence of any clear constitutional stand in disfavor of the enforceability of rights, it is possible to conclude that human rights are justiciable under the FDFE Constitution.¹²³

Thus, the existing jurisprudence of human rights of Ethiopia, even though seems mainly focused on CPRs, entrenched all categories of rights as enforceable.¹²⁴ Hence, even though the Constitution does not water tightly pinpointed to this effect, the comprehensive reading and analysis of the relevant constitutional provisions reveals that the normative aspect of the

¹²¹ Piccar (n 48) 337.

¹²² See HRC, General Comment 31 for CPRAND Committee of SECR, General Comment 9 for SERs

¹²³ Amare Tesfaye, ‘Justiciability of Socio-Economic Rights In the Federal Democratic Republic Of Ethiopia’ (LL. M. Thesis, Addis Ababa University School of Law December 2010) 69.

¹²⁴ Fikire (n 56) 43.

justiciability of human rights is guaranteed.¹²⁵ Beyond, the arguments in favor of the justiciability of SERs goes to the extent of enforcing National Policy Principles and Objectives which are the natural outgrowths of the obligation of the recognition of the later.¹²⁶

3.2.2. Jurisdiction

Jurisdiction, in this context, refers the selection of a body mandated to enforce human rights. The question is who is empowered to enforce human rights in Ethiopia. The answer can be collected from the analysis of some provisions of the Constitution. The first relevant stipulation helpful of finding the answer is what provided under Article 13/1. The Article reads as ‘all Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter.’ This Article sets the principal institutions mandated to protect and enforce the human rights provisions set forth in the Constitution. Thus, one can understand that, without defying the roles of national human rights institutions and civil society organizations, it is on the mainstream legislative, executive and judicial branches that the primarily responsibly of the protection, promotion and enforcement of human rights is bestowed.¹²⁷ Particularly, the judiciary is supposed to enforce rights by redressing victims of human rights violations by determining entitlements, punishing violators in its daily business of interpretation of laws.¹²⁸ In light of this provision and based on the nature of the inherent mandate of courts, it can be argued that the judiciary is mandated to enforce constitutional rights but with the application of ordinary laws.

On the other hand, the power to interpret the Constitution is expressly vested on the HOF¹²⁹ to be accomplished with the support of the CCI.¹³⁰ Ultimately, the body empowered to intemperate the

¹²⁵ Sisay (n 11) 293.

¹²⁶ Abdi Jibril and Kwadwo Appiagyei, ‘Justiciability of Directive Principles of State Policy in Africa: The Experiences of Ethiopia and Ghana’ (2013) 1 Ethiopian Journal of Human Rights 39.

¹²⁷ Tsegaye, (n 36)303.

¹²⁸ Ibid

¹²⁹ FDRE Constitution, Article 62/1, 83/1

¹³⁰ FDRE Constitution, Article 84

Constitution is automatically mandated to enforce the human rights provisions of the Constitution through constitutional litigations. However, the Constitution lacks clarity in defining the scope of powers of the House.¹³¹

The problem emerges from the disparity between the wordings in Article 62/1 that defines the role of the HOF as ‘the power to interpret the Constitution’ and the phrase of Article 83/1 which confers the House the power to ‘decide on all constitutional disputes’. The difficulty is in knowing if the power of the HOF is to interpret the Constitution only when interpretation is needed or decide all constitutional disputes including cases which do not need interpreting it.¹³² This determines the role of the judiciary, the ordinary courts, in the enforcement of human rights. The logical connection is that ‘if the phrase constitutional disputes under 83/1 is taken to mean any and all cases involving invocation of constitutional provisions, the power of the courts to adjudicate any case with a constitutional flavor is wiped away.’¹³³ Thus, one side of looking the matter is that courts cannot entertain any dispute that is solely claimed on provisions of the constitution.¹³⁴

There is also another way of understanding these provisions of the constitution that supports the otherwise. The contextual reading and the holistic understanding of the title of Article 83 (‘interpretation of the constitution’), the attempt to define constitutional disputes under Article 83/2 as ‘contestation of laws as unconstitutional’, the spirit of the HOF Proclamation¹³⁵ and the power of the courts conferred under Article 79/1 and 13/1 of the Constitution supports that the word ‘constitutional disputes’ under Article 83/1 is limited to referring matters that need

¹³¹ Assefa Fiseha ‘Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (Hof), (2007) 1(1) Mizan Law Review 1, 15.

¹³² K. I. Vibhute, ‘Non-Judicial Review in Ethiopia: Constitutional Paradigm, Premise and Precinct’ (2014) 22(1) African Journal of International and Comparative Law 120, 135.

¹³³ Takele Soboka, ‘Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory, (2011) 19(1) African Journal of International and Comparative Law 99, 110.

¹³⁴ See n 133

¹³⁵ Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities Proclamation, 2001, Proc. No. 251/2001, Federal Negarit Gazeta, 7th Year No. 41

constitutional interpretation.¹³⁶ Based on this, courts have jurisdiction to entertain cases that have constitutional issues, unless the application of the provisions appears to be difficult calling Constitutional interpretation.¹³⁷ Even though, it is not of equal relevance to constitutionally based arguments, this stand has further been hinted in some Proclamations.¹³⁸ Hence, courts are empowered to apply and enforce the Constitution's human rights provisions to the extent that it doesn't lead them a constitutional interpretation.¹³⁹

Taking either of the above position, however, will not help noticing that the allocation to the HOF of the power to interpret the Constitution marginalized the inherent role of courts in enforcing human rights. This has been magnified by the lack of constitutional clarity of the scope of the power of the House.¹⁴⁰ The clear stand taken under Article 83/1 of the Constitution in conferring the House the power to 'decide all constitutional disputes, is strong enough to evict courts from any function of adjudicating human rights cases claimed solely based on constitutional provisions. The practice also shows the same. It is in recent years, after decades of avoiding the referring to or applying of the Constitution including on issues in which the human rights provisions are directly relevant, that some courts started invoking and applying constitutional provisions in ordinary civil and criminal litigations.¹⁴¹ Beyond that, purely

¹³⁶ Tekle (n 133) 111-12.

¹³⁷ Ibid; Sisay (n 11), 278.

¹³⁸ Article 3/1 of the Federal Courts Proclamation no. 25/96 says 'federal courts shall have jurisdiction over cases arising under the Constitution, federal laws and international treaties'; See Ethiopian Human Rights Commission Establishment Proclamation, 2000, Pro. No. 210/2000, Federal Negarit Gazeta, 6th year No. 40; Institution of the Ombudsman Establishment Proclamation, 2000, Pro. No. 211/2000, Federal Negarit Gazeta, 6th year No. 41; Common Article 7 of both the Proclamations prohibits the respective institutions from investigating human rights cases pending in courts of law of any level.

¹³⁹ Yonathan Tefaye, 'Whose Power Is It Anyway: the Courts and Constitutional Interpretation in Ethiopia' (2008) 22 JEL128, 41.

¹⁴⁰ Minassie Haile, 'the New Ethiopian Constitution: It's Impact upon Unity, Human Rights and Development' (1996-1997) (20) Suffolk Transnational Law Review 1, 55.

¹⁴¹ Sisay (n 11) 279.

constitutional human rights matters cannot be submitted to and entertained by courts but by the HOF. Thus, the interpreter of the Constitution, the HOF/CCI, has a primary role in enforcement of human rights through constitutional litigation as opposed to courts.

3.2.3. Locus Standi

The other procedural aspect of the right to effective remedies is standing. Standing, a capacity to bring justiciable matters before and seek decisions from a body having a jurisdiction, constitutes one component of the right to effective remedy. Here, the same Article 37 is helpful in digging out how the issue of standing is dealt under the FDRE Constitution. Sub Article one empowers everyone to bring justiciable matters to competent bodies. The word ‘everyone’ at a first glance seems to suggest that PIL is allowed. Nonetheless, Sub Article 2 of the same, in discussing the possibility of submission of matters by persons other than the particular individual affected, pinpointed the otherwise. It requires the necessity of having ‘vested interest’ to bring cases for and on behalf of others by being a member to the affected group.

Furthermore, particular to constitutional litigation, Article 84/2 of the Constitution indicated that the CCI will be set in motion to its job up only on the submission of cases by any court or by ‘interested party’. The Constitutional position therefore did not ascribe to PIL save for some special laws.¹⁴² The case of habeas corpus petition is also exempted from the rule of vested interest in that it can be applied by persons other than the detainee.¹⁴³ In sum, the enforcement of human rights before the HOF/CCI through constitutional litigations is encumbered with the same standing rule of other civil litigations¹⁴⁴ in which the existence of vested interest is required.¹⁴⁵

¹⁴² Federal Courts Advocates Licensing And Registration Proclamation, 2000, Proc. No. 199/2000, Federal Negarit Gazeta, 6th Year, No 27, Article 10; Ethiopian Human Rights Commission Establishment Proclamation, Article 22; Environmental Pollution Control Proclamation, 2002, Pro. No. 300/2002, Federal Negarit Gazeta, 9th Years No. 12, Article 11; Institution of the Ombudsman Proclamation, Article 22

¹⁴³ Civil Procedure Code of the Empire of Ethiopia of 1965, Decree No. 52, Article 177/3

¹⁴⁴ Civil Procedure Code, Article 38

¹⁴⁵ Adem, ‘Towards More Liberal Standing Rule’ (n 45) 409.

Thus, PIL, the human rights enforcement role of which has got international consensus of applauds¹⁴⁶ is desperately curtailed under the FRDE Constitution.

3.2.4. Reparations under the FDRE Constitution

The substantive component of the rights to constitutional remedies is what is known commonly as reparation, possible outcomes of constitutional human rights litigations. This has not been comprehensively dealt by the FDRE Constitution.¹⁴⁷ Nor the relevant Proclamations; the HOF and CCI Proclamations as such are helpful. However, few has been said in scattered manners in some provisions of the Constitution about the remedies that victims of human rights violations can be awarded. The following section discusses these remedies that the FDRE Constitution has mentioned.

