



Original Article

A Critical Appraisal of the Protection Accorded Socio-Economic Rights under the FDRE Constitution

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Abstract

This article evaluates the protection accorded socio-economic rights under the FDRE Constitution. The extent to which the FDRE Constitution has guaranteed most of the socio-economic rights is unclear and it leads to several challenges. Socio-economic rights are incorporated under different parts of the constitution but, not protected as such civil and political rights. Based on an extensive review of legal documents, the protection accorded for socio-economic rights in Ethiopia may be explicitly, implicitly, or both. Focusing on the FDRE Constitution the author argues that the constitutional protection of socio-economic rights derives from the text of the Constitution itself, under fundamental rights and freedom, NPPO, international instruments ratified by Ethiopia, and through an integrated approach of socio-economic rights with civil and political rights. The article concludes that socio-economic rights are not protected as such civil and political rights it is possible to protect through different interpretations to increase the rights protection.

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Abbreviations and Acronyms

ACHPR	African Charter on Human and People Rights
CEDAW	Convention on Elimination of Discrimination against Women
CERD	Convention on Elimination all Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
DPSP	Directive Principles of State Policy
FDRE	Federal Democratic Republic of Ethiopia
ICESCR	International Covenant on Economic Social and Cultural Rights
NPPO	National Policy Principles Objectives
SERAC	Social and Economic Rights Action Center & Center for Economic & Social Rights
UDHR	Universal Declaration of Human Rights

Introduction

The protection of socio-economic rights is not a recent phenomenon. Before the adoption of the Universal Declaration of Human Rights (UDHR), economic and social rights were basically protected under the International Labor Organization.¹ The adoption of the UDHR in 1948 was a basis for the promotion and protection of human

dignity in the history of human rights. The UDHR incorporated socio-economic rights under the last provisions of eight Articles.² At the time when the UDHR was drafted and adopted, ‘there was not much doubt that economic and social rights had to be included’.³ Though, while Commission started to draft a binding International Bill of Human Rights, there was no consensus agreement among the members of the Commission. As a result, the commission separated into two whether to adopt in one or two covenants. Later, the General Assembly concluded that to prepare for civil and political rights⁴ on the other hand International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵ deals with socio-economic rights.

The other instruments that also deal with socio-economic rights are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁶ the Convention on the Rights of the Child (CRC),⁷ and the Convention on Elimination All Forms of Racial Discrimination (CERD)⁸ Ethiopia has incorporated all these instruments as part of its law of the land. Furthermore, the African Charter on Human and Peoples Rights (ACHPR) known as the African Charter to which Ethiopia is a party⁹

¹ E.W. Vierdag, ‘The legal nature of the rights granted by the International Covenant on Economic, Social and Cultural rights’, *Netherlands Year Book of International Law*, Vol. 9 (1978) p.69

² UDHR, 10 December 1948, 217A (iii) Article 22-29

³ A. Eide, ‘Economic, Social and Cultural Rights as Human Rights’, in A. Eide et al (eds.), *Economic, Social and Cultural Rights*, (2nd ed., (2001), Kluwer Law International, The Netherlands) p. 14

⁴ ICCPR, adopted 16 December, 1966 and entered in to force on 23 March, 1976

⁵ ICESCR adopted on 16 December, 1966 and entered in to force on 3 January, 1976

⁶ CEDAW entered into force on 10 October, 1976 and has been ratified by Ethiopia on 10 September, 1981

⁷ CRC has been ratified by Ethiopia on 14 May 1991 and entered into force on 13 June 1991

⁸ CERD entered into force on 23 July, 1976 and has been ratified by Ethiopia on 23 June, 1976

⁹ ACHPR, adopted 27 June 27,1981, OAU Doc. CAB/LEG/67/3 Rev.5, 21 I.L.M. 58 (1982); entered into force 21 October 1986

came with socio-economic rights,¹⁰ however there are socio-economic rights not enshrined in the Charter, but protected by the African Commission on Human and Peoples Rights cases such as the right to food,¹¹ the right to water,¹² the right to adequate housing.¹³

Several African countries have lately legislated Constitutions that contain bills of rights that mostly protect civil and political rights in selected form, and also provide for the protection of certain socio-economic rights.¹⁴ The 1995 Federal Democratic Republic of Ethiopia Constitution (herein after FDRE Constitution or the Constitution) has incorporated socio-economic rights both in its substantive part dealing with ‘fundamental rights and freedoms’¹⁵ and in the National Policy Principles and Objectives (hereinafter ‘NPPO’) of the FDRE Constitution,¹⁶ which is commonly known in other legal systems as Directive Principles of State Policy (DPSP). Similarly, the protection of socio-economic rights in Ethiopia extends to international agreements ratified by Ethiopia.¹⁷ Moreover, there are legislations other than the FDRE Constitution that deal with socio-economic rights.

The purpose of this article is to assess the protection accorded to socio-economic rights in the constitution. The first section introduces direct protection given in the constitution. Further down protection of

socio-economic rights under substantive and under NPPO dealt as sub-sections. Section two deals with the protection of socio-economic rights through an Integrated approach. Under this section, the principle of equality and Socio-economic rights protection via other right interpretations has been shortly seen. The third section dealt with Socio-economic rights protection through the International Treaties and African Charter. The fourth section highlights rights holders and duty bearers of socio-economic rights. The fifth Section deals shortly with Challenges for the protection of socio-economic rights under the FDRE Constitution. Lastly, the conclusion finalizes the article.

1. Direct protections of Socio-Economic Rights under the FDRE Constitution

The FDRE Constitution under chapter three from Article 14-44 particularly deals with fundamental rights and freedoms that can be also grouped into human rights and democratic rights. In view of that, human rights are clustered from Article 14-28, whereas democratic rights are from Article 29-44. However, such classification is not undoubted. This is the reason that there are several human rights including Socio-economic rights, but grouped under democratic rights.

