

# **THE REALIZATION OF THE RIGHT TO HOUSING IN ETHIOPIA**

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**DECLARATION**

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

Signature.....

Date.....

Dr. Atangcho Nji Akonumbo (Supervisor)

Signature: .....

Date: -----

**DEDICATION**

To all Ethiopians facing housing problems!

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## **List of abbreviations**

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

**AU**- African Union

**CCT**-Constitutional Court of South Africa

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

**The Constitution**-The 1994 Constitution of the Federal Democratic Republic of Ethiopia

**CPRs**-Civil and Political Rights

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

**HOF**- the House of the Federation

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

**SCA**- Supreme Court of Appeal of South Africa

**UDHR**-Universal Declaration of Human Rights

**UN**-United Nations

## Chapter 1

### General introduction

#### 1.1. Background

The realization of the right to housing is of central importance to the enjoyment of all ESCRs<sup>1</sup> and CPRs.<sup>2</sup> Yet, housing has remained one of the most basic human needs which millions of the poorest people around the world lack.<sup>3</sup> Over 100 million persons around the world are homeless and over 1 billion are inadequately housed.<sup>4</sup> Half of the population of the world, particularly in the cities of developing countries, live in informal settlements.<sup>5</sup> The right to housing, which aims at addressing this problem, entered into the body of international, universally applicable and universally accepted, human rights law in 1948 with the adoption of the UDHR;<sup>6</sup> but there is no indication that the global housing problem is decreasing since then.<sup>7</sup>

The continuity of housing problems around the world after the recognition of the right to housing in the UDHR and other subsequent human rights instruments is generally attributable to the divisive nature of the enforcement of ESCRs as a whole. ESCRs, rights that create material entitlements for human condition,<sup>8</sup> raise different controversies. Firstly, the very nature of the rights itself is controversial as they are sometimes seen as socialist manifesto thinly veiled in the form of rights,<sup>9</sup> or as societal goals, not human rights,<sup>10</sup> or as non-justiciable rights.<sup>11</sup> Secondly, even when they are considered to be human rights, they are regarded as progressively realizable.<sup>12</sup> This creates an opportunity for states to use scarcity of resource as a pretext for not enforcing them. Thirdly, poverty has become an obstacle to the realization of ESCRs in general and the right to housing in particular.<sup>13</sup> Yet, still there are certain 'minimum core obligations' that every state can perform regardless of their economic situation<sup>14</sup> such as refraining from taking 'deliberately retrogressive measures'<sup>15</sup> like arbitrary eviction-a method of 'de-housing'.<sup>16</sup>

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<sup>1</sup> Committee on ESCRs, General Comment 4, Right to adequate housing, paragraphs 1 and 7

<sup>2</sup> Preamble, ACHPR

<sup>3</sup> Evadne Grant, *Enforcing Social and Economic Rights: The Right to Adequate Housing in South Africa*, African Journal of International and Comparative Law, V 15, PT1, Edinburgh University Press, Edinburgh, 2007, p 2

<sup>4</sup> n 1 above, paragraph 4

<sup>5</sup> n 3 above

<sup>6</sup> *UN Fact Sheet Number 1-25*, 4<sup>th</sup> Ed, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund, 1996, pp 349-350. See also Mignon Senders, *Women and the Right to Adequate Housing*, Netherlands Quarterly of Human Rights, V 16, No. 1, 1998, Kluwer Law, p 165

<sup>7</sup> n 1 above, paragraph 4

<sup>8</sup> Danie Brand and Christof Heyns (eds), *Socio-Economic Rights in South Africa*, Pretoria University Law Press, 2005, p 3

<sup>9</sup> Iain Currie and Johan de Waal, *The Bill of Rights Handbook*, 5<sup>th</sup> ed, 2006, p 568-569

<sup>10</sup> See for instance Ralph Beddard and Dilys M Hill (Eds), *Economic, Social and Cultural Rights Progress and Achievement*, St. Martin's Press, New York, 1992, p 6

<sup>11</sup> n 9 above

<sup>12</sup> General Comment No 3 of the Committee on ESCRs on article 2(1)

<sup>13</sup> n 3 above, p 1

<sup>14</sup> Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997, paragraph 9

<sup>15</sup> n 9 above, p 572

<sup>16</sup> Human Rights, *Forced Evictions and Human Rights*, Fact Sheet No. 25, Centre for Human Rights, United Nations, Geneva, p 4



In Ethiopian constitutional history, the right to housing has never been explicitly recognized as human right.<sup>17</sup> From 1931, when Ethiopia promulgated its first written constitution, upto 1974, housing was a private affair as any Ethiopian who could afford to build a house had a right to own a house, which meant that only the affluent owned houses.<sup>18</sup> The government provided housing to the poor on rent which was not up to town planning standards, leading to development of slums.<sup>19</sup> From 1974 upto 1991, the government was directly involved in the supply of housing by nationalizing all urban land and housing units not occupied by owners, extra houses and by effectively eliminating private sector rental or sale of real estate development.<sup>20</sup> Moreover, the government introduced different incentives such as allocation of land without charge for the construction of owner-occupied dwelling units and subsidization of building materials to encourage people to build their own houses.<sup>21</sup> Nevertheless, the total planned housing production ultimately satisfied only a small portion of housing demands.<sup>22</sup>

From the 1991 onwards, the era of the current government, the situation of the right to housing in Ethiopia is different. Unlike the previous governments, the present government has ratified different international human rights treaties that recognize the right to housing. Domestically, however, neither its Constitution nor other legislation expressly provides for the right to housing; nor is the government directly getting involved in the provision of housing on equally footing with its predecessor.<sup>23</sup> This does not mean that there are no housing problems in Ethiopia. Indeed, there are.<sup>24</sup> The importance of responding to housing problems in Ethiopia lies in that it can, in addition to realizing the right to housing, simultaneous serve as a measure to deal with poverty from human rights perspective.<sup>25</sup>

## 1.2. Literature review

The normative character of ESCRs has been very controversial since early time.<sup>26</sup> During the drafting process of the UDHR, some countries objected to the inclusion of these rights in the document as human rights.<sup>27</sup> Because ESCRs are often regarded as 'mere aspirations or second

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<sup>17</sup> So far, Ethiopia has had four written constitutions that where promulgated in 1931, 1955, 1987 and 1994

<sup>18</sup> Jember Tefere and Admassie Wondimu, *Integrated Holistic Approach and Urban Development Project Housing, Experience in Addis Ababa, Ethiopia*, <[http://216.239.59.104/search?q=cache:hR5o\\_WDtObAJ:www.blpnet.org/learning/casebooks/hic2/ethiopia.pdf+Housing+problems+in+Ethiopia&hl=en&ct=clnk&cd=12&gl=za](http://216.239.59.104/search?q=cache:hR5o_WDtObAJ:www.blpnet.org/learning/casebooks/hic2/ethiopia.pdf+Housing+problems+in+Ethiopia&hl=en&ct=clnk&cd=12&gl=za)> (accessed 7 July 2007).