1. Declaration of Invalidity of Unconstitutional Laws, Acts and Decisions

Elsewhere, it has been discussed that reparations can be awarded in different forms. Amongst, injunction and/ or guarantees of non repetition may be satisfied by the order of aborting laws or acts that caused the violation. This can be done, inter alia, by an order of invalidation in which the unconstitutional law, act or decision is declared to be null and void. This invalidation order, beyond ceasing the ongoing violation can also guarantees the non repetition of the same.

As a natural consequence of its supremacy, Article 9/1 of the FDRE Constitution declares that ‘... any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.’ It gets effect through the body empowered to interpret the Constitution, the HOF. Accordingly, the House, in interpreting the Constitution, invalidates laws, decisions and acts that it finds to be unconstitutional.¹⁴⁸ Indeed, in practice the House had invalidated several laws and practices.

¹⁴⁶ See Serges Djoyou Kamga, ‘An Assessment of the Possibilities for Impact Litigation in Franco phone African Countries, (2014) (14) AFR. HUM. RTs. L.J. 449, 473; J. Oloka-Onyango, ‘Human Rights and Public Interest Litigation in East Africa: A Bird’s Eye View’ (2015) (47) Geo. Wash. Int’l L. Rev. 763, 5.

¹⁴⁷ See n 12.

¹⁴⁸ HOF Proclamation, Article 11 & 12

For example, in Ato Melaku case¹⁴⁹ in which the constitutionality of Article 8/1 of the Federal Courts Proclamation¹⁵⁰ and Article 7/1 of the Revised Anti-Corruption Proclamation¹⁵¹, which gave the Federal Supreme Court a first instance criminal jurisdiction on cases where high government officials are accused, are challenged is mentionable. In the case, the House has invalidated these provisions of the Proclamations ascertaining that they are unconstitutional for contravening Article 20/6 of the Constitution thereby violating the right to appeal.

In another occasion, in Wessen et al (applicants) case¹⁵², the house has invalidated a decision given by the respondents. In the case, the applicants, who are visually impaired, had completed the judicial training that one of the respondent delivers for prospective judges and public prosecutors. The judge – public prosecutor profession selection is determined by lot system as per the working rules of the institutions. However, in this case, the first respondent denied the applicants the lot and placed them to be public prosecutors reasoning that visually impaired persons can be judges. The applicant challenged the constitutionality of this decision arguing that it contravenes Article 41/2 (...the right to choose means of livelihood, occupation and profession) and Article 25 (the right to equality) of the FDRE Constitution. The House, in the final decision up holds the recommendation of the CCI and declared its unconstitutionality thereby rendered it invalid as per Article 9/1 of the Constitution.

2. Compensation

Compensation is also another form of remedy that has been twice mentioned under the FDRE Constitution in an incidental fashion. The first one is under Article 40/8 which empowers the government to expropriate private properties for public purposes subject to payment of commensurate compensation. Therefore, the government's acts of affecting the right to property

¹⁴⁹Melaku Fenta vs. Anti Corruption Prosecutor Team (Decision of HOF, January 2, 2014, unpublished)

¹⁵⁰ Federal Courts Proclamation, 1996, Proc. No. 25/96, Federal Negarit Gazeta, 2nd Year No. 13, Article 8/1

¹⁵¹ Revised Anti-Corruption Special Procedure and Rules of Evidence proclamation, 2005, Proc. No. 434/2005, Federal Negarit Gazeta, 11th Year No.19, Article 7/1

¹⁵² Wessen Alemu et al vs. the Amhara Regional State Justice Officers Training And Legal Studies Institute et al, (Decision of HOF file no. 019/05 January 2009 EC)

of individuals for reasons of public purposes are set to be vindicated with a remedy of compensation. Similarly, the Constitution did also set compensation, including relocation with adequate State assistance, for persons displaced or whose livelihoods have been adversely affected as a result of State programmes.¹⁵³ These articulations of compensation as a remedy for human rights violations under the Constitution are incidental in that they limit compensation to two rights – property (particularly immovable properties) rights and environmental rights while it might be necessary for almost all rights. Furthermore, in these provisions, compensation is set only for state sponsored violations.

3. *Habeas Corpus*

The Latin term, habeas corpus, literary means ‘that you have the body’,¹⁵⁴ is mentioned under Article 19/4 of the Constitution as a remedy for persons whose liberty is deprived unduly by unlawful detention. It is one of the most known forms of orders that is provided as a remedy to the violation of the right to liberty.¹⁵⁵ Thus, the FDRE Constitution empowers a person whose constitutional right to liberty is unduly violated to be released with an order of a constitutional remedy of habeas corpus.

4. *Self Determination and Secession?*

Under the Constitution, self determination including secession is guaranteed as a substantive right. Hence, one cannot regard this right as a ‘remedy’ in strict sense of the concept. However, the HOF Proclamation has uniquely stipulated that the enforcement of this right is to be through a constitutional complaint. The Proclamation is worded as follows.

... Any Nation, Nationality, or People who believes that its self identities are denied, its right of self-Administration is infringed, promotion of its culture, language and history

¹⁵³ FDRE Constitution, Article 44/5

¹⁵⁴ Black's Law Dictionary (10th Ed. 2014)

¹⁵⁵ Lyn S. Entzeroth, ‘Struggling for Federal Judicial Review of Successive Claims of Innocence: A Study of How Federal Courts Wrestled with the AEDPA to Provide Individuals Convicted of Non-Existent Crimes with Habeas Corpus Review’ (2005) (60) U. MIAMI L. REv. 75, 78.

are not respected, in generalist rights enshrined in the constitution are not respected or, violated for any reason, may present its application to the House...¹⁵⁶

This seems to mean that the House remediates any violation to the Constitutional right of self determination. Therefore, the right to self determination up to secession, unlike other rights, is always enforced and remedied by the HOF through constitutional adjudication.

It is important to note her that, save for the remedy of invalidation, the remedies of compensation and habeas corpus have respective ordinary legislations through which they are applied by ordinary courts. Accordingly, while compensation is effected through the relevant Proclamations,¹⁵⁷ habeas corpus is the jurisdiction of High Court to be governed by the Civil Procedure Code¹⁵⁸. The Proclamations of the HOF and the CCI did also say nothing on the possibility of deciding remedies other than invalidation order. The holistic understanding of the relevant laws seems to suggest that once the HOF deals with the matter that requires interpretation, the case will be forwarded to courts for final decision including on appropriate remedies. Hence, these ‘remedies’ are not as such designed as an outcome of constitutional litigation. In practice, the House was never observed deciding compensation or habeas corpus including in cases needing for it. Thus, as opposed to other forms of remedies, invalidation order is better articulated even though the organizational deficiencies of the HOF would cancel it.

3.5. Problems of the Existing Enforcement Mechanism – as Inspirations to the Quest for Constitutional Remedies

The forgoing discussions reveal that the FDRE Constitution does not provide for the right to constitutional remedies. Both the procedural and substantive components of the right are barely articulated leaving us in a helpless position to find a proper human rights enforcement mechanism out of the Constitution. Rather, the vindication of human rights in Ethiopia is made to be satisfied by legal remedies. This creates several problems that curtailed the enforcement of

¹⁵⁶The HOF Proclamation, Article 19

¹⁵⁷ Expropriation of Landholdings for Public Purposes and Proclamation (2005), Proc. No. 455/2005, Federal Negarit Gazeta, 11th Year No. 43; Environmental Pollution Control Proclamation, 2002, Proc. No. 300/2002, Federal Negarit Gazeta, 9th Year No. 12

¹⁵⁸The CPC, Articles 15/2- i & 177/1

human rights of Ethiopia. This section discusses these problems in such a way that inspires the introduction of the right to constitutional remedies in to the FDRE Constitution.

1. Constitutional Commitment in Concern

A constitution is the ultimate document that confers the highest domestic protection to any legal matter. Hence, in as much as it provides for other rights, the FDRE Constitution should have also done the same to the right to remedies. As a constitution that has shown an exemplary normative commitment in the protection of human rights, it should have provisions on how to enforce them. Hence, the Constitution is an instrument guarantying bundles of rights without remedies which reduce it to be a document of empty constitutional promises. Likewise, the right to effective remedies should have a constitutional guarantee as of the other rights. Besides, this kind of enforcement mechanism which is highly dependent on the application of ordinary legislations has several problems as are discussed hereunder.

2. Institutional Inadequacy

As is noted above, the power to interpret the constitution, which embodies the direct application and enforcement of human rights, is given to the HOF. The House however is not well suited for enforcing constitutional rights for several reasons. Firstly, members of the House are representatives of NNPs indirectly elected by regional electorates and are accountable to different bodies that may have conflicting interests.¹⁵⁹ Thus, the House is a political organ than a judicial one operating within the federal government.¹⁶⁰ This makes the House to lack one of the essential features of a body serving judicial functions, independency from the executive.¹⁶¹ Secondly, its members are 120 in number that makes hard to bring all them on board and delve to arguments on cases to be decided.¹⁶² This all, added with the fact that members are not professionally procured, renders the House to be organizationally unfit to the function of constitutional adjudication. Thirdly, there are also problems of accessibility. The HOF is placed only in the Federal Capital, Addis Ababa and its existence and functions are little known by the

¹⁵⁹ Tadesse Melaku, '*Ethiopian Constitutional Law: Past and Present*' (Volume II, Alpha Printers 2017) 228.