¹⁰Id Article 14, 15,16,17,18, 21, 22 and 24

¹¹*Social and Economic Rights Action Center and Center for Economic and Social Rights vs Nigeria*, Communication No. 155/1996, 15th Annual Activity Report (2002) (known as SERAC case), Para. 63-65

¹²Ibid

¹³Ibid

¹⁴The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation available

at:http://www.researchgate.net/publication/23357583_1_The_Constitutional_Protection_of_SocioEconomic_Rights_in_Selected_African_Countries_A_Comparative_Evaluation last visited on 26 May,2023

¹⁵Adem Kasie, ‘Human Rights under the Ethiopian Constitution: a descriptive overview,’ *Mizan Law Review* Vol.5 No.1,(2011), p.53

¹⁶Id p. 55

¹⁷FDRE Constitution, Proclamation No.1, *Federal Negarit Gazeta*, 1st Year, No.1 (1995), Article 13(2).

1.1 Socio-Economic Rights under Fundamental Rights (Substantive Part)

1.1.1. Rights Protected

FDRE Constitution in its substantive part dealing with “fundamental rights and freedoms” has incorporated socio-economic rights. The Constitution under Article 41 explicitly guaranteed socio-economic rights, which are titled as ‘Economic Social and Cultural Rights’. Even though, the title says so there are other socio-economic rights in the constitution, such as Labour rights,¹⁸ the rights to Development¹⁹, the rights to Property,²⁰ and Environmental rights²¹ which are also protected directly in the FDRE Constitution as a fundamental right.

1.1.2 Economic, Social and Cultural Rights

The title of Article 41 of the Constitution which is titled “Economic, Social and Cultural Rights” may give the impression that all the rights that fall under the province of socio-economic rights are incorporated in this provision. However, deep study of the sub-articles tells us the absence of specific rights of such a category. FDRE Constitution under Article 41 provides that:

1. *Every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory.*
2. *Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession.*
3. *Every Ethiopian national has the right to equal access to publicly funded social services.*

4. *The State has the obligation to allocate an ever increasing resource to provide to the public health, Education and other social services.* 5. *The State shall, within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian.* 6. *The State shall pursue policies which aim to expand job opportunities for the unemployed and the poor and shall accordingly undertake programmes and public works projects.* 7. *The State shall undertake all measures necessary to increase opportunities for citizens to find gainful employment.* 8. *Ethiopian farmers and pastoralists have the right to receive fair price for their products, that would lead to improvement in their conditions of life and to enable them to obtain an equitable share of the national wealth commensurate with their contribution. This objective shall guide the State in the formulation of economic, social and development policies.*

Despite the heading of Article 41 recognized as ‘economic, social and cultural rights’, it is not only fails to provide all the socio-economic rights as its heading implies, but also its provisions are so crude that it is challenging to identify the rights guaranteed and the extent of protection afforded to them.²² This problem can be solved by referring to international human rights instruments dealing with the rights ratified by

¹⁸Id Article 42

¹⁹ Id Article 43

²⁰ Id Article 40

²¹ Id Article 44

²² Sisay Alemahu, ‘The Constitutional Protection of Economic and Social Rights in the Federal Democratic Republic of Ethiopia’ *Journal of Ethiopian Law* Vol. 22 No. 2, (2008) p. 139

Ethiopia. Sub-articles 1, 2 and 3 which guarantee freedom to engage in economic activities the right to choose such engagement, and non-discriminatory access to publicly funded services are basic to all sorts of economic and social rights.

In addition, Article 41(4) of the Constitution provides the state shall have the obligation to allocate increasing ever-increasing resources to provide public health, education and other services. From this sub-article, there are two problems found. This does not establish a right to health or education as such. Because, it does not put the rights of person to public health and education rather simply states the government obligation without stating right holders. In order to solve this problem, it is better to use the rights provided under ICESCR with which the Ethiopia party with its General Comments deals. Also, it does not provide an indicative listing of the socio-economic rights, that the state should realize progressively within the limits of its available resources. The word “other social services” is an open-ended and it is vague to understand what other social services are. This open-ended word can be solved through interpretation provided under chapter three of the FDRE Constitution. According to Article 13(2) of the Constitution, all human rights provided under Chapter Three of the Constitution including Article 41(4) should be interpreted in line with ICESCR ratified by Ethiopia.

Furthermore, the FDRE Constitution under sub-article 4 and 5 recognize the nature of socio-economic rights as progressive realization since they impose an obligation

on the State to allocate its increasing ever-increasing resource for their realization. This is also another problem of the Constitution dealing with socio-economic rights. In order to find a solution what progressive realization constitutes and how it relieves the Ethiopian government from fulfilling its obligations enshrined under ICESCR is to be answered here. According to the Committee on Economic Social and Cultural Rights on ICESCR under General Comment No.3 progressive realization constitutes a primary obligation and States are required to ensure the satisfaction of the very list’ minimum essential levels of each of the rights.²³ For example, Article 41(5) of the Constitution limits the obligation of the State, ‘within its available means, while providing rehabilitation and assistance to the physically and mentally disabled, old age and orphanage. Thus, this does not prevent the Ethiopian government from fulfilling its minimum core obligations for the right holders.

Moreover, Article 41 (6) of the Constitution imposes an obligation on the state to take all necessary measures to expand job opportunities for the unemployed and poor. Accordingly, this provision protects the socio-economic rights of the unemployed and the government has the duty to take all necessary measures to guarantee the rights. This show the rights are only for those who are unemployed and poor not include those who already have a job. Similarly, under sub-article 7 the government has an obligation to increase opportunities for citizens to find gainful employment. Finally, Article 41(8) of

²³ Committee on Economic, Social and Cultural Rights, ‘the nature of states parties obligations’,

General Comment No.3, (5th session, 1990), UN. DOC 14/12/90 (1990), para.10

the FDRE Constitution provides that the state in the formulation of economic, social and development policies shall consider the rights of Ethiopian farmers and pastoralists to receive fair prices for their products.

Overall, Article 41 of the FDRE Constitution is not free from criticism. Sisay criticizes this provision starting from its title and all sub articles with some exceptions. According to him provision of Article 41 apart from sub-articles 1, 2, and 8 does not provide for all rights falling within the realm of socio-economic rights in black and white letters as one would hope by reading its title.²⁴ The writer also agrees with asserted critics, because the sub-articles provided under Article 41 of the Constitution do not go in line with the heading of the article.