<sup>19</sup> As above

<sup>20</sup> Abraham Tesfaye, *Problems and prospects of housing development in Ethiopia* <<http://emeraldinsight.com/Insight/ViewContentServlet?Filename=Published/EmeraldFullTextArticle/Articles/1130250102.html>> (accessed 7 July 2007)

<sup>21</sup> As above

<sup>22</sup> As above

<sup>23</sup> See chapter two.

<sup>24</sup> See chapters three and four

<sup>25</sup> n 10 above

<sup>26</sup> See Vincent O. Orlu Nmehielle, *The African Human Rights System, Its Laws, Practice, and Institutions*, International Studies in Human Rights, Volume 69, Martinus Nijhoff Publishers, The Hague/London/New York, 2001, p 121

<sup>27</sup> n 8 above, p 1

class right' not deserving the status of human rights,<sup>28</sup> or, as Cranston argues, 'utopian aspirations'.<sup>29</sup> Nevertheless, the UDHR emerged as 'an international instrument with strong socio-economic dimension'.<sup>30</sup> On the other side, some authors argue that ESCRs are indeed human rights. For instance, Awasthi and Katoria argue that in any organized society, the right to life as a human being is not ensured by meeting only the animal needs of man.<sup>31</sup> It is secured only when a man is assured of basic needs<sup>32</sup> and ESCRs create entitlements to those basic needs.<sup>33</sup> The realization of the right to housing as one of the ESCRs is, therefore, necessary for human life.

Indeed, it is not simply right to housing but right to adequate housing is universally viewed as one of the most basic necessities of life.<sup>34</sup> *Adequacy* in this sense refers, among others, to 'adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities-all at reasonable cost'.<sup>35</sup> According to Conway's,<sup>36</sup> inadequacy of housing can be a root cause of, inter alia, disease and poor quality workforce.

Some authors, without challenging the status of ESCRs as human rights, challenge the feasibility of enforcing ESCRs in general and the right to housing in particular. For instance, Bankie, Marias and Namiseb,<sup>37</sup> argue that the enforcement of the right to adequate housing, as part of ESCRs, is difficult and this difficulty has resulted in its marginalization. Conway also argues that housing issue is complex because it involves economic and financial issue.<sup>38</sup> Akumah<sup>39</sup> further argues that while the ESCRs under the ACHPR are justiciable, they are difficult to exercise.<sup>40</sup> Certainly, the realization of the right to housing, like any other ESCRs, is difficult and complex. Yet there are instances where the enforcement and enjoyment of housing rights can be less problematic than even the enforcement and enjoyment of CPRs. Because the right to housing does not mean the same thing for everyone. For some people it means abstaining from forced eviction, for others it means getting access to vacant government houses and still for some it means granting access to land to build their own houses.<sup>41</sup>

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<sup>28</sup> Sibonile Khoza (ed), *Socio-Economic Rights in South Africa*, 2<sup>nd</sup> Ed, Community Law Centre, University of Western Cape, South Africa, 2007, p 19

<sup>29</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2<sup>nd</sup> ed, Cornell University, USA, 2003, p 29

<sup>30</sup> n 8 above, p 7

<sup>31</sup> S.K. Awasthi and P.P. Katoria, *Law Relating to Protection of Human Rights*, 2<sup>nd</sup> ed, Orient Publishing Company, 2005, p 62

<sup>32</sup> As above

<sup>33</sup> n 28 above, p 20

<sup>34</sup> n 6 above (*UN Fact Sheet Number 1-25*), p 349-350 and (Senders), p 348

<sup>35</sup> As above (*UN Fact Sheet Number 1-25*), p 349-350 and (Senders), p 349

<sup>36</sup> Jean Conway, *Housing Policy*, The Gildredge Press, United Kingdom, 2000, p 1

<sup>37</sup> B.F. Bankie, C. Marias, and J.T. Namiseb (Compilers), *The Southern African Human Rights Reader Towards Creating a Sustainable Culture of Human rights*, UNESCO, 1998, p vi

<sup>38</sup> n 36 above, p 2

<sup>39</sup> Evelyn A Akumah, *The African Commission on Human and Peoples' Rights*, V 16, Martinus Nijhoff Publishers, The Hague, London, Boston, 1996, p 183

<sup>40</sup> Yet, the African Commission on Human and Peoples Rights declared that they are justiciable. See Solomon Franc Sacco, *A Comparative Study of the implementation in Zimbabwe and South Africa of the international law rules that allow compulsory licensing and parallel importation for HIV/AIDS drugs*, (2005) 5 AHRLJ, pp 106-107

<sup>41</sup> This may not be costly in Ethiopia where land is owned by the government. See article 40(3) of the Constitution

Indeed, some authors argue that even with all their difficulties ESCRs should be implemented like the CPRs. For instance, Beddard and Hill<sup>42</sup> argue “...why is it apparently acceptable to die of hunger than to be shot?” Within the meaning of the right to housing, it can be asked why it is acceptable to be eaten by some wild animal or to be taken by flood than to be killed by a human being. After all, the right to housing is important for the protection of life and of human worth and dignity.<sup>43</sup> The 1986 UN Declaration on the Right to Development which places ESCRs on a par with CPRs<sup>44</sup> is also in line with these authors’ argument.

Further, it is important to note that economic and financial implications are not unique to the enforcement of ESCRs but applicable to the CPRs, too. Moreover, according to Teymur’s argument, ‘to argue that the cost of housing is too high is equivalent to saying that the aim [of realizing housing rights] is not worth achieving’.<sup>45</sup> Besides, every state has the capacity to perform certain obligations with respect to the right to housing irrespective of its economic and financial capacities.<sup>46</sup>

As the above review shows, many books and articles have been written on the right to housing. Nevertheless, it is very difficult to find literature that specifically addresses the precise concern that this research raises.

### 1.3. Research question

**The central question** this research aims to answer is: **Has Ethiopia adopted adequate measures to realize the right to housing?**

**The secondary questions are:**

1. What measures have been adopted to realize the right to housing?
2. If these measures are not adequate, why not and what other measures should be adopted to realize the right to housing in Ethiopia?

### 1.4. Hypothesis

This research conceives that Ethiopia has not adopted adequate measures to realize the right to housing.

### 1.5. Objectives of the research

This research aims at understanding and explaining the status of realization of the right to housing in Ethiopia to make some recommendations to problems of realization of the right. To achieve this

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<sup>42</sup> n 10 above, p 4

<sup>43</sup> As above, p 47

<sup>44</sup> Anthony Hall and James Midgley, *Social Policy for Development*, SAGE Publication, London, Thousand Oaks, New Delhi, 2004, p 11

<sup>45</sup> Necdet Teymur, Thomas A Markus, and Tom Woolley (Eds), *Rehumanizing Housing*, Butterworths, London, Boston, Durban, Singapore, Sydney, Toronto and Wellington, 1988, p 137

<sup>46</sup> See chapter four on ‘minimum core obligations’

aim, among others, the legal framework of the right to housing, the measures Ethiopia has taken to realize the right to housing, the conduct violating the right to housing and the possible remedies therefor will be discussed.