¹⁶⁰ Assefa (n 131) 31

¹⁶¹ Kimberly Medlock Wigger, 'Ethiopia: A Dichotomy of Despair and Hope, (1998) 5 TuLSA J. CoMP. & IrLL. 389, 401; Minasse (n 140) 46

¹⁶² Tadesse (n 159) 225

public.¹⁶³ The other factor that contributes to its inaccessibility is the part time nature of the body that meets only twice a year unless extra-ordinary circumstances dictate.¹⁶⁴ This inaccessibility of the system has been reflected in the record of the House that it has entertained small number of cases in the past two and half decades. Until March 2010 E.C., only 43 cases have been submitted to the House by the CCI for constitutional interpretation out the whole cases, proximately 3000, submitted to the Council.¹⁶⁵ One cannot leave simply marveling at such low number of cases in a country of huge population with substantial number of human rights issues without attributing it to the inaccessibility of the system.¹⁶⁶

Thus, the innovative approach of the FDRE Constitution that accorded the power to interpret the Constitution to a non judicial political body proved to be problematic for lack of structural and professional features that make it well suited for the function.¹⁶⁷ The system that makes the constitution essentially a political document has proved itself to be a failure including on enforcement of human rights.¹⁶⁸ Hence, the HOF federation is inadequate to enforce human rights with constitutional adjudication.

3. The Absence of Public Interest Litigation

So as to ensure the full enforceability of rights, it is crucial to liberalize the law defining standing in a way allowing for PIL.¹⁶⁹ PIL is even more important in countries like Ethiopia where victims

¹⁶³ Interview with Registrar, Council of Constitutional Inquiry, in Addis Ababa, Eth. (Mar. 28, 2008) as cited in Teramed Tezera et al, ‘Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights’ (2008) 32 (1) Fordham International Law Journal 259, 89,

¹⁶⁴ Assefa (n 131) 31

¹⁶⁵ The FDRE Council of Constitutional Inquiry Office Head, (CCI Journal, Final Draft, 2010) 6

¹⁶⁶ Teramed et al (n 163) 294.

¹⁶⁷ See Yonatan Tesfaye, ‘judicial Review and Democracy: A Normative Discourse on the (Novel) Ethiopian Approach to Constitutional Review’ (2006) African Journal of Intentional and Comparative Law 53-83.

¹⁶⁸ Teramed et al (n 163) 293.

¹⁶⁹ Sisay (n 11) 293.

may be ignorant or too poor to enforce their rights by their own means.¹⁷⁰ The rules of the FDRE Constitution however limit the standing right to persons who has an interest in the case. This objectively affects the enforceability of rights.¹⁷¹ The absence of the consensual way of supporting the enforcement of rights of individuals whose enforcing endurances are undermined by some incapacity, PIL, is another major problem of the human rights enforcement system of Ethiopia that needs political or legal measures.

4. Inadequacy of Reparations of the Constitutional Litigation

As discussed above, there are constitutional rights that have no implementation laws which cannot be brought to the attention of courts for enforcement. Such rights can only be enforced by the HOF/CCI in possibilities where they trigger constitutional adjudication. In such cases even, there are no comprehensive reparation rules and the House can only decide a remedy of invalidation order. The relevant Proclamations too, do not enable the House to give other remedies. Thus, human rights violations that are brought to the attention of the HOF/CCI for enforcement, as has been proved by the practice, could not be remediated with any remedy save for invalidation order. Hence, the Ethiopian constitutional review system does not provide adequate remedies for human rights violations.

5. Not All Constitutional Rights Have Implementation Laws

Ordinary legislations are specific to matters they are aimed to regulate. In surging the human rights of the Constitution to legislations, there might be missing in which constitutional rights do not get perfect substitutes in ordinary legislations.¹⁷² The violation of such rights cannot be redressed by the application of any ordinary legislation.¹⁷³ The right not to be victim of non retroactive application of the law (Article 22) and the right not to be victim of double jeopardy (Article 23) can be raised here. If a person is convicted by retroactive application of a law or if a

¹⁷⁰ See n 91; Deva (n 44)24.

¹⁷¹ Sisay (n 11) 290.

¹⁷² Ibid 284.

¹⁷³ Whenever these rights are violated by act of the government, the victim can't get redressed with the application of ordinary laws. This will only be resorted to the House of Federation where only invalidation order is available.

person is convicted for an offence he has been acquitted or convicted before, his rights are violated and must be redressed. However, these rights have no implementation laws that remediate their violations. Thus, within the existing enforcement mechanism, the violation of these rights cannot be redressed.

The problem is that in Ethiopia where only legal remedies are available; the remedies can be accessed through either criminal prosecution or with civil litigations.¹⁷⁴ Hence, to redress human rights violations, the violation must constitute either a ‘crime’ or a ‘civil offence’.¹⁷⁵ But, constitutional rights that have no substitute in ordinary legislations can not fall under either of the two. In other jurisdictions like India, human rights cases are treated as civil matters having separate procedure. In Ethiopia, however, such clear position is not taken. Categorizing human rights cases that are brought based solely on a constitution as civil matters, in which case they are to be discharged with the Civil Procedure Laws or as criminal litigations that can be adjudicated by the Criminal Procedure Laws has not been settled. Hence, under which procedure such cases could be entertained is undetermined. Besides, purely constitutional human rights cases could not be the areas of courts. Thus, the enforcement of such constitutional rights that has no implementation laws is locked with numerous procedural difficulties.

6. Not All Enforcement Legislations Provide Adequate Remedies

For violations of the rights that have got substitutes in ordinary legislations, legal remedies could be claimed with appropriate civil or criminal proceedings as their violations could be established either as criminal or civil offences depending on the nature of the violation and the nature of right violated. When the violation constitutes a crime as per the criminal provisions, the victim is considered to apply for compensation out of the criminal prosecution¹⁷⁶ in which case the court may award a payment of compensation ascertaining that the crime has caused ‘considerable

¹⁷⁴ K.I. Vibhute, ‘Compensating Victims of Crime in Ethiopia: A Reflective Analysis of Legislative Paradigm and Spirit’ (2010) 17 IRV 311, 12.

¹⁷⁵ Kidus Meskele and Teketel Labena, ‘The Right to Reparation for Human Right Violation in Ethiopian Legal Framework’ (2017) 31 Journal of Poverty, Investment and Development 5.

¹⁷⁶ The Criminal Procedure Code Proclamation, 1961, Imperial Government of Ethiopia Proclamation No. 185/1961, Negarit Gezzetta, Article 154

damage' to the victim.¹⁷⁷ In addition, the court may also decide some orders of remedy of satisfaction by convicting the criminal and/or by ordering the criminal to ask apology to the victim.¹⁷⁸

The remedies provided under the criminal system are deficient for several reasons. Firstly, an application to compensation is not obligatory and can be rejected by the court.¹⁷⁹ Secondly, only remedies of compensation and, in limited sense, satisfaction are available. Thirdly, only damage that convinces the court to be 'considerable' can be compensated with this procedure. Fourthly, the compensation to be paid under this proceeding is subject to fees as if it is decided in civil proceedings.¹⁸⁰ Finally, the lengthy procedures that are usual in criminal proceedings must also be considered vis a vis the urgent needs of victims. The remedy of apology is articulated as a secondary punishment in such a way that does not involve victim and that gives the ultimate discretion to the court not to order. These altogether speaks victims of human rights violations cannot be adequately remedied with the existing criminal justice system.

The other possibilities are when violations of some human rights constitute civil offences as per relevant laws. The major civil laws work towards implementing rights that have been specifically surged to them from the Constitution. As a show case, the Labour Proclamation is promulgated to enforce the constitutional labour rights enshrined under Article 43.¹⁸¹ The Electoral Proclamation¹⁸² is also meant to implement the right to vote and be elected guaranteed under

¹⁷⁷ The Criminal Code of the Federal Democratic Republic of Ethiopia, 2005, Pro No. 214/2004, Federal Negarit Gazetta, Article 101

¹⁷⁸ Ibid, Article 122/1

¹⁷⁹ Criminal Procedure Code, Article 155

¹⁸⁰ Criminal Procedure Code, Article 159/1

¹⁸¹ Ethiopia Labour Proclamation , 2003, Proc. No. 377/2003, Federal Negarit Gazeta , 10th Year No. 12

¹⁸² Amended Electoral Law of Ethiopia Proclamation, Proclamation No. 532/2007, Federal Negarit Gazeta, 13th Year No. 54

Article 38 of the Constitution. In addition, the tort law serves as last resorts to civil claims that that can be attributed as extra contractual.

Coming to reparations under these civil avenues, courts may generally decide three categories of decrees; payment of money, specific performance and declaratory reliefs as the case may be.¹⁸³ Even though these are common forms of remedies, they are not adequate enough. For example, the Labour Proclamation, beyond setting specific rules of implementation of the rights, does not provide reparations, except injunction, for violations of the protected rights. Similarly, the Electoral Proclamation does not have any remedy for individuals whose rights to elect or to be elected are violated. Likewise, the tort law regime covers only offence against economic interest and honors and reputations.¹⁸⁴ For such violations, the law provides pecuniary¹⁸⁵ and non pecuniary compensations in the forms of restitution, injunction and retraction of defamatory publications.¹⁸⁶ The problem however is that the remedies are limited to violations that caused material and/or moral damages. Thus, human rights violations that have less to do with economic interests are less remediable and violations that caused no material/moral damage are left only with the insignificant ‘nominal damages’ of Article 2104. Violations to the right to vote, the right to form labour union, the right to peaceful demonstration, the right to association or the right to religion are not reparable with the tort law regime to the extent that no pecuniary damages are caused. Thus, civil law reparation scheme is not substantially full-fledged and procedurally encumbered with inconveniencies such as strict adherence to the rules of the civil procedure and court fees.