1.1.3 Labor Rights

The word labor is used interchangeably with work. The right to work and rights in work contain socio-economic rights.²⁵ Likewise, in the FDRE Constitution labor rights (right to work) is the one socio-economic right that is incorporated under Article 42. It states under sub-article (1) (a) category of persons such as: factory and service workers, farmers, farm laborers, other rural workers, and government employees “have the right to form associations to improve their conditions of employment and economic well-being.” Consequently, the rights explicitly assured are the right to form trade unions, the right to strike, the right of women to equal pay for equal work, and the right to reasonable

limitation of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for public holidays as well as healthy and safe work environment.

In sum, everyone can understand that Article 42 of the FDRE Constitution has two limitations. It provides for the right of those who already have a job and does not actually provide for the right to get one. On the other hand, the exercise of trade union rights is limited to a specific category of workers “whose work compatibility allows for it and who are below a certain level of responsibility”.²⁶ In fact, labor rights in the FDRE Constitution do not give consideration to those who have no work but rather protect those who have work.

1.1.4 The Rights to Development

The FDRE Constitution also recognized the RTD under fundamental rights as socio-economic rights under Article 43. Under this provision the Constitution defines the RTD as a right that includes the right to improved living standards,²⁷ the right to sustainable development,²⁸ and the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.²⁹ Based on the definition the right to development under the Constitution comprises both substantive and procedural rights.³⁰ The substantive rights under the Constitution are the right to improved living standards and the right to sustainable development, whereas the procedural right is the right to participate in

²⁴ Sisay, *supra* note 22 p.139

²⁵ Krzysztof Drzewicki, ‘The right to work and the rights in work’ in A. Eide et al (eds.), ‘Economic, Social and Cultural Rights’: A Textbook’, (2nd ed.), *Kluwer Law International*, Netherlands, (2001) p. 223

²⁶ Sisay, *supra* note 17, p.140

²⁷ FDRE Constitution *supra* note 17, Article 43(1)

²⁸ *Ibid*

²⁹ *Id* Article 43(2)

³⁰ Abdi Jibril Ali, ‘The right to development in Ethiopia, Human Rights and Development,’ Koninklijke Brill NV, Leiden, (2015), p.78

national development including the right to be consulted on development policies and projects.³¹

The Constitution under Article 43(1) claims each Nation, Nationality and People in Ethiopia including non-nations have the “right to improved living standards” as well as “sustainable development”. The content of the right to improved living standards under the Constitution is not defined. The right to improved living standards is comparable with similar rights provided under international human rights instruments particularly dealing with socioeconomic rights. The right to improved living standard is similar to the right to an adequate standard of living protected under Article 11 of the ICESCR. Thus, the word improved living standard via interpretation in line with Article 11 of ICESCR enables for the insertion of implied socio-economic rights particularly the right to adequate food, housing, clothing,³² and clean water.³³ The right to sustainable development will be addressed under the next section environmental protection.

1.1.5 The Rights to Property

However, there are doubts about classifying the rights to property as either civil or political rights or as economic or social rights, as it protects the socio-economic interest of individuals it is an economic and social right.³⁴ The right to property is a socio-

economic right enshrined under the African Charter on Human and People Rights³⁵ to which Ethiopia is a party. Similarly, Article 40 of the FDRE Constitution provides the right to property as a specific socio-economic right. It guarantees the ownership right to every Ethiopian citizen over ‘private property’, which shall comprise the right to acquire, to use, and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.³⁶ In view of that, the Constitution under Article 40 clearly specifies, ‘private property³⁷ shall mean: - Any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.

This sub-article tells us as a principle every Ethiopian citizen has the right to own private property (socio-economic right), except when limited by legislation for the public interest. Bestowing to Elias N. Stebek Article 40 (2) of the FDRE Constitution, a person is a titleholder of the house which is the product of his labor, creativity, enterprise, or capital.³⁸ Besides, the Constitution in Article 40(8) requires when the government expropriates private property for public

³¹ Ibid

³² ICESCR, *supra* note 5, Article 11(1)

³³ Committee on Economic, Social and Cultural Rights, the right to water, General Comment No.15 (2002), (twenty-ninth session, November 2002), E/C.12/2002/11 (2003), para.3

³⁴ Katarine Krause, ‘The right to property’, in A. Eide et al (eds.), ‘Economic, Social and Cultural Rights’: A

Textbook’, 2nd ed., Kluwer Law International, (2001) p. 191

³⁵ACHPR, *supra* note 9, Article 14

³⁶ FDRE Constitution, *supra* note 17, Article 40(1)

³⁷ Id Article 40(2)

³⁸ Elias N. Stebek, ‘Access to Urban Land and its Role in Enhancing Business Environment: Multi-track versus Mono-route Land-use Markets’: *Mizan Law Review*, Vol. 9, No.1 (2015) p.22

interest, the government pay compensation proportionate to the value of the property. In view of that, the right to property in Ethiopia with some exceptions can be taken by the government.

Furthermore, property rights are also present in scattered form under chapter three as fundamental rights and freedom in different provisions of the FDRE Constitution. For example, The Constitution under Article 35 guarantees women have equal rights to property with men to acquire, administer, control, use, and transfer any specific property.³⁹ The Constitution also assures women shall have a right to equality in employment.⁴⁰ Similarly, Article 36 recognizes child has the right to free from child labor that affects his/her education and health.⁴¹ Moreover, the Constitution under Article 37 assures everyone has the right to get access to justice⁴² including socioeconomic rights. FDRE Constitution under its Articles 35 and 36 foresees that more protection has been given for women and children in socio-economic cases in addition to protections assured under Article 40.