### **1.6. Methodology**

The research will mainly be library based with documented facts on the right to housing explored, legal regimes analyzed and judicial decisions in the field exploited. Pertinent internet resources shall also be used to get relevant information.

### **1.7. Significance of the research**

This dissertation will be informative to many Ethiopian about their right to housing vis-à-vis the duty of the government and the measures it has taken hitherto to realize it. It can also serve as an incentive for the government to take adequate steps to realize the right to housing thereby influencing policy-making. Further, the research will bridge the gap in the existing literature on the subject.

### **1.8. Scope/limitation of the research**

This dissertation is an attempt to analyze the housing situation in Ethiopia. It does not deal with the housing situations in Cameroon and South Africa except that some kind of comparison might be made for the sake of understanding and explaining the situation of housing in Ethiopia and using their experiences, if found relevant, to make feasible recommendations for the realization of the right to housing in Ethiopia. In the course of conducting this research, there will be shortage of materials, including cases, directly pertaining to the enforcement of socio-economic rights in Ethiopia. Moreover, most of the information available on the subject concentrates on problems of housing in urban areas, by no means suggesting that there are no housing problems in rural areas.

### **9. Overview of chapters**

Chapter one is a general introduction to the research. Chapter two provides for the legal framework of the right to housing and the obligations flowing therefrom. Chapter three considers the measures that are in place in Ethiopia to realize the right to housing. Chapter four answers the research question by looking into conducts violating the right to housing in Ethiopia. Chapter five presents the available international and national remedies for the violations of the right to housing in Ethiopia. The last part contains conclusion and recommendations.

## Chapter 2

### The legal framework of the right to housing

#### 2.1. Introduction

Although there has been hot debate on whether ESCRs should be recognized as human rights in general, nowadays, these rights are recognized in many international and national legal instruments as human rights. The right to housing, as one of these rights, can therefore be grounded in some of these legal instruments. The following part will consider the legal bases of the right to housing under two sub-sections: international law and national laws. The second sub-section will deal particularly with the constitutions of South Africa (SA), Cameroon, and Ethiopia.

#### 2.2. International law

It was mentioned that the right to housing is a basis for the enjoyment of both ESCRs and CPRs.<sup>47</sup> Undoubtedly, it can also be a basis for the enjoyment of what is known as *third generation or group rights*. For instance, for the purpose of ensuring the development and the peace of people, which are *third generation rights*, realizing housing needs is very important. As a result, one can find this right recognized in different international-global and regional-human rights instruments either directly or indirectly.

At global level, the right to housing came into existence in 1948 with the adoption of the UDHR<sup>48</sup> thereby joining the body of international, universally applicable and universally accepted human rights law.<sup>49</sup> After the adoption the UDHR, many other international human rights treaties have recognized the right to housing as human right. For instance, no less than 12 different texts adopted and proclaimed by the UN explicitly recognize the right to housing.<sup>50</sup> Just to consider few examples, the ICESCR, the major international human rights treaty on ESCRs, provides, under article 11(1), for everyone's right to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions. Interestingly, the ICESCR goes one step ahead of the UDHR by, on top of recognizing the right to adequate housing, demanding its *continuous improvement*. Article 14 of CEDAW also requires states to ensure to women in rural areas the right to enjoy adequate living conditions, particularly in relation to housing. Unlike the ICESCR, this convention does not apply to everyone but it is particularly important for it shows that housing problems are not limited only to urban areas.

At regional level, the major African human rights document, the ACHPR, does not expressly provide for the right to housing. Nevertheless, the African Commission on Human and Peoples' Rights (the Commission) adopted the approach of generous and purposive interpretation which led to the development of the doctrine of *implicitly guaranteed rights*: reading rights which are not

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<sup>47</sup> See chapter one, background

<sup>48</sup> n 6 above (Senders), p 165 and article 25(1), UDHR.

<sup>49</sup> n 6 above (UN Fact Sheet Number 1-25)

<sup>50</sup> As above

expressly recognized by the ACHPR “into” it.<sup>51</sup> Luckily, the right to housing is one the two such rights read ‘into’ the ACHPR by the Commission. In the *SERAC* case,<sup>52</sup> the Commission stated that although the right to housing or shelter is not explicitly provided for under the ACHPR, the combined effect of articles 14 (the right to property), 16 (the right to enjoy the best attainable state of mental and physical health) and 18(1) (the protection accorded to the family) reads into the ACHPR a right to shelter or housing.

However, the Commission did not explain whether the right to housing it read ‘into’ the ACHPR is the right to *adequate* housing or not. Some argue that the ACHPR is the only international convention on human rights that has attempted to elevate socio-economic rights to the level of enforceable rights thereby creating opportunity for nurturing and securing the right to *adequate* housing.<sup>53</sup> It can also be conceived that, had the issue been raised in the *SERAC* case, the Commission would have said, by having recourse, inter alia, to articles 60 and 61 of the ACHPR, that the right to housing read ‘into’ the ACHPR is the right to adequate housing, not simply housing.

Ethiopia ratified all the three instruments.<sup>54</sup> By virtue of article 9(4) of the Ethiopian Constitution, therefore, they are integral part of the law of the land thereby creating the obligation to realize the right to housing.

### **2.1.1. Contents of the right to housing**

Socio-economic rights in general are rights that give people access to certain basic needs (resources, opportunities and services) necessary for human being to lead a dignified life.<sup>55</sup> They are rights which create entitlements to things such as food, water, health care services and shelter, rather than rights to vote, or speak, or associate.<sup>56</sup> Within this broader picture of socio-economic rights, the right to housing can be understood as the right to get (access to) housing without being restricted to a ‘roof over one’s head’. It is the right to live somewhere in *security, peace and dignity*.<sup>57</sup>

According to General Comment 4 of the Committee on ESCRs (the Committee), article 11(1) of the ICESCR recognizes the right to adequate housing, not simply housing.<sup>58</sup> Some of the factors that need to be taken into account to determine the *adequacy* of housing include adequate privacy,

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<sup>51</sup> Frans Viljoen, *Introduction to the African Commission and the Regional Human and Rights System* as included in Christof Henys (ed), *Human Rights Law in Africa: International Human Rights Law in Africa*, V 1, Martinus Nijhoff Publishers, Leiden/Boston, 2004, p 410

<sup>52</sup> *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria*, Communication No.155/96, African Commission Human and Peoples' Rights, 2001, Paragraph 62

<sup>53</sup> Osita Eze, *Study on the Right to Adequate Housing in Nigeria*, Shelter Rights Initiative, Lagos, 1996, p 20 (Emphasis added)

<sup>54</sup> Ethiopia acceded to the ICESCR on 11 June 1993, ratified CEDAW on 10 September 1981 and acceded to the ACHPR on 15 June 1998.