The substantive problems of the human rights enforcement of Ethiopia in relation to reparation are apparent both in constitutional and legal avenues. Constitutionally, only the remedy of

¹⁸³ Federal Justice Organs Professionals Training Center, ‘Training Module on Calculation of Compensation in Extra Contractual Liability Cases’(2004) 8

¹⁸⁴ Abdulmalik Abubeker & Desta G/Michael, *Extra-Contractual Liability Teaching Material* ‘ (Sponsorship of the Justice and Legal System Research Institute 2009)

¹⁸⁵ Civil Code of the Empire of Ethiopia, 1960, Proc No. 165/60, Negarit Gazeta , Article 2090

¹⁸⁶ Ibid, Articles 2090/2 & 2118-23

invalidation order is relatively adequately framed. Likewise, in other legal proceedings, only the remedies of compensation, declaration of rights and some measures of restitution and satisfaction are poorly designed. Furthermore, there are also procedural difficulties that add to the existing substantive problems of human rights enforcement. Generally, the Ethiopia legal frameworks did not provide adequate reparations for victims of human rights violations.¹⁸⁷

7. Absence of State Sponsored Victim Funds

The satisfaction of the most common form of remedy, compensation, depends on factors, principally, knowing the identity of the offender and the ability of offender to pay compensation.¹⁸⁸ If the offender is convicted in his absence, for example, the victim has no one to ask compensation against despite the violation of his right is duly established. Similarly, even though the payment of compensation is decided for the victim in a civil or criminal proceeding, it cannot be executed unless the offender is financially capable. As a response to this, state sponsored compensation funds are usually established in other jurisdiction. This has also been suggested by the General Principles of UN.¹⁸⁹ In Ethiopia, such unfortunate victims are left without any monetary redress for there are no alternative schemes. This further curtails the process of remedying human rights violations including of victims that overcame the other procedural and substantive difficulties.

Altogether, the existing mechanism of enforcement of human rights of Ethiopia, which is highly dependent up on the application of ordinary laws, is full of procedural and substantive obstacles. Particularly, the ineffectiveness of the constitutional review system makes the rights recognized in the Constitution jurisprudentially less developed.¹⁹⁰ It also keeps the enforcement of human

¹⁸⁷ Kidus (n 175) 5

¹⁸⁸ Godsend Konofa, 'Laws Relating To Victim Compensation: A Comparative Study of Indian and Ethiopian Law' (LL.M. Thesis, Punjabi University, Department of Law June 2008) 87.

¹⁸⁹ THE General Principles, Guideline 3/IV

¹⁹⁰ Yonatan (n 167) 81; Adem Kassie, 'the Potential Role of Constitutional Review in the Realization of Human Rights in Ethiopia', (PH.D .Thesis, Pretoria University, Faculty of Law, October 2015) 6.

rights in Ethiopia minimal.¹⁹¹ This also counts on the commitment of the state towards its international obligation. Excluding Optional Protocols, Ethiopia is party to 6 of the 7 core human rights treaties¹⁹² each of which imposes obligations on member states to enforce the rights by providing effective remedies. Hence, the absence of the right to constitutional remedies from the FDRE Constitution speaks the lower (constitutional) commitment the state owes to its international obligations.

3.3. Possible Solutions

The forgoing discussion reveals that the enforcement of human rights in Ethiopia is encumbered with several problems. Some of the major problems, principally the allocation of the power to interpret the constitution, are rooted in the Constitution. Hence, even though some problems can be dealt by proclaiming an ordinary legislation, the whole systemic problem cannot be mended unless the constitution is amended. In addition, the fact that there is something inherently constitutional about human rights, including to the right to effective remedies, must also be considered.¹⁹³ The right to effective remedies, as of any rights, must be conferred with a constitutional protection. Thus, the magnitude of the problem and the need to rectify it inspire the incorporation of the right to constitutional remedies in to the FDRE Constitution. In the following chapter, the comparative experiences of states will be explored with the view of collecting lessons that the FDRE Constitution can emulate in introducing the right to constitutional remedies.

¹⁹¹ Tsegaye Regassa, 'Sub-National Constitutions In Ethiopia: Towards Entrenching Constitutionalism At State Level' (2009) 3 Mizan Law Review 33, 48.

¹⁹² The only core treaty to which Ethiopia is not a party is ICMW.

¹⁹³ Gardbaum (n 87) 52.

Chapter Four

4. The Right to Constitutional Remedies: Comparative Lessons for the FDRE Constitution

4.1. Introduction

In the forgoing Chapters, the merit of having the right to constitutional remedies is established along with the Ethiopian version of the problem. Specifically, the fact that the FDRE Constitution did not expressly articulate on ‘the right to effective remedies’ and that it barely treated the enforcement of human rights is presented as a major problem in need of legal and political measures. Agreeing that the right to constitutional remedies must be introduced to the FDRE Constitution, under this chapter, a comparative exploration of some Constitutions of states with the right to constitutional remedies will be presented with a view of searching lessons on how to craft the right better.

The lessons will be drawn from the selected Constitutions under different headings each of which constitutes elements of the right to effective remedies as are discussed under Chapter two. Scope wise, thee Constitutions with the right to constitutional remedies, the Constitutions of Kenya, SA and India will be covered. In the introductory part of this paper under Chapter one, it has been noted that these Constitutions are selected for reasons owing to the better articulation they have on the matter and/or the remarkable achievements they have shown in the areas of enforcement of human rights through constitutional remedies.

4.2. Snapshots of the Constitutions

Chapter three of the Constitution of India is dedicated to human rights protection. The Constitution classified rights into Fundamental Rights (Articles 12 through 35) and the Directive Principles of State Policies (Article 36 through 51). The distinction is in a way making those rights under the umbrella of ‘Fundamental Rights And Freedoms’ justiciable (Article 13) as

opposed to those rights dealt with in the section of ‘Directive Principles’.¹⁹⁴ In addition, India has enacted a Human Rights Act¹⁹⁵, which provides for the establishment of a National Human Rights Commission, States Human Rights Commissions and Human Rights Courts at district levels. In relation to the right to effective remedies, the Constitution clearly empowers the judiciary to enforcement human rights. Article 32, known as the soul of the Constitution, reads as ‘the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.’ In sub national level, furthermore, the High Court of each states of the federation and human rights courts of districts are similarly mandated with the same task of enforcing rights within their own jurisdictions.¹⁹⁶

The Constitution of Kenya guarantees human rights; including SERs, under Part II of its Chapter Four (Article 26 through 51). In respect to all the elements of the right to constitutional remedies, the Kenyan Constitution articulates relatively comprehensively. It guarantees the right as ‘every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.’¹⁹⁷ The part of the Constitution that deals with the judiciary (Article 165/3) also reaffirmed the mandate of the High Court to enforce the constitutional rights. Further, the Constitution leaves a room for the parliament to confer other subordinate courts with similar function.¹⁹⁸

The 1996 Constitution of SA on its part dedicated its Chapter Two (Sections 7-39) for human rights protection. In addition for the CPRs, the Constitution formulated SERs in similar lines with ICESCR and hence provides comprehensive domestic protection for such categories of rights.¹⁹⁹ The Constitution grantees the right to constitutional remedies under Article 38 as

¹⁹⁴ Matthew George, ‘Human Rights in India’ (1965) 11 Howard L.J. 291.

¹⁹⁵ The Protection of Human Rights Act of India, 1993, Act No. 10/ 1994.

¹⁹⁶ Indian Constitution, Article 226/1 ; Indian Human Rights Act, Article 30

¹⁹⁷ Kenyan Constitution, Article 22/1

¹⁹⁸ Ibid, Article 23/2

¹⁹⁹ Mbazira, (n 20) 131.

‘anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened. . . ’ the mandate of the judiciary to enforce human rights is also provided in the section that deals with the judiciary (Articles 167 ff).

4.3. Comparative Lessons for FDRE Constitution

4.3.1. The Procedural Elements of the Right to Effective Remedies

The procedural aspect of the right to effective remedies comprises the institutional and procedural frameworks set forth for human rights enforcement. Principally, it embodies the issues of jurisdiction, justiciability and standing.

4.3.1.1. Jurisdiction

As far as human rights enforcement is concerned, courts are regarded as the ‘gold standard’ in human rights enforcement because they possess the authority to sanction violators that other enforcement mechanisms lack.²⁰⁰ Hence, the role of the judiciary in the protection and enforcement of human rights is so immense.²⁰¹ Furthermore, inherently, the protection of constitutional rights and freedoms is the objective of all courts.”²⁰² In the forgoing section, it has been established that the innovative approach of the FDRE Constitution that accorded the power to interpret the Constitution to a non judicial political body proved to be problematic for lacking structural and professional features that makes it well suited.²⁰³ The system taken the most powerful and important tool of courts, judicial review that could have enabled them to properly enforce human rights better.²⁰⁴ Cognizant of the aforementioned theoretical support in favor the judiciary, all the Constitutions of India²⁰⁵, South Africa²⁰⁶ and Kenya²⁰⁷ confer the power of

²⁰⁰ Pammela Quinn Saunders, ‘The Integrated Enforcement of Human Rights’ (2012) 45 International Law and Politics 97.

²⁰¹ Friedman (n 81) 316.

²⁰² Hajiyev (n 82) 3.

²⁰³ See Yonatan ‘judicial Review and Democracy’ (n 167) 53-83.

²⁰⁴ Teramed et al (n 163) 294.

²⁰⁵ Indian Constitution, Article 32 & 226

enforcing human rights through constitutional complaint to courts. Hence, it is wise to the FDRE Constitution to be reformulated and mandate the judiciary to interpret the Constitution.

Another important question arising here is to which court should this power particularly be assigned? The Comparative exploration did not reveal homogeneity in this respect. The SA system is decentralized in that it empowers all the courts to enforce human rights reserving some significant powers²⁰⁸ to the Constitutional Court, the highest judicial body mandated to give binding decisions.²⁰⁹ The Indian Constitution prefers the Supreme Court while the High Court is the case in Kenya. The common culture is that in all the states, the Courts that are empowered to enforce rights are the organs that are mandated to interpret the Constitutions.²¹⁰ Owing to this, in the upcoming section, emphasizing the need to further studies on the matter, an argument in favor of the High Court of Ethiopia will be presented so that decisions could be appealable. Here, it suffices to argue that the judiciary must be empowered to interpret the Constitution.

Apropos the sub national level enforcement of human rights in federal states, the Indian Constitution is novel in that it empowers the States' High Courts to enforce human rights, except on cases that involve a question of constitutional validity of central laws²¹¹, concurrently with the Federal Supreme Court. In relation to how it functions, the Court, in Ramesh case²¹², said that it is up to the petitioner to shop a forum and that it is not necessary for him to first resort to High Court before approaching the Supreme Court. Beneath, by the Human Rights Act, Human Rights

²⁰⁶SA Constitution, Section 46 & 172

²⁰⁷ Kenyan Constitution, Article 22, 23 & 165

²⁰⁸ Ibid, Article 167/4

²⁰⁹ Ibid, Article 167/3

²¹⁰ See Article 165/3(d) of the Kenyan Constitution, Article 167 of the SA Constitution and Article 131/a of the India Constitution.