1.1.2. Environmental Rights

The relationship between Human rights and the environment is intertwined. In fact, human rights cannot be enjoyed without a safe, clean and healthy environment; and sustainable environmental governance

cannot exist without the establishment of and respect for human rights.⁴³ This means human rights and environmental protection a matter that one cannot exist without the existence of the other or one cannot properly enjoy human rights without environmental protection.⁴⁴ However, there are doubts to classify environmental rights as civil and political rights or socio-economic rights or group/solidarity rights. Due to the fact that it protects the interests of individuals or groups it can be considered as socio-economic rights.⁴⁵

Likewise, the FDRE Constitution addresses issues concerning the environment under Articles 43, 44, and 92. The concept of environmental protection, sustainable development and environmental rights originates from those provisions of the Constitution. Articles 44 and 43 (sustainable development) could be detailed under this section of the substantive part, while Article 92 will be addressed under NPPO. FDRE Constitution under chapter three in Article 44 also recognized environmental rights (the right to a healthy environment) as fundamental rights without defining and delimiting the term environment.⁴⁶ However, the Environmental Protection Organs Establishment Proclamation under Article 2 defines the environment as:

"Environment" means the totality of all materials whether in their natural

³⁹ FDRE Constitution, *supra* note 17, Article 35(7)

⁴⁰ FDRE Constitution, *supra* note 17, Article 35(8)

⁴¹ Id Article 36(1) (d)

⁴² Id Article 37(1)

⁴³ Report of the United Nations High Commissioner for Human Rights, Analytical study on the relationship between human rights and the environment, nineteenth session agenda items 2 and 3, (Dec.16 2011) p.6

⁴⁴ Ibid

⁴⁵Girmachew Alemu Aneme, 'The Policy and Legislative Framework of Environmental Rights in Ethiopia,' *Ethiopian Human Rights Law Series* Volume IV, Addis Ababa University Press, (July 2012), pp 5-6

⁴⁶ Id p.3

state or modified or changed by human, their external spaces and the interactions which affect their quality or quantity and the welfare of human or other living beings, including but not restricted to, land atmosphere, weather and climate, water, living things, sound, odor, taste, social factors, and aesthetics.⁴⁷

In view of that, the FDRE Constitution guarantees environmental rights as a fundamental right to have/to live in a clean and healthy environment, the right to commensurate monetary or alternative means of compensation, including relocation with adequate state assistance (the right to improved living standards or the right to livelihood) and the right to sustainable development.

a) The right to a clean and healthy environment

The FDRE Constitution unequivocally recognizes the right to live in a clean and healthy environment under Article 44(1) which states that ‘all persons have the right to a clean and healthy environment’. Thus, the existence of such constitutional provisions protecting the right to a clean and healthy environment under fundamental rights along with other rights indicates how those rights are essential. Obviously, the right to a clean and healthy environment of the people under sub-article 1 of Article 44 is put in general terms. However, to implement these rights the Constitution enables the Federal Government to enact specific environmental laws.

⁴⁷ Proclamation No. 295/2002, A Proclamation provided for the establishment of Environmental Protection Organs, Article 2(3)

b) The right to commensurate monetary or alternative means of compensation, including relocation with adequate state assistance

FDRE Constitution in Article 44 also enunciates environmental rights as a fundamental right to commensurate monetary or alternative means of compensation, including relocation with adequate state assistance.⁴⁸ It guarantees a person who is displaced or has lost the means of his livelihood due to the implementation of State programs has the right to seek appropriate compensation from the State. According to this provision, if and when it is necessary to implement development projects that may displace or adversely affect the livelihood of people, the government is obliged to provide commensurate monetary or other types of compensation and relocation with adequate assistance.

c. The right to sustainable development

The FDRE Constitution incorporated the right to sustainable development under Article 43 without defining the term sustainable development. Under sub article 1 among other rights protects ‘the right to improved living standards’ and ‘the right to sustainable development’ for the people of Ethiopia. At this juncture, the right to improved living standards has reference to the better quality of life in terms of the environment as well as other basic needs and comforts. The right to sustainable development is globally defined as development that meets the needs of the

⁴⁸FDRE Constitution, *supra* note 17, Article 44 (2)

present generation without compromising the environmental needs of future generations.⁴⁹ The term sustainable development contains both substantive and procedural elements.⁵⁰ The substantive elements are sustainable utilization of natural resources, the integration of environmental protection and economic development, the right to development, the pursuit of equitable allocation of resources both with the present and future generations (intra and inter-generational equity), and the internalization of environmental costs through the application of the 'polluter pays' principle.⁵¹ Furthermore, according to Article 43(3) of the FDRE Constitution in pursuant to the right to sustainable development, the Federal Government has an obligation to see to it that its international agreements and relations, concluded, established, or conducted, with other states protect and ensure the right to sustainable development. Moreover, Article 43(4) repeats the basic idea of sustainable development, such as development through rational and prudent use of environmental resources.

In sum, the right to sustainable development enshrined under Article 43 of the FDRE Constitution comprises both substantive and procedural elements. Thus, when we interpret the right to sustainable development recognized under the FDRE Constitution, the

substantive elements includes the right to sustainable utilization of natural resource, the integration of environmental protection and economic development programs, the right to development which is the right of rights, the pursuit of equitable allocation of resources both with the present and future generations (intra and inter-generational equity).⁵²

1.2 Socio-Economic Rights under National Policy Principles and Objectives (NPPOs)

The FDRE Constitution has also incorporated socio-economic rights in the NPPO of the Constitution. Chapter ten of the FDRE Constitution is devoted to NPPOs with which any organ of government at both Federal and State levels shall be guided in the implementation of the Constitution, other laws, and public policies.⁵³ For instance, Chapter 10 of the FDRE Constitution deals with the NPPO that comprises essential provisions relevant to human rights particularly socio-economic rights.