<sup>55</sup> n 28 above, p 20

<sup>56</sup> n 8 above

<sup>57</sup> n 1 above, Paragraph 7(Emphasis added)

<sup>58</sup> As above

adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities-all at a reasonable cost.<sup>59</sup> Further, the Committee made it clear that, while *adequacy* can be determined in part by social, economic, cultural, climatic, ecological and other factors, aspects such as legal security of tenure, availability of services (materials, facilities and infrastructure), affordability, habitability, accessibility, location, and cultural adequacy must be taken into account *in any particular context* to determine the adequacy of housing.<sup>60</sup>

### 2.1.2. States' obligations

The enforcement of human right requires states to engage in different types of conducts (negative and positive). The African Commission explained these conducts, in the *SERAC case*, as follows:

...internationally accepted ideas of the various obligations engendered by human rights indicate that all rights-both civil and political rights and social and economic-generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to *respect, protect, promote, and fulfill* these rights.<sup>61</sup>

The Commission also defined the obligation to *respect* as the obligation to *refrain from interfering* in the enjoyment of all fundamental rights, the obligation to *protect* as the obligation to *protect right-holders against other subjects* by legislation and provision of effective remedies, the obligation to *promote* as the obligation to *make sure that individuals are able to exercise their rights and freedoms*, for example, by promoting tolerance, raising awareness, and even building infrastructures, and the obligation to *fulfill* as the obligation to *directly provide the basic needs* such as food or resources that can be used for food (direct food aid or social security).<sup>62</sup>

In relation to the right to housing, therefore, the obligation to respect includes abstinence from arbitrary evictions; the obligation to protect includes the obligation to prohibit unlawful evictions by private person; the obligation to promote includes the obligation to raise peoples' awareness about their right to housing and create conducive environment whereby they will be able to exercise the right such as by encouraging private housing providers; and the obligation to fulfill includes the provision of housing or other corollary services that make housing more than 'a roof over head' to those in need of, or granting access to land to those who want to build their own houses.

Each of the above obligations contains elements of obligation of *conduct* and obligation of *result*: the former requires 'taking actions reasonably calculated to realize the enjoyment of a particular right' whereas the latter requires 'the achievement of specific targets to satisfy a detailed substantive standard'.<sup>63</sup> Accordingly, in relation the right to housing the obligation of conduct may

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<sup>59</sup> As above

<sup>60</sup> n 1 above, paragraph 8 (Emphasis added)

<sup>61</sup> n 52 above 1, paragraph 44 (Emphasis added)

<sup>62</sup> As above, paragraphs 45-47 (Emphasis added)

<sup>63</sup> n 14 above, paragraph 7 (Emphasis added)

require making specific housing legislation or national housing policies and implementing them while the obligation of result requires reduction of homelessness, slums, or inadequacy of housing.

In addition to, but emanating from, the above-mentioned obligations, there is another obligation that states assume upon the recognition of human rights. This is the obligation to take steps either immediately or progressively to enforce the above-mentioned obligations. It is the obligation to discharge obligations; that is, for the purpose of discharging the obligations to respect, protect, promote, and fulfil, states assume another obligation to take steps either progressive or immediate, as the case may be. For instance, under article 2(1) of the ICESCR, states assume both progressive and immediate obligations; the obligation to 'take steps' and the obligation to 'fully realize'. The obligation 'to take steps' in itself is not qualified or limited by other considerations [hence, it is immediate obligation] while the obligation to 'fully realize' the relevant rights is progressively achievable by taking steps towards that goal within a reasonably short time after the ICESCR's entry into force for the States concerned.<sup>64</sup> Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the ICESCR.<sup>65</sup> No state can use the obligation to progressively realize rights as a pretext for non-compliance with its obligations.<sup>66</sup> In fact, the progressive obligation is an obligation to move as expeditiously and effectively as possible towards the full realization of the rights recognized.<sup>67</sup> If a state, therefore, fails to realize the right to adequate housing when it is possible to do so, it will violate its obligation to progressively fully realize the right.<sup>68</sup>

As far as the means to an end is concerned, states enjoy a margin of discretion in selecting any means for implementing their respective obligations.<sup>69</sup> In this regard, the Committee recognizes that in many instances legislation is *highly desirable* and in some cases may even be *indispensable* to enforce the right to housing.<sup>70</sup> So, in most cases, those states in which there are no specific housing laws or other legislation with equivalent purposes are probably not in the right path to implement their obligations to realize the right to housing.

However, it is important to note that whatever means is adopted, there are minimum core obligations that any state is required to implement to realize the right to housing. This minimum obligation is the obligation to provide basic shelter or housing to significant number of citizens.<sup>71</sup> If this is not so, then the state concerned is, *prima facie*, failing to discharge its obligations under the ICESCR.<sup>72</sup> Because, in many cases, compliance with such obligations may be undertaken by most

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<sup>64</sup> n 1 above, paragraphs 1-2

<sup>65</sup> As above

<sup>66</sup> n 14, paragraph 8

<sup>67</sup> n 1 above, Paragraph 9

<sup>68</sup> n 8 above, p 99

<sup>69</sup> n 14 above, paragraph 8

<sup>70</sup> n 1 above, Paragraph 3 (Emphasis added)

<sup>71</sup> n 1 above, Paragraph 10

<sup>72</sup> As above



states with relative ease and without significant resource implications.<sup>73</sup> Government policy or programme should aim at providing at least basic shelter or housing to significant number of its citizens. Failure to do so will render the policy or programme unacceptable and inconsistent with the right to housing.<sup>74</sup>

Under the ACHPR and CEDAW, there is no explicit requirement that states' duty to enforce the right to housing is the duty of progressive realization. That implies that the right to housing they recognize, either expressly or impliedly, is immediately realizable. Yet, to the extent the realization of this right is contingent upon the consumption of resources, which is not at the disposal of a state, they are still progressively realizable in the sense that their enforcement may be stayed until such time that the capacity to enforce the right is gained. To the extent that these resources are not required, therefore, they are immediately realizable thereby burdening states to take immediate steps to realize them.<sup>75</sup>

## **2.2. National laws**

### **2.2.1. South African Constitution**

South Africa was one of the few countries that objected to the inclusion of socio-economic right in the UDHR during its drafting process.<sup>76</sup> Its current Constitution is, however, known for its entrenchment of a range of socio-economic rights.<sup>77</sup> Under section 2, the Constitution of South Africa requires the state to fulfil its constitutional duties while section 7(2) requires the state to respect, protect, promote and fulfil the rights it recognizes.<sup>78</sup> The cumulative reading of these two sections, therefore, suggests that the socio-economic rights the Constitution of South Africa recognizes are justiciable rights.<sup>79</sup> These rights operate proactively and reactively.<sup>80</sup> Proactively, the rights guide and shape legislative measures, policy formulations and executive and administrative decision-making while reactively they create avenues for redress when they are violated.<sup>81</sup>

The right to housing is one of the socio-economic rights the Constitution of South Africa recognizes. Section 26 of this Constitution provides for everyone's right to access to adequate housing while simultaneously obliging the state to take reasonable measures, within its available resources, to progressively realize the right. It also prohibits arbitrary eviction or demolition of

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<sup>73</sup> n 14, paragraph 10

<sup>74</sup> *The Government of the Republic of South Africa and Others v Irene Grootboom and Others*, Case CCT 11/00, 2000, paragraph 43

<sup>75</sup> It can also be envisaged that sometimes the realization of the right to housing may be postponed as a matter of budget prioritization to respond to problems requiring urgent attention.