²¹¹ India Constitution, Article 226/a

²¹² Ramesh Thappar v. Madras, AIR 1950 SC 124

Courts are established at districts level to enforce rights at their jurisdictions.²¹³ Such sub national level human rights protection and enforcement is taken to be positive in that states' courts do not provide lesser level of protections than their federal counterparts.²¹⁴ In sum, the Ethiopian human rights system must bequeath a power to enforce human rights to the judiciary including to Courts of sub national level.

4.3.1.2. Justiciability

In Ethiopia, even though the constitutional text is not clear enough on the matter, the justiciability of all rights is asserted by academic discourses. Of course, in other jurisdictions with constitutional remedies too, the justiciability of rights, particularly of SERs is developed by interpretation and through practices. Hence, it needs not to be innovative to argue much for justiciability of rights. Only how to adjudicate rights better should be a subject to be explored from experiences of states. In all the three states the justiciability of major CPRs is not constitutionally doubtful. The problem is with SERs the justiciability of which is not usually constitutionally guaranteed. The Indian Constitution treats SERs as Directive Principles of State Policies and hence they are not justiciable. However, the Supreme Court, taking the position that these rights have equal relevance with CPRs, developed mechanisms to enforce them through the instrumentality of the later. For example, the Court noted that the right to life has a wide horizon that includes several SERs, inter alia, the right to health²¹⁵, unpolluted environment²¹⁶, shelter²¹⁷, clean drinking water²¹⁸, privacy²¹⁹ and legal aid²²⁰ the violation of any of which constitutes the violation of article 21 of the Constitution.

²¹³ Indian Human Rights Act, article 30

²¹⁴ William J. Brennan, Jr, 'the Bill Of Rights and the States: the Revival of State Constitutions as Guardians of Individual Rights' (1986) 61 N.Y.U. L. Rev. 535, 50.

²¹⁵ Paschim Banga Khet Mazdoor Samity v State of West Bengal, (1996) 4 S.C.C. 37

²¹⁶ Narmada Bachao Andolan v Union of India (2000) 10 S.C.C. 664

²¹⁷ Gauri Shankar v Union of India, (1994) 6 S.C.C. 349

²¹⁸ A.P. Pollution Control Board II v M V Nayudu, (2001) 2 S.C.C. 62

On the other hand, the SA Constitutional Court has shown in numbers of cases that SERs can be enforced. The court, for the first time engaged with directly enforcing these rights, in Soobramoney case²²¹, by surmounting the traditional prejudice against the justiciability of SERs. The Courts played down the counter arguments against justiciability of SERs associated with their nature, budgetary implication, and the doctrine of separation of power.²²² This enforceability of SERs is developed in SA, as they call it, as a system of ‘differentiated incorporation’.²²³ The exportability of this jurisprudence to other states is advised to be with due care for country-specific socio economic contexts where the court must examine each non-justiciability arguments in relation to its own constitutional text of the claimed right and jurisprudential culture.²²⁴ The lesson here is that states, including those that did not recognize them in their Constitutions, are finding ways to enforce SERs.²²⁵

Thus, in Ethiopia, the absence of constitutional clarity on the matter should not be taken anymore in favor curtailing the judicial enforcement of all categories of rights. Introducing the right to constitutional remedies, the Constitution should, by providing standards that further the

²¹⁹ Kharak Singh v State of UP, AIR 1963 SC 1295

²²⁰ Hoskot v State of Maharashtra, AIR 1978 SC 1548

²²¹ *Soobramoney v Government of the Republic of South Africa and Others*, 1998 (1) SA 765 BCLR, (CC)

²²² *Grootboom and Others v the Government of the Republic of South Africa and Others*, 2000 (11) SA 1169 BCLR, (CC); *Minister of Health and Others v Treatment Action Campaign and Others*, 2002 (5) SA 721 BCLR, (CC)

²²³ The phrase ‘differential incorporation’ denotes the needs to make differentiation between valid and invalid critiques of SERs adjudication to incorporate the valid once.

²²⁴ Eric Christiansen, ‘Exporting South Africa’s Social Rights Jurisprudence’ (2007) 5 LOY. U. CHI. INT’L L. REV. 29, 41-43; Christiansen (n 19) 389.

²²⁵ Gerry Whyte, ‘Judicial Capacity to Enforce Socio-Economic Rights’ (2014) 37 Dublin University Law Journal 203, 30.

interpretive guide set forth under Article 13/1²²⁶, ease the justiciability of all rights to the extent proved to be possible in other jurisdictions and the international jurisprudence.

4.3.1.3. Locus Standi

The standing rule of the FDRE Constitution is utterly limited to a person who has an interest in the case. This objectively affects the enforceability of the rights.²²⁷ While its unparalleled role to human rights enforcement is irrefutable, PIL is denied a place under the FDRE human rights vindication system. In this regard, the experiences of other states show that PIL is rapidly evolved in human rights litigations even in constitutions that do not expressly provide for it.

The SA Constitution expressly allowed PIL in which anyone acting in their own interest, anyone acting on behalf of another person who cannot act in their own name, anyone acting as a member of, or in the interest of a group or class of persons, anyone acting in the public interest or an association acting in the interest of its members can approach the court to enforce rights.²²⁸ Quite similar stipulation is found under the Kenya constitution.²²⁹ On the other hand, initially PIL has no place under the Indian Constitution. However, the Supreme Court, through successive engagement on practical cases²³⁰, has developed the possibilities of PIL.²³¹ In India, PIL is developed as a social action litigation owing to its peculiar feature in that it was designed to principally address the rural poor.²³²

²²⁶ Article 13/1 of the Constitution guides the interpretation of the human rights Provisions of the Constitution to be in line international instruments that the State has adopted.

²²⁷ Sisay, (n 11) 290.

²²⁸ SA Constitution, Article 38

²²⁹ Kenya Constitution, Article 22/2

²³⁰ Gupta v Union of India (1981) S.C.C. 87, 210; PUDR v Union of India, AIR 1982 SC 1473; Bandhua Mukti Morcha v Union of India (1984) 3 S.C.C. 161.

²³¹ Deva (n 220) 25.

²³² Bhagwati, 'Judicial Activism and Public Interest Litigation' (1984) 23 Columbia Journal of Transnational Law 561; Baxi, 'Taking Suffering Seriously' (1985) Third World Legal Studies 107.

Of course, the development of PIL in Indian faced several challenges such as problems associated with overuse and misuse by people agitating for private grievances in the grab of public interest and seeking publicity rather than espousing public causes, inefficiency of judicial resources, creating judicial popularism, tendencies of doing symbolic justices and disturbance of constitutional balance of power.²³³The system however managed to marginalize these side effects of PIL by confining its application only to legitimate cases, primarily to those cases where access to justice is undermined by some kind of ‘disabilities’ and discouraging frivolous once so that its outrageous benefits and problems be kept balanced.²³⁴ Further, economic incentives such as protected cost order, legal aid, pro bono litigation, funding for PIL civil society, should be arranged.²³⁵ Hence, the FDRE Constitution should allow PIL in such cautious way for the better vindication of human rights violations without which rights can’t be enforced well.

4.3.1.4. Other Procedural Issues

1. Exhaustion of Legal Remedies

Normatively speaking, under the three Constitutions, the exhaustion of legal remedies is not stated as a prerequisite to avail constitutional remedies. Likewise, the Supreme Court of India stated that the existence of an alternative remedy is no bar to entertaining a petition under Article 32.²³⁶ But the overwhelming practice seems to suggest that other statutory remedies should be exhausted before invoking a direct application of constitutional rights.²³⁷ To avoid duplication of remedies, constitutional remedies come in to picture when legal remedies are not available or are inadequate for any reason.²³⁸

²³³ Deva (n 44) 29-38.

²³⁴ Ibid 40

²³⁵ Ibid

²³⁶ See n 226

²³⁷ ‘Du Plessis Is Not Dead: South Africa’s 1996 Constitution and the Application of the Bill of Rights to Private Disputes’ (1999) South African Journal on Human Rights 15, 25.

²³⁸ Mzikenge (n 110) 408.

2. *Abstract v Concrete Review*

In all the three Constitutions, petitions are allowed not only when rights are violated but also in cases where they are potentially in danger of being violated.²³⁹ Hence, a kind of abstract review in which actual harm is not realized is amenable if threatening scenarios exist. Theoretically, therefore, in all the jurisdictions, the materialization of harm is immaterial. However, for example in Kenya, the practice is noticed to be discriminatory in that, as was tested in George case²⁴⁰, the Court is reluctant to entertain complaint of abstract cases.²⁴¹

3. *Appeal*

The appealability of a certain decision depends on the level of the institution that has decided it, i.e. if the decision is given by a highest judicial organ, it will not have any further avenue to resort at. Accordingly, in India, the decision of the Supreme Court in any matter is binding on all other courts²⁴² and the judgment of the Court pertaining to enforcement of human rights is not subject to any appeal. But, the decisions of the State's High Courts are appealable to the Supreme Court as per Article 132/1. On the other hand, the decision of the High Court of Kenya is appealable to the Court of Appeal (Article 164/3-i). Similarly, in SA, human rights decisions, other than decisions on constitutional matters that are exclusively reserved for the Constitutional Court by virtue of Article 167/4, are appealable to the Supreme Court of Appeal. This altogether points that a power to enforce rights shall better be vested up on a court that is not the supreme judicial organ so that the right to appeal of individuals will not be compromised. In this parlance, in Ethiopia, the High Court is better suited to this function.

²³⁹ The constitutional remedies clauses of all the three constitution entitle the constitutional complaint to be initiated including when the rights are '*threatened*'

²⁴⁰ George Anyona v. Returning Officer and Zachary Onyonka, High Court of Kenya, Case No. 3346, (1979) (Unreported).