Basically, for the Constitutional protection of socio-economic rights, there are different ideas for different writers. Some writers argue that the statuses of socio-economic rights in the FDRE Constitution are unclear as they are both placed under chapter three of the substantive part as fundamental rights and in other to be found under DPSP.⁵⁴ On the other hand, others claim that the national

⁴⁹ Brundt land Commission, World Commission on Environment and Development, *Our Common Future* (1987) p.43

⁵⁰ Principle 3-8 and 16 of the Rio Declaration on Environment and Development (United Nations Conference on Environment & Development) Rio de Janerio, Brazil, (3 to 14 June 1992) Agenda 21

⁵¹ Ibid

⁵² Dersolegn Yeneabat, 'Comparing the Status and Recognition of the Right to Development Under the

RTD Declaration, African Charter on Human and People's Right and Ethiopian Constitution,' *International Journal of African and Asian Studies*, Vol.19, (2016), p.7

⁵³ FDRE Constitution, *supra* note 17, Article 85

⁵⁴ Takele Soboka, 'Exception as norms: The local remedies rule in the context of Socio-economic rights in the African human rights system,' *The International Journal of Human Right*, Vol.16 No.4 (2012), p. 557

policy objectives and principles are the DPSP of the FDRE Constitution. As a result, socio-economic rights incorporated under fundamental rights and freedom are protected rights as claims for individuals and groups and enforceable by courts. Whereas, socio-economic rights enshrined under chapter ten of NPPO are not directly enforceable by the courts.⁵⁵

For the writer, the assertions that NPPOs are DPSPS of the FDRE Constitution are unsound. This is because the Constitution clearly indicated NPPO didn't insist on DPSP and their purposes and goals are different. As a result, it is untenable to use interchangeably. For example, the 1937 Constitution of Ireland states clearly the title 'Directive Principles of Social Policy'⁵⁶ unlike the FDRE Constitution. As far as NPPOs are not DPSP of the FDRE Constitution, they can be enforced by the court. Normally, the FDRE Constitution under Chapter 10 deals with NPPO that socio-economic rights are protected as economic, social, and environmental objectives enshrined under Articles 89, 90, and 92 respectively.

1.2.1 Economic Objectives

Apart from the duties of the State corollary to economic rights, the economic objectives also include other objectives that are related to cultural rights and the right to development. The FDRE Constitution under Article 89 provides for the duty of the government to formulate policies that ensure

that all Ethiopians can benefit from the country's legacy of intellectual and material resources.⁵⁷ According to this provision reference is made to 'the country's legacy' implying its inheritance; such policies could have been better categorized under the cultural objectives.⁵⁸ The Constitution also imposes a duty on the government to safeguard equal opportunity to improve and promote economic conditions and equitable distribution of wealth for all Ethiopians.⁵⁹ Similarly, the Constitution recognizes the government's duty to prevent any natural and man-made disasters and to provide assistance when they occur is included as an economic objective.⁶⁰

Furthermore, the FDRE Constitution under Article 89(4) cumulative Article 25 stipulates the government to provide affirmative measures for disadvantaged nations, nationalities, and peoples in economic development. On the other hand, the Constitution under Article 89 (4) lays down the government has duty to safeguard the principle of equality between men and women in relation to economic and social development participation. In sum, the government has the duty to protect and promote the economic rights of the working population of the country such as health, welfare, and living standards. In writer's view, economic objectives stated under policy objectives of Article 89 of the FDRE Constitution only express about duty of the government (there are no rights of the

⁵⁵ Sisay, *supra* note 22, p.141

⁵⁶ Abdi Jibril and Kwadwo Appiagyei-Atua, 'Justifiability of Directive Principles of State Policy in Africa: The Experiences of Ethiopia and Ghana,' *Ethiopian journal of human rights* Vol.1, (2013), p.5

⁵⁷ FDRE Constitution, *supra* note 17, Article 89(1)

⁵⁸ Abdi and Kwadwo, *supra* note 56, p.17

⁵⁹ FDRE Constitution, *supra* note 17, Article 89(2)

⁶⁰ Id Article 89(3)

individuals in besides), unlike socio-economic rights provided under chapter three that clearly states that government as duty bearer and individuals as rights holders side by sides.

1.2.2 Social objectives

FDRE Constitution under social objectives requires the state to provide all Ethiopians access to public health and education, clean water, housing, food, and social security as resource permits.⁶¹ The social objectives are the rewriting of Article 41(4) of the FDRE Constitution in the form of state duties with the objective mainstreaming it to the country's policies. It is totally a government obligation without the corresponding individual rights and tied up by the language of progressive realization. The State obligation under Article 90(1) is a little bit different from Article 41(4) of the Constitution. In the case of Article 41(4), the obligation of the state is relatively strong and immediate than Article 90(1) of the Constitution. Protection and Promotion of the health, living standard, and general welfare of the working population are not limited expressly by resource constraints unlike the provision of public health, education, water, food, housing, and social security to all the people. It seems that the Constitution favors of the working population, though the basis of the social objective is a "welfare state that provides the minimum acceptable to all the citizenry".⁶²

However, the socio-economic rights exhausted under Article 90 (1) have no doubt and the court can apply easily without difficulties, whereas, Article 41(4) says '...other social services' is vague, broad, and what it means other social services not defined. By reading Article 41(4) with Article 90(1) other social services are clean water, housing, food, and social security. As a result, socio-economic rights enshrined in NPPO are giving more protection for the rights in addition to chapter three of the FDRE Constitution. On the other hand, some writers argue the emphasis on social policies gives the impression of disregarding other obligations of the State, by putting faith in ICESCR of Article 13(2) (a) to which Ethiopia party clearly impose obligation on states to provide free primary education.⁶³ However, the author argues though there is no clearly stated obligation of states, the state has an obligation to provide social rights. The rights stipulated under social objectives are even more clear than other rights of socio-economic rights. If the duty of the state is not clear to curtail the problem reading with other provisions is the solution.