<sup>76</sup> n 8 above, p 1

<sup>77</sup> As above

<sup>78</sup> As above, p 2

<sup>79</sup> As above, p 86 and Miloon Kothari, *Priority Issues and Impediments to Realizing the Rights to Adequate Housing* as included in the work of Berma Klein Goldewijk, Adalid Contreras Baspeinerio and Poulou Cesar Carbonari (eds), *Dignity and Human Rights: The Implementation of Economic, Social and Cultural Rights*, Intersentia, p 70

<sup>80</sup> As above (Brand and Heyns)

<sup>81</sup> As above

homes, requires courts to consider all relevant circumstances to authorize eviction from or demolition of homes and prohibits laws permitting arbitrary eviction. Article 28(1)(c) recognizes every child's right to basic shelter while article 35(2)(e) recognizes every detainees and prisoners right to adequate accommodation.<sup>82</sup> Further, article 39(1)(b) obliges courts to consider international law while interpreting the bill of rights.

Interestingly, both the legislature and the judiciary have taken steps towards the implementation of the constitutional right to access to adequate housing. The legislature passed different laws<sup>83</sup> which include the Housing Act,<sup>84</sup> Prevention of Illegal Eviction from and Unlawful Occupation of Land,<sup>85</sup> Rental Housing Act (to promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market),<sup>86</sup> and Extension of Security of Tenure Act.<sup>87</sup> Legislative measures have also been taken at provincial levels within the legal framework of the national housing legislation. For instance, Western Cape has its own Western Cape Housing Development Act to enforce the constitutional right to access to adequate housing.<sup>88</sup> The judiciary, at different levels, has also passed different decisions involving the right to access to adequate housing. For instance, in *Grootboom case*, the CCT said the nationwide housing programme of the government of South Africa falls short of its obligations under article 26 of the Constitution to the extent that it fails to recognise that the state must provide for relief for those in desperate need.<sup>89</sup> In the *City of Johannesburg v Rand Properties (Pty) Ltd and Others*, Witwatersrand Local Division High Court issued an order prohibiting eviction of people from the building they occupied until *alternative adequate accommodation* is provided.<sup>90</sup>

Therefore, in South African jurisprudence ESCRs in general and the right to housing in particular are well grounded and accorded sufficient guarantees. Indeed, the Constitution of South African in particular and its jurisprudence on the right to housing in general can be exemplary for other systems to follow to realize housing rights.

### 2.2.2. Cameroonian Constitution

Cameroon does not have specific national instrument, such as bill of rights, that contains and guarantees fundamental rights.<sup>91</sup> But the preamble of its Constitution<sup>92</sup> contains list of rights and freedoms, which can substitute bill of rights. More interestingly, however, the preamble of the

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<sup>82</sup> As above, p 88

<sup>83</sup> As above, p 93-96

<sup>84</sup> HOUSING ACT, Act No. 107, 1997, Republic of South Africa, Government Gazette

<sup>85</sup> Prevention of Illegal Eviction from and Unlawful Occupation of Land, Act No. 19 of 1998, Republic of South Africa, Government Gazette

<sup>86</sup> Rental Housing Act, Act No. 50, 1999, Republic of South Africa, Government Gazette

<sup>87</sup> Extension of Security of Tenure Act, Act NO. 62, 1997, Republic of South Africa, Government Gazette

<sup>88</sup> n 14 above, paragraph 55

<sup>89</sup> As above, paragraphs 66-69

<sup>90</sup> *City of Johannesburg v Rand Properties (Pty) Ltd and Others*, 2006(6) BCLR 728 (W), Case No O4/10330; O4/10331; O4/10332; O4/10333; O3/24101; O4/13835 (Emphasis added)

<sup>91</sup> Atangcho Nji Akonumbo, *HIV/AIDS law and policy in Cameroon: Overview and challenges*, (2006) 6 AHRLJ, No. 1, JUTA Law, p 93

<sup>92</sup> The 1996 Revised Constitution of Cameroon is used here.

Cameroonian Constitution is binding because the Constitution stipulates, under article 65, that *[t]he preamble shall be part and parcel of this Constitution*. This means, the fundamental rights expressly or *impliedly* referred to in the Preamble have the same status and effect as individual provisions in the body of the Constitution.<sup>93</sup> Nonetheless, none of the rights expressly mentioned in the preamble makes express reference to the right to housing although there are implications that the preamble recognizes the right to housing. Firstly, the preamble affirms the *attachment* of the People of Cameroon to the fundamental freedoms enshrined in the UDHR, the Charter of the UN and the ACHPR, and *all* duly ratified international conventions relating thereto.<sup>94</sup> If the term *attachment* is understood to mean making all the international human rights instruments explicitly mentioned or duly ratified by Cameroon integral part of the law of Cameroon, then the right to housing becomes part of the Preamble and binding on Cameroon via article 65 of its Constitution. For instance, Akonumbo seems to interpret the *attachment* as 'giving full effect' or 'commitment to',<sup>95</sup> which is similar to saying that the rights and freedoms recognized by the international human rights instruments Cameroon has ratified are part of the law of Cameroon. However, if the term *attachment* means using these instruments for interpretive or policy formulations or other reasons, it becomes difficult to situate the right to housing within the framework of the Cameroonian Constitution, although the international laws Cameroon has ratified can be operative on their own. Secondly, it is argued that even if the Preamble does not specifically mention the right to health, the right to health can be read into the spirit and broad ambit of the right to life.<sup>96</sup> By the same token, the right to housing can be read into every person's right to life, to physical and moral integrity and to humane treatment in all circumstances, which is expressly mentioned in the Preamble. Because the right to life, to physical and moral integrity, and to humane treatment *in all circumstances* is inextricably linked to the right to housing.