²⁴¹ Chris Maina Peter, 'Fundamental Rights and Freedom in Kenya - a Review Essay' (1991) (3) Afr. J. Int'l & Comp. L. 61, 90.

²⁴² Indian Constitution, Article 139

4. Procedural Formalities

Procedural technicalities are paid better attention under the Kenya Constitution. It declares such formalities to be kept in minimum by mitigating the effect of non compliance to such rules. Particularly, the Constitution dictates that non compliance to procedural technicalities should not affect the enforcement of rights and that the courts should not have to unreasonably be restricted by such formalities.²⁴³ Particularly, it allowed the involvement of amicus curiae, commencement of such litigation with informal documentation, and grants that they are fee free. Even though equivalent provisions are not found in the Constitutions of SA and India, the Indian Supreme Court has developed such relaxed procedural rules including a commencement of petition just by a letter to the court, without formal documentation.²⁴⁴ Furthermore, detail procedures are left to be determined by ordinary legislations.

4.3.2. Reparations

The final attempt in search of lesson for the FDRE Constitution in relation to the right in question is on how to frame 'reparations'. Elsewhere, it has been noted that the FDRE Constitution barely regulates on possible outcomes of constitutional adjudications including on human rights cases. Sneaking in to the experience of states, the SA Constitution is a bit humble in this regard in that it leaves without listening. It however confers the court to issue 'appropriate reliefs and incidentally mentioned 'declaration of right' and 'invalidation order' under Article 38 and 172 respectively. Whereas, the Indian Constitution provides remedies in the form of common law writs in the nature of Habeas corpus (restitution of liberty of unduly detained person), Mandamus (ordering a government body to do something that has violated human rights by failing to discharge its duty), Prohibition (stay order of pending ultra virus functions), Quo- Warranto (an order of restraining a person from a public office to which he is not entitled) and Certiorari (an order of revoking decisions given in ultra virus functions).²⁴⁵ The Constitution of Kenya, in this regard, has made a most inclusive list. It empowers the High Court to award reliefs of 'appropriate forms' including in the form of a declaration of rights, an injunction, a

²⁴³ Kenya constitution, Article 22/3

²⁴⁴ Whyte (n 225) 2006.

²⁴⁵ Constitution of Indian, Article 32/2

conservatory order, declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights, an order for compensation and an order of judicial review.²⁴⁶

In all the cases, courts are empowered to decide any relief that they think appropriate for the particular case at their hand. In *Fose* case²⁴⁷, the Constitutional Court of SA had emphasized on the need of creativity in crafting remedial tools.²⁴⁸ This is even more recommendable in the enforcement of SERs.²⁴⁹ Likewise, the conventional account of remedial tradition supports this reasonable discretionary power of courts so that they can craft, choose and withhold remedies (to balance legitimate concerns).²⁵⁰ Constitutional vernaculars on remedies should therefore equip courts with a range of powers, often including declaration of right, declaration of existence of a violation, quashing the impugned decision, ordering the relevant authority to take the necessary action, remitting the case to the relevant authority for further proceedings based on the decision, ordering the payment of compensation, and/or ordering restitution.²⁵¹ Thus, a wise approach to the FDRE Constitution is to articulate on reparations is to make illustrative lists in manner that leaves courts with reasonable discretion cognizant of the overall legal system of the state.

4.3.3. Establishing Victim Fund

It has been discussed above that states should have victim compensation funds to compensate victims when it is not fully available from the offender or when the injury is inflicted directly by

²⁴⁶ Constitution of Kenya, Article 23/3

²⁴⁷ *Fose v Minister of Safety and Security* (1997) 3 SA 786, BCLR, (CC)

²⁴⁸ Sandra Liebenberg ‘Remedial Principles and Meaningful Engagement in Education Rights Disputes’ 2016(19) *PER / PELJ* 1, 2.

²⁴⁹ John Githii, ‘the Case for Justiciability of Social and Economic Rights in Kenya: Drawing from the Experience in South Africa, India and the United States’, (Thesis, Central European University, Nov 2008) 69.

²⁵⁰ John M. Greabe, ‘Constitutional Remedies and Public Interest Balancing (2013) 21(3) *William & Mary Bill of Rights Journal* 857, 8; Sonja B. Starr, ‘Rethinking “Effective Remedies”’: Remedial Deterrence in International Courts’ (2008) 83 *New York University Law Review* 693–98.

²⁵¹ Council of Ministers (n 108) 49.

state actors. Given compensation is the most routinely claimed remedy that suites for most human rights violations, state sponsored fund are necessary. Cognizant of this, such type of funds are emerging in South Africa²⁵² and Kenya²⁵³. The experiences of these states feed the art of discharging this herculean task without much disturbing states expenditure priorities by imposing financial burden. This is establishing, through legislation, a ‘pragmatic compensatory scheme’ the application of which is limited to few violent crimes and few compensable heads and by making it to be funded by fines, sale proceeds of confiscated properties, donations and the likes.²⁵⁴

²⁵² South African Law Reform Commission Project 82 , A Compensation Fund For Victims Of Crime Report April 2004)

²⁵³ Kenyan Witness Protection (Amendment) Act of 2010

²⁵⁴ Vibhute, ‘Compensating Victims of Crime in Ethiopia’ (n 174) 336.

Chapter five

5. Conclusion and Recommendations

5.1. Conclusion

The enforcement of human rights has got bi level mechanisms that operate complementarily – at national and international forums. The national level enforcement of human rights, being preferred for its effectiveness, is supposed to provide alternative enforcement mechanisms through which human rights violations are to be vindicated and victims are to be redressed. Particularly, states are advised to have robust constitutional vernaculars, in lieu of these complementary mechanisms, that guarantees the right to effective remedies

Viewed in light of this, the FDRE Constitution did not set robust mechanisms of human rights enforcement leaving victims of human rights violations without adequate reparation schemes. The absence from the Constitution of the right to constitutional remedies leaves the enforcement of human rights to be satisfied by ordinary legislations. This, apart from making the constitution a document of hoodwinking promises, creates several problems. Some of the major problems are the institutional inadequacy of the HOF, the absence of PIL, the absence of implementation laws for all constitutional rights, the inadequacy of civil and criminal implementation laws to provide for effective remedies and the absence state sponsored victim compensation fund.

Some of these problems, particularly the allocation of the power to interpret the constitution out of the judiciary, are rooted in the constitution. Thus, even though some aspects of the problem could be mended by other measures; the whole systemic problem cannot be rectified without constitutional reforms. This the inspires the incorporation of the right to constitutional remedies in to the FDRE Constitution so to frame a constitutional human rights cause of action.

In this paper, in search of a solution to this problem from the experiences of other states, the Constitutions of India, SA and Kenya have been studied. The lessons altogether feed that the FDRE Constitution must introduce the right to constitutional remedies, in such a way that allow PIL and enables the judiciary to enforce human rights through constitutional litigations. Beyond, state sponsored victim compensation fund is necessary to make the remediation more effective.

5.2. Recommendations

It is concluded in this study that the FDRE Constitution should guarantee the right to effective remedies so that it establishes a constitutional human rights enforcement mechanism. To this effect, the following recommendations are forwarded as are found to be commendable out of this comparative study by way of suggesting for a Constitutional reform in couples of areas.

1. Firstly, the ill suited non judicial review that confers the HOF with a power to interpret the Constitution should be reformed and courts, the consensually better guardian and enforcer of human rights, should be bestowed with the power to adjudicate constitutional disputes including on human rights cases.
2. Secondly, an addition to the human rights Chapter of the Constitution should be made to provide for a constitutional guarantee to the right to effective remedies.
3. The right to effective remedies to be introduced to the Constitution should be designed in such a way that:
 - 3.1. Provides for a PIL to human rights cases to set off the drawback of article 37/2 of the Constitution;
 - 3.2. Allows for abstract review so that constitutional complaints can be initiated including when human rights are threatened;
 - 3.3. Empowers courts to enforce rights and redress victims of violations of human rights with appropriate remedies;
 - 3.4. Mandate the legislature to proclaim on detail procedural matters.
4. The state should also move on to establish a pragmatic victim compensation fund by law.

Bibliography

1. Legislation

1.1. Ethiopia laws

Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No. 1, Federal Negarit Gazeta, 1st Year No. 1

Civil Code of the Empire of Ethiopia, 1960, Proc No. 165/60, Negarit Gazeta

Civil Procedure Code of the Empire of Ethiopia of 1965, Negarit Gezzetta, Decree No. 52

Council of Constitutional Inquiry Proclamation, 2013 Pro. No. 798/2013, Federal Negarit Gazeta, 19th Year No. 65

Criminal Code of the Federal Democratic Republic of Ethiopia, 2005, Pro No. 214/2004, Federal Negarit Gazetta.