1.2.3 Environmental Objectives

The FDRE Constitution also enumerates a set of 'environmental objectives and places them under chapter ten along with the principles for external relations⁶⁴ and national defense,⁶⁵ and political,⁶⁶ economic, social, and cultural objectives.⁶⁷ The Constitution under Article 92 clearly states about

⁶¹ FDRE Constitution, *supra* note 17, Article 90(1)

⁶²Fasil Nahum, Constitution for a Nation of Nations: The Ethiopian Prospect, The Red Sea Press (1997), P.189

⁶³ Abdi and Kwadwo, *supra* note 56, p.19

⁶⁴ FDRE Constitution, *supra* note 17, Article 86

⁶⁵Id Article 87

⁶⁶ Id Article 88

⁶⁷ Id Article 91

environmental objectives. This provision not only repeats the fundamental right to live in a clean and healthy environment⁶⁸ but also imposes a corresponding constitutional duty on the federal and the regional governments along with citizens ‘to protect the environment’.⁶⁹ Furthermore, it expects the governments to ensure that development projects and programs do not damage or destroy the environment.⁷⁰ It also assures Ethiopians that they have the constitutional right to participate in the planning and implementation of environmental policies and projects that affect them directly.⁷¹

Moreover, all NPPOs including environment objectives enshrined under chapter ten of the FDRE Constitution secured the status of guiding principles in the State Governance. Therefore, the Constitution under Article 85(1) obliges all organs of the federal and regional governments to be guided by these ‘objectives’ in implementing the Constitution, other laws, and public policies.

2 Integrated approach protection of socio-economic rights

The integrated protection approach can be said indirect protection of socio-economic rights applying through the interpretation of civil and political rights. In this case, the rights are protected through the application

principle of the right to equality or non-discrimination⁷² and other rights.

2.1 Right to equality or non-discrimination

The right to equality is the basic for protection of socio-economic rights that realizes the better protection of all human rights. The right to equality in the FDRE Constitution is enunciated under Article 25.⁷³ The article delivers three messages for every person. Firstly, runs for the principle of equality before the law and confers the right to equal protection of the law. Secondly, contains a prohibition of discrimination on certain listed grounds. Lastly, extends the prohibition of discrimination to other unlisted grounds (‘others’). This means all the rights incorporated in the FDRE Constitution are protected from discrimination. Thus, the violation of a given socio-economic rights may trample not just the specific socio-economic right in question, but also the equality clause⁷⁴ uttered in the Constitution. In such cases, the use of the right to equality, or, alternatively, proving discrimination has been shown to be a vital instrument as a means of demonstrating the violations of socio-economic rights.

Overall, the right to equality (non-discrimination) used as a cross-cutting right

⁶⁸ Id Article 92 (1)

⁶⁹ Id Article 92 (4)

⁷⁰ Id Article 92 (2)

⁷¹ Id Article 92 (3)

⁷² S. Liebenberg, ‘The Protection of Economic and Social Rights in Domestic Legal Systems’, in A. Eide, C. Krause & A. Rosas (eds.), *Economic, Social and Cultural Rights: A Textbook*, (2nd ed., 2001) p.71

⁷³ FDRE Constitution, *supra* note 17, Article 25 stated as:

All persons are equal before the law and are entitled without any discrimination to the

equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.

⁷⁴ Takeke Soboka, ‘The Utility of Cross-cutting rights in to Enhancing Justifiability of Socio-economic Rights in the African Charter on Human and Peoples’; *The University of Tasmania Law Review* vol.29 No. 2(2010) p.164

to the protection of socio-economic rights discussed above such as socio-economic rights, labor rights, property rights, the rights right to development, economic and social objectives, etc. Article 41(3) the word ‘...equal access...’ Article 35(3) the phrase and Article 89(7) the word ‘women equal with men’ cumulative with Article 25 of the Constitution evades discrimination with respect to socio-economic rights if discrimination existed. Socio-economic rights are protected through cross-cutting rights by applying the right to equality with the right violated. Henceforth, even though practically challenging a person can bring the case to the court of the law if any socio-economic rights are violated based on Article 25 of the FDRE Constitution.⁷⁵ As a principle, the Constitution clearly recognizes everyone has the right to equality or non-discrimination without any grounds, but there are also exceptions to the principle based on legitimate grounds of affirmative action. For example, Article 41(5) stipulates states allocate resources to make available the physically and mentally disabled, the aged, and children who are left without parents or guardians. Similarly, Article 89(4) of the Constitution affords the phrase the government to deliver ‘special assistance’ to least advantaged nations, nationalities, and peoples in economic development.

2.2. Socio-economic rights protection via other rights interpretation

Noticeably, all human rights including socio-economic rights are indivisible, interrelated, and interdependent. The concept of indivisibility, interrelatedness, and interdependence of human rights in general has come during the 1993 Vienna Conference.⁷⁶ Besides, the African Charter to which Ethiopia is party under its preamble stipulated satisfying socio-economic rights is a guarantee for civil and political rights.⁷⁷ As a result, the FDRE Constitution will have a great role in realizing the protection of socio-economic rights through the notion of indivisibility, interrelatedness, and interdependence of the rights. For example, in the *SERAC* case, the African Commission used the right to food from the right to dignity, the right to shelter from the right to health.⁷⁸

In the FDRE Constitution, the right to life is an example that can show that other rights can be derived from it. Craig Scott alleges that the right to an adequate standard of living and health is part of the right to life and dignity.⁷⁹ According to Article 15 of the FDRE Constitution, everyone has the right to life. Socio-economic rights are pre-condition-conditions for the protection of civil and political rights like the right to life.⁸⁰ The right to life clearly relies on socio-economic rights such as the right to health, food, housing, and others. Thus, the right to life contributes to the protection of socio-economic rights through other rights

⁷⁵ Sisay, *supra* note 22, p.142

⁷⁶Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna, (June 25, 1993) para. 5

⁷⁷ Takele, *supra* note 54, p.157

⁷⁸ Id p.159

⁷⁹ Craig Scott, ‘The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights’, *Osgoode Hall Law Journal*, Vol. 27, No. 4 (1989),P.874.

⁸⁰ Takele, *supra* note 54, p.158

interpretations guaranteed in the FDRE Constitution.