In Cameroon, there are also some laws<sup>97</sup> which deal with the regulation of administrative houses. According to these laws only civil servants can get administrative houses. The laws further provide for those civil servants who are entitled to free administrative houses and fix the rates of rents for those civil servants who are not entitled to free administrative houses. So, one may argue that for those civil servants who are covered by these laws, the right to housing is somehow being realized.<sup>98</sup> But the first problem with these laws is discrimination since they do not target non-civil servants. Secondly, they create loophole for some non-civil servants to indirectly get access to these houses via some civil servants either by sub-leasing or relationship. Even when those non-

<sup>93</sup> n 91 above, p 93 (Emphasis added)

<sup>94</sup> Cameroon has acceded to many international human rights instruments. <<http://www.ohchr.org/english/countries/ratification/.htm>> (accessed 23 August 2007)

<sup>95</sup> n 91 above

<sup>96</sup> As above

<sup>97</sup> See, for example, Decree No 91/324 of 9 July 1991, *fixant les conditions d'attribution et d'occupation de logements administratifs* and Decree No 91/323 of 9 July 1991, *fixant les plafonds des loyers et les taux de l'allocation de logement des membre du Gouvernement et assimilés*, REPUBLIQUE DU CAMEROON

<sup>98</sup> The following comments emanated from the discussions made with my Supervisor who is a Cameroonian.

civil servants occupying administrative houses are known to the administration by any means, they will be allowed to continue living in these houses but required to pay full rent for the houses.

There were also instances when some actions which targeted non-civil servants had been taken to ease the housing problems in Cameroon. For instance, in 2004, the government of Cameroon allowed MBI Group Inc., an international development firm, to work with Cameroon to create affordable housing.<sup>99</sup> Consequently, in early 2005, the Cameroonian government awarded MBI Group a contract to create more than 1,000 affordable homes in a suburb of Yaoundé, the nation's capital, as a result of which the process was commenced.<sup>100</sup> Unfortunately, however, due to some disagreements between the government of Cameroon and the MBI Group, the work has been suspended.<sup>101</sup> Further, there were instances where the government of Cameroon dislodged people for various reasons with relocations promises although such promises were honored under limited circumstances.<sup>102</sup>

In general, it is difficult to find satisfactory housing measures which, like in South Africa, clearly and indiscriminately aim at the realization of the right to housing in Cameroon. Therefore, neither the Cameroonian Constitution nor the other measures that might be seen as housing measures can be exemplary to follow to protect housing rights.

### **2.2.3. Ethiopian Constitution**

Unlike the South African Constitution but like the Cameroonian Constitution, the Ethiopia Constitution does not devote much space to ESCRs in general. It does not mention the right to housing as a human right at all. But article 41(3) states that every Ethiopian national has the right to equal access to publicly funded social services while article 41(4) imposes obligation on the state to allocate its ever increasing resources to provide to the public social services. Similarly, article 41(5) of the Constitution imposes duty on the state, within the available means, to allocate resources to provide assistance to the physically and mentally disabled, the aged and the children who are left without parents or guardians. Further, article 90(1) mentions housing as one of the guiding policy principles.

So, under article 41(3) and (4), the *publicly funded social services* to which all Ethiopian nationals have the right to equal access and which the government is obligated to provide can be interpreted to include housing services. Under article 41(5), the term *assistance* can be interpreted to include housing provisions if the category of people mentioned are in need of them. Under article 90(1), *housing* itself is expressly mentioned. Hence, the issue of housing is apparently covered by these provisions. Nevertheless, none of these provisions create justiciable right to housing. Article 41(3)

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<sup>99</sup> Jen Degregorio, Bethesda firm sues Cameroon over failed housing development, Daily Record, The (Baltimore), December 12, 2006 <[http://findarticles.com/p/articles/mi\\_qn4183/is\\_20061212/ai\\_n16907729](http://findarticles.com/p/articles/mi_qn4183/is_20061212/ai_n16907729)> (accessed 22 September 2007)

<sup>100</sup> As above

<sup>101</sup> As above

<sup>102</sup> n 98 above

does not grant any independent right to housing in particular and to social services in general rather than simply guaranteeing *equality* of access *if* there are publicly funded social services including housing. Articles 41(5) and 90(1) also do not impart any right to individuals but impose duty on the government. Hence, the provisions, in reality, do not solve the issue of the right to housing.

But the fact that the right to housing is not expressly mentioned in the Constitution does not mean that none of the human rights the Constitution expressly recognizes has the right to housing as its inbuilt element. In fact, there are certain provisions which allow the right to housing to be read 'into' themselves. This attempt to situate the right to housing in the Constitution itself is important particularly in Ethiopian context where relying on international law, albeit they become integral part of the law of the land upon their ratifications, before the judiciary is almost impossible.<sup>103</sup> Before commencing the reading 'into' work, it is important to pay a brief attention to article 13(2) of the Constitution for it facilitates reading the right to housing 'into' other constitutional rights. It reads:

The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia

This provision supports efforts to read impliedly recognized rights 'into' expressly recognized constitutional rights. Because when there are ambiguities, interpretation in accordance with international instruments is required of the body interpreting the Constitution on the bill of rights. With this in mind, the right to life, dignity, and health will be discussed below as some of the rights which, if interpreted, deliver the right to housing.

At the first glance, the right to life sounds only the right not to be killed. But the Supreme Court of India noted, in *Olga Tellis and Others v Bombay Municipal Corporation and Others*, that:

The right to life does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living. If the right to livelihood is not treated as part of the constitutional right to life, the easiest way to deprive a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation.<sup>104</sup>

In *Shantistar Builders v Narayan Khimalal Totame*, the same court further stated:

The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an

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<sup>103</sup> See chapter 4 on lack of awareness

<sup>104</sup> See Bartrand G Ramcharan (ed), *Judicial Protection of Economic, Social and Cultural Rights: Cases and Materials*, V22, Martinus Nijhoff, Leiden/London, 2005, p 364

animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation which would allow him to grow in every aspect-physical, mental and intellectual...It is not necessary that every citizen must be ensured of living in a well built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or mud-built fire-proof accommodation.<sup>105</sup>

According to the Supreme Court of India, therefore, the right to life concomitantly includes the right to demand abstinence, like in the case of forced evictions, and the right to demand action, such as provision of housing or elements thereof or materials to build one's house, provided that these demands are necessary for the preservation of decent life.

The right to life is recognized under article 15 of the Ethiopian Constitution. It is stated that every person has the right to life and no person may be deprived of his life except as a punishment for a serious criminal offence determined by law. By following the logic of the Supreme Court of India, this stipulation can be said to have wide and far-reaching effect so as to include the right to housing-one of the basic human needs. Indeed, it is expressly provided that the only ground for the deprivation of the right to life is the imposition of punishment for a serious criminal offence determined by law. No other ground leading to the deprivation of life is allowed. Hence, exposing persons to dangers of life by neglecting them without housing will be contrary to the spirit of this right.