Criminal Procedure Code Proclamation, 1961, Imperial Government of Ethiopia Proclamation No. 185/ 1961, Negarit Gezzetta

Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities Proclamation, 2001, Proc. No. 251/2001, Federal Negarit Gazeta, 7th Year No. 41

Electoral Law of Ethiopia Proclamation (Amended), Proclamation No. 532/2007, Federal Negarit Gazeta, 13th Year No. 54

Ethiopian Human Rights Commission Establishment Proclamation, 2000, Pro. No. 210/2000, Federal Negarit Gazeta , 6th year No. 40

Ethiopia Labour Proclamation, 2003, Proc. No. 377/2003, Federal Negarit Gazeta, 10th Year No. 12

Environmental Pollution Control Proclamation, 2002, Proc. No. 300/2002, Federal Negarit Gazeta 9th Year No. 12

Expropriation of Landholdings for Public Purposes and Proclamation (2005), Proc. No. 455/2005, Federal Negarit Gazeta 11th Year No. 43

Federal Courts Advocates Licensing And Registration Proclamation, 2000, Proc. No. 199/2000, Federal Negarit Gazeta , 6th Year, No 27

Federal Courts Proclamation, 1996, Proc. No. 25/96, Federal Negarit Gazeta, 2nd Year No. 13

Institution of the Ombudsman Establishment Proclamation, 2000, Proc. No. 211/2000, Federal Negarit Gazeta, 6th year No. 41

Proclamation to Establish the Procedure for Peaceful, Demonstration and Public Political Meetings, 1991, Proc. No. 3, Negarit Gazzetta, Year 50, No. 4

Revised Anti-Corruption Special Procedure and Rules of Evidence proclamation, 2005, Proc. No. 434/2005, Federal Negarit Gazeta 11th Year No.19

1.2. Other Jurisdictions' Laws

Constitution of Botswana, 1966

Constitution of India, as amended in 2007

Constitution of the Federal Republic of Nigeria, 1999

Constitution of Kenya, 2010

Constitution of the Republic of Ghana (Amendment) Act, 1996

Constitution of the Republic of South Africa, 1996

Constitution of Sierra Lion, 1996

Constitution of the United Republic of Tanzania, 1977

Fundamental Rights Enforcement Procedure Rules of Nigeria, 2009

Human Rights Enforcement Act of USA, Public Law 111–122 2009

Protection of Human Rights Act of India, 1993, Act No. 10/ 1994

Kenyan Witness Protection (Amendment) Act, 2010, Act of Parliament to Amend the Witness Protection Act of 2006

2. International instruments

2.1. UN instruments

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46, 10 December 1984, entered into force 26 June 1987

Convention on the Elimination of All Forms of Discrimination against Women Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180, 18 December 1979, entered into force 3 September 1981

Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25, 20 November 1989, entered into force 2 September 1990

Convention on the Rights of Persons with Disabilities Adopted and opened for signature and ratification by General Assembly resolution 61/106, 13 December 2006

International Convention on the Elimination of All Forms of Racial Discrimination Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX), 21 December 1965, entered into force 4 January 1969

International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976

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

International Convention for the Protection of All Persons from Enforced Disappearance Adopted and opened for signature and ratification by General Assembly resolution 61/177, 20 December 2006

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Adopted by General Assembly resolution 45/158, 18 December 1990

Optional Protocol to the International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, The General Assembly adopted resolution A/RES/63/117, 10 December 2008

Optional Protocol to the Convention on the Rights of Persons with Disabilities Adopted and opened for signature and ratification by General Assembly resolution 61/106, 13 December 2006

Optional Protocol to the Convention on the Rights of the Child on a communications procedure Adopted and opened for signature, ratification and accession by General Assembly resolution 66/138, 19 December 2011

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women Adopted and opened for signature, ratification and accession by General Assembly resolution 54/4, 6 October 1999 entered into force 22 December 2000

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly Resolution 57/200, 18 December 2002, entered into force 22 June 2006

Rome Statute of the International Criminal Court, (United Nations, Treaty Series, Vol. 2187, No. 38544 1998)

Universal Declaration of Human Rights, adopted by General Assembly resolution 217 A (III) of 10 December 1948

Vienna Convention on the Law of Treaties, 1969, done at Vienna on 23 May 1969, entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331

2.2. Regional instruments

African Charter on Human and Peoples' Rights (Banjul Charter), Adopted on 27 June 1981, entered into Force 21 October 1986

American Convention on Human Rights, Adopted on 22 November 1969, entered into Force: 18 July, 1978.

European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 4 November 1950

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women In Africa (Maputo Protocol), adopted on 11 July 2003

3. Cases

3.1.Cases from Ethiopia

Melaku Fenta vs. Anti Corruption Prosecutor Team, Decision of HOF on Thursday, January 2, 2014 (unpublished).

Wessen Alemu et al vs. the Amhara Regional State Justice Officers Training And Legal Studies Institute et al, the House of Federation Decisions, file no. 019/05 January 2009 EC

3.2.Cases from India

Paschim Banga Khet Mazdoor Samity v State of West Bengal, (1996) 4 S.C.C. 37

Narmada Bachao Andolan v Union of India (2000) 10 S.C.C. 664

Gauri Shankar v Union of India, (1994) 6 S.C.C. 349

A.P. Pollution Control Board II v M V Nayudu, (2001) 2 S.C.C. 62

Kharak Singh v State of UP, AIR 1963 SC 1295

Hoskot v State of Maharashtra, AIR 1978 SC 1548

Gupta v Union of India (1981) S.C.C. 87, 210

PUDR v Union of India, AIR 1982 SC 1473

Bandhua Mukti Morcha v Union of India (1984) 3 S.C.C. 161

3.3. Cases from South Africa

Soobramoney v Government of the Republic of South Africa and Others, 1998 (1) SA 765 BCLR, (CC)

Grootboom and Others v the Government of the Republic of South Africa and Others, 2000 (11) SA 1169 BCLR, (CC)

Minister of Health and Others v Treatment Action Campaign, 2002 (5) SA 721 BCLR, (CC)

Fose v Minister of Safety and Security (1997) 3 SA 786, BCLR (CC)

3.4. Cases from Kenya

George Anyona v. Returning Officer and Zachary Onyonka, High Court of Kenya, Case No. 3346, (1979) (Unreported).

3.5. Cases from ICJ

Permanent Court of International Justice, *Chorzów Factory (Germany v. Poland)*, (13 September 1928), Series A, No. 17 47

4. Books

Allan T, 'Constitutional Justice: a Liberal theory of the Rule of Law' (Oxford: Oxford University Press 2001).

Bingham L, 'Tort and Human Rights', in P Cane/J Stapleton (eds), *the Law of Obligation, Essays in Celebration of John Fleming* (1998).

Crawford J, (ed.), *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (Cambridge: Cambridge University Press 2002).

Dicey A, *An Introduction to the Study of the Law of the Constitution*, (10th eds., London: Macmillan 1959).

Eide A, 'Economic, Social and Cultural Rights as Legal Rights', in A. Eide *et al.* (eds.), *Economic, Social, Cultural Rights: A Textbook* (Dordrecht 1995).

Greiff P. (ed.), Introduction: Repairing the Past: Compensation for Victims of Human Rights Violations, in *the Handbook of Reparations* (2006).

Iyer V, *Justice at the crossroads*, (1992).

Jain M, 'The Supreme Court and Fundamental Rights' in S.K. Verma and Kusum (eds), *Fifty Years of the Supreme Court of India—Its Grasp and Reach* (Oxford University Press, 2000).

Melaku T, *Ethiopian Constitutional Law: Past and Present* (Volume II, Alpha Printers 2017) .

Mzikenge D, 'state responsibility for human rights' in Mashood A. et al (eds.) *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate 2010).

Rieter E, 'Preventing Irreparable Harm: Provisional Measures in International Human Rights Adjudication' (Intersentia 2010).

Shelton D, 'enforcement and remedies', in Scott Sheeran and Sir Nigel Rodley (eds), *Rutledge Handbook of International Human Rights Law* (Rutledge 2013).

Shelton D, 'Remedies in International Human Rights Law, 2nd edn. (Oxford University Press, 2005)

Smith R, 'Human rights in the United Nations, in C. Heyns and K. Steffiszyn (eds.), *Human Rights, peace and justice in Africa: (Pretoria University Law Press 2006).*

Starr S, 'the right to an effective remedy: Balancing realism and aspiration' in Mashood A. et al (eds.) *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate 2010).

Zyberi G, 'Human Rights in the International Court of Justice' in Mashood A. et al (eds.) *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate 2010).

5. Journal Articles

'Du Plessis Is Not Dead: South Africa's 1996 Constitution and the Application of the Bill of Rights to Private Disputes' (1999) South African Journal on Human Rights.

Abebe A, 'Human Rights under the Ethiopian Constitution: A Descriptive Overview' (2011) 5(1) Mizan Law Review.

Abebe A, 'Towards More Liberal Standing Rules To Enforce Constitutional Rights In Ethiopia' (2010) African Human Rights Law Journal.

Agbor A, 'Pursuing the Right to an Effective Remedy for Human Rights Violation(s) In Cameroon: The Need for Legislative Reform' (2017) 20 PELJ.

Alemahu S, 'The justiciability of human rights in the Federal Democratic Republic of Ethiopia' (2008) 8 African Human Rights Law Journal.

Antkowiak T, 'Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond, (2008) 46 Columbia Journal of Transnational Law.

Atupare, 'Legitimacy, Judicial Review and Human Rights Enforcement in Ghana' (2007) 3 U. Ghana L.J.

Bassiouni M, 'Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions' (2008) (3) Duke Journal of Comparative & International Law.

Baxi, 'Taking Suffering Seriously' (1985) Third World Legal Studies 107. Bendor A, 'Are There Any Limits to Justiciability: the Jurisprudential and Constitutional Controversy in Light of the Israeli and American Experience' (1997) 7 (2) IND. INT'L & COMP. L. REV.

Benjamin R, 'Courts and the Vindication of Human Rights in Africa' (1982) 72 Law & Justice - Christian Law Review.

Bhagwati, 'Judicial Activism and Public Interest Litigation' (1984) 23 Columbia Journal of Transnational Law.

Boughay J, 'the use of administrative law to enforce human rights' (2009) 27 AJ Admin L

Brennan W, 'the Bill Of Rights and the States: the Revival of State Constitutions as Guardians of Individual Rights' (1986) 61 N.Y.U. L. Rev.

Buyse A, 'Lost and Regained: Restitution as a Remedy for Human Rights Violations in the Context of International Law' (2008) 5 *Leiden Journal of International Law*.

Chiduzo L and Makiwane P, 'Strengthening Locus Standi in Human Rights Litigation in Zimbabwe: An analysis of the Provisions in the New Zimbabwean Constitution' (2016) (19) *PELJ*.

Christiansen E, 'Exporting South Africa's Social Rights Jurisprudence' (2007) 5 *LOY. U. CHI. INT'L L. REV.*

Christiansen E, 'Using Constitutional Adjudication to Remedy Socio-Economic Injustice: Comparative Lesson from South Africa' (2008) 13 *UCLA J. INT'L L.*

Courtis C, *The Right to Food as Justiciable Right: Challenges and Strategies* (2007) 1 *Revista Internacional de Direito e Cidadania*

Deva S, 'Public Interest Litigation in India: a Critical Review' (2009) 1 *Civil Justice Quarterly*.