3 Socio-economic rights protection through International Treaties and African Charter

FDRE Constitution also protects socio-economic rights through international instruments ratified by Ethiopia dealing with the rights. The Constitution under Article 9 provides that, it is the supreme law of the land.⁸¹ On the other hand, Article 9(4) of the Constitution states all treaties ratified by Ethiopia are integral parts of the law of the land. According to this provision international agreements ratified by Ethiopia are an integral part of its domestic law. At this juncture, no other substantive step is required, except a proclamation ratifying the convention required to make a ratified agreement an integral part of Ethiopian law.⁸² Afterward, by reading Article 9(4) and Article 13(2) of the FDRE Constitution socio-economic rights set under chapter three of fundamental rights and principles shall be interpreted in compatible to international and regional human rights instruments dealing with socio-economic rights, such as UDHR,⁸³ ICESCR,⁸⁴ CRC,⁸⁵ ACHPR⁸⁶ and others⁸⁷ to which Ethiopia is party. From this one can understand that, there are other provisions

outside this chapter that are directly or indirectly relevant to human rights (socio-economic rights). For that reason, Ethiopia is bound to respect the above international and regional human rights instruments in interpreting the socio-economic rights provided there.

Moreover, the Ethiopian government is also bound to apply General Comments, Committee decisions, and African Commission decisions with regard to socio-economic rights. Hence, everyone in the country facing violation of any socio-economic rights can cite the provisions of international human rights instruments and the ACHPR ratified by Ethiopia to protect his/her rights as enshrined there in; and federal or state courts at any level are bound to respect that. Overall, in addition to different parts of the Constitution several international human rights instruments and ACHPR to which Ethiopia is a party protect the socio-economic rights of every person including any Ethiopian.

4 Right Holders and Duty Bearers of Socio-Economic Rights in the FDRE Constitution

Each and every human right including socio-economic rights recognized under international/regional human rights

⁸¹ FDRE Constitution, *supra* note 17, Article 9(1)

⁸² FDRE Constitution, *supra* note 17, Article 71 (2)

⁸³ UDHR, *supra* note 2, Article 25 which provides for the right to a standard of living adequate for the health and well-being . . . including food, clothing, housing and medical care the right to a healthy environment.

⁸⁴ ICESCR, *supra* note 5, Article 11(1) and 12(1) has certain relevant provisions on the right to a healthy environment towards guaranteeing an adequate standard of living.

⁸⁵ CRC, *supra* note 7, Article 24 (1) 'recognize the right of the child to the enjoyment of the highest attainable standard of health.'

⁸⁶ ACHPR, *supra* note 9, Article 22(1) all people have the right to economic, social and cultural development.

⁸⁷ Additional Protocol I to the Geneva Conventions Article 35(3) provides, it is prohibited to employ methods or means of warfare which are intended or may be expected, to cause widespread, long-term and severe damage to the natural environment. See also Article 55 (1 &2) provides for environmental protection with special reference to the health and survival of the people in the area of the conflict, and beyond.

instruments and FDRE Constitutions must be implemented. Their implementation requires identifying who is/are the duty bearers and who is/are beneficiaries or the right holders of the specific rights.

4.1 Rights holders of socio-economic rights

In the development of human rights, rights are nothing without knowing who the right holders are. In as discussed above, the FDRE Constitution under Article 41 and other relevant provisions protect economic and social rights as entitlements of individuals and groups. According to Article 41(1) and (2) of the Constitution social, economic, and cultural rights incorporated are enunciated for the benefit of every Ethiopians, however as clearly provided under Article 41(5) of the FDRE Constitution certain rights are for the benefit of a specific group of physically and mentally disabled, the aged and children who are left without parents or guardian, and Ethiopian farmers and pastoralists as enshrined under Article 41(8).

Also, the FDRE Constitution with reference to other socio-economic rights such as the right to property recognized under Article 40 and the right to development stated under Article 43 are for the benefit of Ethiopian citizens. What is more, chapter ten of the Constitution under Articles 89 and 90 of the socio-economic objectives and principles for State policy are also formulated for the benefit of all Ethiopians, except some are for the benefit of a defined group of the right

holders' particularly least advantaged nations, nationalities, and peoples in economic,⁸⁸ women⁸⁹ and victims of disasters.⁹⁰ This also indicates that only Ethiopian citizens are right holders or can claim socio-economic rights enshrined in the Constitution.

In general, from this scenario, everyone can understand that in the FDRE Constitution, none of the economic, social, and cultural rights are explicitly formulated for the benefit of "everyone" like civil and political rights. Teferi tries to justify this expression based on ICESR under Article 3(2) seems that it has already contemplated the probability of such a scenario by allowing developing countries to guarantee economic rights provided in the Covenant to non-nationals to the extent of their national economy.⁹¹ Therefore, he claims that why the FDRE did not extend the right holders of economic, social, and cultural rights to everyone seems to be justified on the grounds of the economic development of the country.⁹²

4.2 Duty bearers of socio-economic rights

It is noticeable that right is meaningless unless duty exists on the other side of it. The human rights jurisprudence reveals that human rights impose the triple obligation to respect, protect and fulfill.⁹³ The FDRE Constitution under Article 13(1) imposes a duty to promote and fulfill the three organs of government at all levels either federal or regional to respect and enforce the provisions

⁸⁸ FDRE Constitution, *supra* note 17, Article 89 (4)

⁸⁹ Id Article 89 (7)

⁹⁰ Id Article 89 (3)

⁹¹Teferi Bekele Ayana, Human Rights Protection under the FDRE and Oromia Constitutions: A comparative study, *Oromia Law Journal* Vol.5,No.1, (2016), p.52

⁹² Ibid

⁹³Magdalena Seplveda, Theo Van Banning, Gudrn Gudmundsdttir, Christine Chamoun and Willem Van Genugten, *Human Rights Reference Handbook*, University for Peace, (2004), pp.16-17

of Chapter Three, containing socio-economic rights. Accordingly, all fundamental rights including socio-economic rights guaranteed under this chapter can be realized when Federal and the States' organs such as legislative, executive, and judicial obey their responsibility and duty to respect and enforce' the rights thereunder. Similarly, the Constitution under Article 85(1) legislative, executive, and judiciary organs of the government both at the federal and regional levels should be guided by DPSP. This obligation is additional to the enforcement of socio-economic rights and other national objectives.