Another right which embraces the right to housing is the right to dignity. Article 24(1) of the Constitution provides that *everyone has the right to respect for his human dignity, reputation and honour*. Human dignity is highly related to the enforcement of the right to housing.<sup>106</sup> For instance, the CCT stated that failure to meet housing needs of people would amount to denial of human dignity.<sup>107</sup> Certainly, it is not possible to say that the right to dignity, reputation and honour of those who are living in slums, 'left out in the cold', exposed to the sun, rains, flood, and other hazards can be enforced without housing them. Hence, the right to dignity, reputation and honour under article 24(1) necessarily implies the right housing.

The right to health is another right 'into' which the right to housing can be read. However, this right is not recognized in the Ethiopian Constitution in the form of right. The Constitution, under article 41(4) imposes duty on the government to allocate its ever increasing resources to provide to the public health services. It might be possible to argue that this is 'a duty whose flip side is a right'. Moreover, under article 90(1), health is recognized as one of the policy principles. But since these stipulations do not take the form of rights, they cannot be justiciable. On the other hand, since poor housing, let alone homelessness, is a cause and catalyst of health problems<sup>108</sup> and the right to life

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<sup>105</sup> As above, p 342

<sup>106</sup> n 10 above, p 47

<sup>107</sup> n 14 above, paragraph 23

<sup>108</sup> n 36 above, p 92-93

includes the right to health,<sup>109</sup> one can say that the right to housing can still be read 'into' the right to health which by itself can be read 'into' the right to life. Then, the provision of housing will take the form of protective, not only curative, measure of the government to meet health needs to ultimately safeguard life.

These are some of the rights under the Constitution which can, if interpreted, give birth to the right to housing. Therefore, valid claims for the realization of the right to housing can be made under the Constitution. The government is also obliged to enforce this tacitly recognized constitutional right. Article 13(1) of the Constitution stipulates that *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*. These organs are obliged to respect and enforce not only the rights expressly mentioned but also those impliedly recognized by the Constitution. Otherwise, respecting and enforcing those expressly mentioned rights will not be possible.

### **2.3. Other legislation**

Unlike South Africa, Ethiopia does not have any specific legislation that recognizes the right to housing or imposes duty on the government to realize the right to housing or accords protection against violations of the right to housing like arbitrary evictions. Moreover, Ethiopia does not have specific national housing policy aiming at the realization of the right to housing.<sup>110</sup> Nevertheless, this does not mean that there are no laws or policies which respond to the housing needs in the country at all; nor does it mean that measures that can respond to the housing problems in the country do not exist at all. Indeed, they exist.<sup>111</sup>

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<sup>109</sup> n 91 above

<sup>110</sup> See Azeb Kelemework Bihon, *Housing for the poor in Addis Ababa*, p. 6, <<http://www.google.com/search?hl=en&sa=X&oi=spell&resnum=0&ct=result&cd=1&q=Ministry+of+Urban+Development+and+housing+in+ethiopia&spell=1>> (accessed 28 August 2007).

<sup>111</sup> See chapter three.

## Chapter 3

### Realization of the right to housing in Ethiopia

#### 3.1. Introduction

In Ethiopia, housing problems exist everywhere in the country. However, these problems are glaring in urban areas because 'the pattern of growth of Ethiopian towns is irregular and uncontrolled thereby leading to the emergence of slums'<sup>112</sup> and homelessness. For instance, the housing condition in Addis Ababa is by far inadequate in quantity and quality terms to meet the need of its residents.<sup>113</sup> Many other urban areas such as Gondor;<sup>114</sup> Dire Dawa and Harar;<sup>115</sup> Mekelle, Adigrat, Shire Endasillasie, Maichew and Humera;<sup>116</sup> and Ambo<sup>117</sup> also have similar housing problems. As discussed in the preceding chapter, the Ethiopian government has the duty under international law and its Constitution to take measures to deal with these problems. This chapter will consider these measures.

#### 3.2. Legislative measures

For the purposes of realizing the right to housing, the existence of legislation specifically meant to deal with housing issues is in many instances highly desirable and sometimes indispensable.<sup>118</sup> Because such legislation creates conducive environment for the enjoyment of the right to housing such as by prohibiting arbitrary evictions by both the state and private persons. South Africa, for example, enacted different laws to ensure the enjoyment of housing rights.<sup>119</sup> In Ethiopia, there are no laws which specifically deal with the enjoyment of housing rights. However, there are some laws which are meant to serve different societal goals but which incidentally have indirect bearing on the enjoyment of the right to housing. For instance, in 2003, Ethiopia enacted Condominium Proclamation.<sup>120</sup> The reasons for the enactment of this Proclamation are the need 'to implement other alternatives of urban land use in addition to plot basis urban land use to narrow the imbalance between the demand for and supply of housing' and the creation of favourable conditions, for private developers and co-operatives, to contribute towards the development of

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<sup>112</sup> Daniel Tadesse, *Reflections on the Situation of Urban Cadastres in Ethiopia*, Addis Ababa, Ethiopia, April 7, 2006 <<http://www.mdpafrica.org.zw/ALGAF%202002-6/algaf%20VI/ALGAF%20VI%20Session%20III%20Reflections%20on%20the%20Situation%20of%20Urban%20Cadastres%20in%20Ethiopia.doc>> (accessed 7 July 2007)

<sup>113</sup> n 110 above, p. 3

<sup>114</sup> *Brief Description on the Problems and Project Ideas of the City of Gondar*, prepared by City Council of Gondar, 10 January 2006, <<http://www.ci.corvallis.or.us/council/mail-archive/ward4/docaeX7WH2qQg.doc>> (accessed 7 July 2007)

<sup>115</sup> Eskinder Michael, *EthioBlog - Ethiopia - Condos on rent for millennium*, <[http://nazret.com/blog/index.php?title=ethiopia\\_condos\\_on\\_rent\\_for\\_millennium&more=1&c=1&tb=1&pb=1](http://nazret.com/blog/index.php?title=ethiopia_condos_on_rent_for_millennium&more=1&c=1&tb=1&pb=1)> (accessed 28 August 2007)

<sup>116</sup> Mekelle Housing Development Agency, *Launching construction of condominium houses*, <<http://www.waltainfo.com/EnNews/2007/Apr/21Apr07/27883.htm>> (accessed 28 August 2007)

<sup>117</sup> Ethiopian Reporter: *Ambo Town Constructing Condominium Houses* <http://www.ethiopianreporter.com/modules.php?name=News&file=categories&op=newindex&catid=31> (accessed 28 August 2007)

<sup>118</sup> n 1 above, paragraph 3

<sup>119</sup> See chapter two

<sup>120</sup> Condominium Proclamation, Proclamation No.370/2003, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 2003



condominium houses for sale or lease.<sup>121</sup> So, one can argue that this Proclamation is an indirect legislative measure dealing with housing issues for the following reasons.<sup>122</sup> Firstly, although it was made for the purpose of using urban land efficiently, the Proclamation facilitates the building of condominium houses which incidentally results in the availability of houses for those who need them. Secondly, it has the purpose of creating conducive atmosphere for private developers of condominium houses either for sale or lease. The aim here is to encourage private housing developers to contribute to the effective use of urban land. Yet, this will eventually result in the availability of houses. Therefore, for those who can afford to pay for the houses these private developers provide, the proclamation opens up the system for them to enjoy their right to housing. Thirdly, the Proclamation has the purpose of creating favourable environment for cooperatives to contribute to the development of condominium houses. Those who cannot afford to get housing from private housing providers can, therefore, form cooperatives to build their own houses. Accordingly, to the extent that the Proclamation facilitates the building of condominium houses by the government, private housing providers or cooperative, albeit for the effective use of urban land, it has bearing on the availability of houses and the enjoyment of the right to housing.