Dinokopila B, 'The Justiciability of Socio-Economic Rights In Botswana' (2013) 57(1) *Journal of African Law*.

Entzeroth L, 'Struggling for Federal Judicial Review of Successive Claims of Innocence: A Study of How Federal Courts Wrestled with the AEDPA to Provide Individuals Convicted of Non-Existent Crimes with Habeas Corpus Review' (2005) (60) *U. MIAMI L. REv.*

Fallon R, 'the Linkage between Justiciability and Remedies: Their Connections to Substantive Rights' (2006) (92) *Virginia Law Review* 633, 34.

Fiseha A, 'Constitutional Adjudication in Ethiopia: Exploring the Experience of the House of Federation (Hof), (2007) 1(1) *Mizan Law Review*.

Friedman L, 'Turning to the Courts: Human Rights before the Bench' (Book Review), *Harvard Human Rights Journal*, Vol. 13 (2000).

Gaer, 'A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System' (2007) 7 *Hum. Rts L. Rev.*

Gardbaum S, 'Human Rights As International Constitutional Rights' (2008) 19(4) European Journal of International Law.

Gartner D, 'Transnational Rights Enforcement' (2013) 31 Berkeley J. Int'l L.

George M, 'Human Rights in India' (1965) (11) Howard L.J.

Greabe J, 'Constitutional Remedies and Public Interest Balancing (2013) 21(3) William & Mary Bill of Rights Journal.

Haile M, 'the new Ethiopian Constitution: Its impact upon unity, human rights and development' (1996-1997) (20) Suffolk Transnational Law Review.

Jeffries J, 'The Right-Remedy Gap in Constitutional Law' (2000) 109 the Yale Law Journal.

Jibril A and Appiagyei K, 'Justiciability of Directive Principles of State Policy in Africa: The Experiences of Ethiopia and Ghana' (2013) 1 Ethiopian Journal of Human Rights.

Kamga S, 'An Assessment of the Possibilities for Impact Litigation in Franco phone African Countries, (2014) (14) AFR. HUM. RTs. L.J.

Levinson D, 'Rights Essentialism and Remedial Equilibration' (1999) 99 Columbia Law Review.

Liebenberg S, 'Remedial Principles and Meaningful Engagement in Education Rights Disputes' 2016(19) *PER / PELJ*.

Loots C, 'Standing To Enforce Fundamental Rights' (1994) South African Journal On Human Rights.

Mbazira C, 'Enforcement of Socio-Economic Rights in South Africa: Strengthening the Reasonableness Approach' (2008) 26 Nordisk Tidsskrift for Menneskerettigheter.

Meskele K and Labena T, 'The Right to Reparation for Human Right Violation in Ehiopian Legal Framework' (2017) 31 Journal of Poverty, Investment and Development.

Nariman F, 'Judicial Aspects of Human Rights Protection in India' (1992) 17 International Legal Practitioner.

Obodo C, 'International Human Rights Law Enforcement Challenges in 21st Century Africa' (2014) 32 J.L. Pol'y & Globalization.

Onyango J, 'Human Rights and Public Interest Litigation in East Africa: A Bird's Eye View' (2015) (47) Geo. Wash. Int'l L. Rev.

Orakhelashvili A, 'the Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence' (2008) 19(1) the European Journal of International Law.

Peter C, 'Fundamental Rights and Freedom in Kenya - a Review Essay' (1991) (3) Afr. J. Int'l & Comp. L.

Piccar A, 'Justiciability of All Human Rights: Scottish Independence as Redress for British Human Rights Abuses' (2015) 27 Florida Journal of international Law 333, 56.

Porter B, Justiciability of ESC Rights and the Right to Effective Remedies: Historic Challenges and New Opportunities Beijing, an essay, (March 31, 2008)

Przetacznik F, 'Implementation of Human Rights According to Multilateral Treaties' (1983) 12 Anglo-Am. L. Rev.

Regassa T, 'Making Legal Sense of Human Rights: the Judicial Role in Protecting Human Rights in Ethiopia', (2009) 3(2) Mizan Law Rev.

Regassa T, 'Sub-National Constitutions in Ethiopia: Towards Entrenching Constitutionalism At State Level' (2009) 3 Mizan Law Review.

Saunders, 'The Integrated Enforcement of Human Rights' (2012) 45 International Law and Politics.

Schaack B, 'The Civil Enforcement of Human Rights Norms in Domestic Courts' (2000) 6 ILSA J. Int'l & Comp. L.

Shelton D, 'International Human Rights Law: Principled, Double, or Absent Standards' (2007) 25 Journal of Law and Inequality.

Shelton D, 'Righting Wrongs: Reparations in the Articles on State Responsibility' (2002) 96 American Journal of International Law.

Soboka T, 'Judicial Referral of Constitutional Disputes in Ethiopia: From Practice to Theory, (2011) 19(1) African Journal of International and Comparative Law.

Starr S, 'Rethinking "Effective Remedies": Remedial Deterrence in International Courts' (2008) 83 New York University Law Review.

Stephens B, 'Expanding Remedies for Human Rights Abuses: Civil Litigation in Domestic Courts' (1997) (40) German Y.B. Int'l L.

Tezera T and others, 'Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights' (2008) 32 (1) Fordham International Law Journal.

Tesfaye Y, 'judicial Review and Democracy: A Normative Discourse on the (Novel) Ethiopian Approach to Constitutional Review' (2006) African Journal of Intentional and Comparative Law.

Tefaye Y, 'Whose Power Is It Anyway: the Courts and Constitutional Interpretation in Ethiopia' (2008) 22 JEL.

Tinsae F, 'Justiciability of Socio-Economic Rights in Ethiopia: Exploring Conceptual Foundations and Assessing the FDRE Constitution and Judicial Perspective, (2018) 9 Beijing Law Review.

Tomasevski K, 'Justiciability of Economic, Social and Cultural Rights' (1995) 55 I.C.J. Rev.

Tsehaye M and Hailu S, 'Minority Empowerment, Self-Determination Rights and Sub-National Constitutionalism in Tigray National Regional State: An Analysis of the Kunama Community Case' (2014) 31 Journal of Law, Policy and Globalization.

Udombana N, 'interpreting rights globally: Courts and constitutional rights in emerging democracies' (2005) 5 African Human Rights Law Journal.

Vibhute K, 'Compensating Victims of Crime in Ethiopia: A Reflective Analysis of Legislative Paradigm and Spirit' (2010) 17 IRV

Vibhute K, 'Non-Judicial Review in Ethiopia: Constitutional Paradigm, Premise and Precinct' (2014) 22(1) African Journal of International and Comparative law.

Wigger K, 'Ethiopia: A Dichotomy of Despair and Hope, (1998) 5 TuLSA J. CoMP. & Ir'LL.

Whyte G, 'Judicial Capacity to Enforce Socio-Economic Rights' (2014) 37 Dublin University Law Journal.

Zegveld L, 'Remedies for Victims of Violations of International Humanitarian Law' (2003) *IRRC*.

6. Other sources

6.1. UN soft laws and other documents

OHCHR, 'Human rights and constitutional making' (New York, HR/PUB/17/5, 2018)10

OHCHR, Rule-of-Law Tools for Post Conflict States: Reparations Programmes 6 (2008)

Report of CERD Committee (15 September 1993) A/48/18, Annex III

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (here in after called the basic principle), G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005)

The ILC, Article on States Responsibility for Internationally Wrongful Acts, (UN Doc. A/56/10 2001)

UNGA Resolution number 60/251, (3 April 2006), Paragraph 5(e) F.D

UN OHCHR, Individual Complaint Procedures under the United Nations Human Rights Treaties, (2013, fact Sheet no. 7/Rev.2)

UN HRC, General Comment No.31, Nature of the Legal Obligation on States Parties to the Covenant, (UN Doc. Ccpr/C/21/Rev.1/Add.13 2004)

UN Committee of ESCR, General Comment N° 9, the domestic application of the Covenant, (U.N. Doc. E/C.12/1998/24 (1998)

UN Committee of CRC, General Comment No. 5, on General measures of implementation of the Convention (2003)

Vienna Declaration and Program of Action (1993) UN Doc A/CONF.157/23

6.2. Miscellaneous

Adem Kassie, 'the Potential Role of Constitutional Review in the Realization of Human Rights in Ethiopia', (PHD Thesis, Pretoria University Faculty of Law, October 2015).

Amare Tesfaye, 'Justiciability of Socio-Economic Rights In the Federal Democratic Republic Of Ethiopia' (LL. M. Thesis, Addis Ababa University School of Law December 2010).

Black's Law Dictionary (10th Ed. 2014)

C. Willis, 'Essays on Modern Ethiopian Constitutionalism: Lectures to Young Lawyers' (unpublished, on file with the author), Addis Ababa University (1997).

Godsend Konofa, 'Laws Relating To Victim Compensation: A Comparative Study of Indian And Ethiopian Law', (LL.M. Thesis, Punjabi University, Department of Law June 2008).

Ethiopian Federal Justice Organs Professionals Training Center, 'Training Module on Calculation of Compensation in Extra Contractual Liability Cases' (2004).

John Githii, 'the Case for Justiciability of Social and Economic Rights in Kenya: Drawing from the Experience in South Africa, India and the United States', (Thesis, Central European University November 2008).

Khalnar Hajiyeu, 'The Role of the Constitutional Court and Ordinary Courts in the Protection of Human Rights', (Bishkek conference, Paper presented on a conference on 'Human Rights Protection Systems', November 2002).

The Committee of Ministers of Council of Europe, 'Guide to good practice in respect of domestic remedies', (18 September 2013).

The International Commission of Jurists, 'The Right to a Remedy and Reparation for Gross Human Rights Violations', (Practitioners Guide No. 2 Revised Edition, 2018).