Likewise, the duty to protect obliges the State to prevent private actors from infringing the socio-economic rights of others. For instance, FDRE Constitution under Article 41(6) places a positive duty on the State to pursue policies, which aim to expand job opportunities for the unemployed and the poor. Further, the Constitution under Article 41(7) imposes an obligation to create a favorable environment for the creation of employment opportunities in which citizens can find gainful employment and improve their economic conditions. The Constitution under Article 41(4) also provides the State has the obligation to deliver public health, education, and other social services. This provision shows the kind of public-funded social services the government may provide. However, these services such as public health, education, and other social services are expressed not as rights but as duties to the state based on available resources akin to the socio-economic objectives of the DPSP.

Besides, the duty to promote and fulfill requires the State to take positive measures to assist individuals and groups of individuals to obtain access to socio-economic rights. Accordingly, Article 41 (5) of the Constitution expresses the duty of the state to allocate resources for the realization of the socio-economic rights for the disabled. The state has the duty to respect and protect⁹⁴ even though, sub-article 1, 2, and 3 are stated as the rights of individuals. Moreover, both under ACHPR and FDRE Constitution the state is duty-bound to ensure the Right to development. On the other hand, the FDRE Constitution under Article 92(4) provides both the Government and citizens with the duty to protect the environment.

5 Challenges for protection of Socio-economic rights in the FDRE Constitution

Socio-economic rights are protected sparsely under different provisions of the FDRE Constitution either directly or indirectly or both. As a result, socio-economic rights guaranteed under the Constitution have their own features and face the following challenges: The Constitution contains 106 Articles in general and only a few articles deal explicitly with socio-economic rights compared to civil and political rights. This means almost the majority of the Articles of the Constitution talk about civil and political rights as opposed to socio-economic rights and⁹⁵ they have a wide coverage of the Constitution. Because, during the Constitution drafted socio-economic rights were not given the same emphasis as civil and political rights. This aptly tells us, the failure

⁹⁴ Takele, *supra* note 54, p.168

⁹⁵ Sisay, *supra* note 22, p.138

of the Constitution to accord a balanced protection to the two grand categories of human rights. However, yet socio-economic rights are small in number they should be considered alike as civil and political rights. The other challenges are those socio-economic rights stipulated in the FDRE Constitutions are very general and unclear. If a certain law is general and vague it leads to debate. Some of the provisions of Socioeconomic rights enshrined in the constitution such as Article 41(3) the word 'publicly funded social services' is vague and general to understand what it means. Almost all the rights under the same articles are so crude that it is difficult to identify the rights guaranteed and the extent of protection afforded to them. Specifically, Article 41(6) and (7) do not give rise to a right-based approach rather, they impose duty on the government to ensure the enjoyment of the rights provided for in Article 41(1) and (2) recognized in unsophisticated terms.⁹⁶ To overwhelm the problems of vagueness confronted with socio-economic rights in the FDRE Constitution there are three solutions to be forwarded.

Firstly, Dejene asserts that the only possible way of alleviating socio-economic rights vagueness is interpretation through which it is possible to expand the existing rights in order to cover the untouched areas of economic and social rights.⁹⁷

Secondly, the FDRE Constitution under Article 9(4) states that 'all international agreements ratified by Ethiopia are an integral part of the law of the land'. Ethiopia has ratified several international and regional human rights instruments dealing with socio-economic rights. As a result, since they are part of the law of the land federal and regional courts at all levels can apply provisions of ratified treaties by Ethiopia.⁹⁸ Finally, the Committee on Economic, Social and Cultural Rights to which Ethiopia is a party, explicitly deals with socio-economic rights and has allotted many General Comments to clarify the scope and content of the rights confined in the ICESCR. These comments are a clear indication that the rights are capable of definition,⁹⁹ and can also be used by courts to define the scope of disputed socio-economic rights presented before them. Therefore, Ethiopian courts at any level either federal or regional having jurisdiction on the matters use the General comments of economic, social, and cultural rights such as the General Comment on the right to health,¹⁰⁰ when violation of any socio-economic rights appeared before. Therefore, the vagueness and broadness of socio-economic rights do not justify the denial of their protection in the FDRE Constitution.

6 Conclusion

⁹⁶ Id p.148

⁹⁷ Dejene Girma, 'Economic, Social and Cultural Rights and their Enforcement under the FDRE Constitution', *Jimma University Law Journal* Vol.1, No. 2, (2008), p.83-85

⁹⁸ Sisay, *supra* note 22, p.148

⁹⁹ Mariette Brennan, 'To Adjudicate and Enforce Socio-Economic Rights: South Africa proves that

Domestic Courts are a Viable Option,' *Queensland University Tech. Law and Justice Journal*, Vol. 9, No. 1 (2009), p. 70

¹⁰⁰ Committee on Economic, Social and Cultural Rights, *the right to the highest attainable standard of health*, General Comment No. 14, (twenty second session, 2000), E/C 12/2000/4 (2000), see also General Comment No.15, *supra* note 33

Before the adoption of an independent primary instrument of ICESCR, the legal nature and protection given for socio-economic rights were less debatable among scholars. However, later ICESCR became an international human rights treaty adopted in 1966 to ensure the protection of economic, social, and cultural rights such as the right to education, fair and just conditions of work, adequate standards of living, and the highest attainable standard of health and social security. Afterward, several international and regional human rights treaties also incorporated socio-economic rights.

FDRE Constitution also came with many rights (holistic) such as civil and political rights, socio-economic rights, and group rights. However, to what extent the rights are protected is debatable among Ethiopian writers. The Constitution guarantees socio-economic rights in different ways, particularly as fundamental rights and freedom, NPPO, international/regional instruments ratified by Ethiopia, and by applying an integrated approach.

However, socio-economic rights guaranteed under the Constitution have got their own features and face some challenges. Unlike civil and political rights the socio-economic rights are certain in number and they should be cured alike as civil and political rights. The other challenge is those rights are expressed in general and vague to understand the rights. To overcome such problems, it is possible to apply through interpretation, applying international/regional instruments dealing with the rights that are part and parcel of the Constitution, and to apply General Comments that clarify the rights in the ICESCR. In sum, since human rights are by

their nature interrelated, interdependent, and indivisible the vagueness and broadness of socio-economic rights does not justify the denial of their protection in the FDRE Constitution.