At this juncture, it is important to consider briefly the efficiency of the Condominium Proclamation. One of the places this Proclamation was meant to apply to is Addis Ababa, the capital and a city with a high population growth rate.<sup>123</sup> Housing conditions in Addis Ababa has been inadequate in quantity and quality terms to meet the need of the residents for the last 30-40 years.<sup>124</sup> Many residents live in houses with leaking roofs, cracking mud and no windows, doors or sanitation.<sup>125</sup> There are also people who do not have shelter at all.<sup>126</sup> Generally, the victims of housing problems in the city are the poor households that account for 92% of the city's population.<sup>127</sup> Consequently, the construction of condominium houses in the city was kicked-off in November 2004,<sup>128</sup> a year after the enactment of the Proclamation. Since then, many condominium houses have been built and distributed to those who were entitled to them. For instance, in July 2007, 12,000 condominium houses were made available for the second round distribution and the winners thereof were identified.<sup>129</sup> More condominium houses are also under construction while the city council has the plan of continuing to build more low-cost condominium houses to ease the city's housing problems. For instance, the City Administration plans to build 161,000 condominium

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<sup>121</sup> Preamble and article 39 of the Condominium Proclamation

<sup>122</sup> See chapter 4

<sup>123</sup> For instance, from 1994-2004, the average annual growth rate of the population of Addis Ababa was 3% where as more than 40% of the residents of the city have no source of income for survival. See n 110 above, p. 8

<sup>124</sup> n 110 above, p. 3

<sup>125</sup> n 115 above

<sup>126</sup> The Reporter (English Weekly Newspaper): An interview on the right to housing with Frenesh Tessema, coordinator of research and publication at APAP, local Human Right NGO, 29 September 2006, <<http://216.239.59.104/search?q=cache:WzNQ4cgzZUkJ:www.apapeth.org/Docs/Interview%2520Right%2520to%2520Housing.pdf+Housing+problems+in+Ethiopia&hl=en&ct=clnk&cd=7&gl=za>> (accessed 7 July 2007)

<sup>127</sup> n 110 above, p. 8

<sup>128</sup> n 115 above

<sup>129</sup> Kaleyesus Bekele, Ethiopian Reporter-City administration to build 161,000 condos, <<http://www.ethiopianreporter.com/modules.php?name=News&file=article&sid=16375>> (accessed 28 August 2007)

houses in the coming three years.<sup>130</sup> 'In a press conference held on 15 August 2007, head of the Addis Ababa Housing Agency, Daniel Tadesse, said the city administration planned to build 40,000 condominium houses in 2007/2008, 55,000 in 2008/2009 and 66,000 in 2009/2010.'<sup>131</sup>

Moreover, people are also forming cooperatives and constructing their own condominium houses by joining their hands through the facilitation and assistance of the city administration. With regard to the private housing providers, they existed even before the enactment of the Condominium Proclamation. Accordingly, their contribution to the construction of houses in Addis Ababa cannot properly be attributed to the Condominium Proclamation as such.

In general, although the Condominium Proclamation was adopted recently, it seems that there are some success as can be inferred from what has been done in Addis Ababa and what is underway and what is planned to be done. With regard to Dire Dawa, the success of the Condominium Proclamation is negligible because right now mainly there are plans, not massive construction, like in Addis Ababa, of low-cost condominium houses.

The other legislative measure that can be mentioned as having indirect pertinence to the right to housing is the Appropriation of Land for Government works and Payment of Compensation for Property Proclamation (Appropriation Proclamation).<sup>132</sup> Here is the preamble of the Proclamation:

Whereas the government needs to use land for development works carried out the [sic] in the public interest;

Whereas it is necessary to improve procedures for appropriation of the required land and valuation of property for compensation;

NOW, THEREFORE, in accordance with article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows...

This Proclamation is not against appropriation of land; indeed, it reaffirms that government needs land. Firstly, it wants to improve the procedures by which government can appropriate land<sup>133</sup> to carry out developmental works in the interest of the public. Secondly, it wants to improve procedures for the valuation of property to be affected by appropriation of land to compensate the owners thereof.<sup>134</sup> It is the second purpose that has bearing on the right to housing. By improving the procedures for the valuation of and compensation for property, those whose property will be affected by appropriation of land will be enabled to accommodate themselves, if the appropriation affects their shelter or houses, in alternative places so as to continue enjoying their right to

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<sup>130</sup> As above

<sup>131</sup> As above

<sup>132</sup> *Appropriation of Land for Government works and Payment of Compensation for Property Proclamation*, Proclamation 401/2004, Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, 2004

<sup>133</sup> Here, the term *appropriation of land* should not be understood to imply the existence of private ownership of land since individuals have only possession rights which the term refers to.

<sup>134</sup> The property for which compensation will be paid is not the property the government needs for public use in the sense of expropriation but the property that the owner can no longer use because of the appropriation of the land he/she possesses.

housing. This is particularly important because, unlike the Condominium Proclamation, the scope of application of the Appropriation Proclamation is not limited territorially. It can apply to all parts of the country particularly the rural areas where many people possess land and land is usually appropriated for developmental activities thereby affecting their shelter or houses.

At this juncture, it is important to note that there is no compensation for the land to be appropriated. The Appropriation Proclamation allows the payment of compensation only for property produced on the land by one's finance, labour or creativity and for the permanent improvement made to such land.<sup>135</sup> For instance, if the land to be appropriated is where a person lives, he/she will be compensated for other property will inevitably be affected. If, however, it is a grazing land, compensation will not be paid for appropriating such land.

### **3.3. Non-legislative measures**

In addition to the above-mentioned legislative measures indirectly addressing housing issues to certain extent, there are also some non-legislative activities which are being carried out to respond to housing needs. These activities include the construction of houses, the permission of private housing providers to engage in and contribute to the construction of houses and the reduction of bank interest rates on housing loans. At both federal and regional levels, the construction of low-cost condominium houses are taking place in different urban areas<sup>136</sup> at the expense of the government to distribute the houses to those who can pay for them either at once or by instalments. For instance, in Gonder, a city where the middle and lower class of the society face housing problems, the construction of condominium houses for about 3000 households every year is planned.<sup>137</sup> In Mekelle and other urban areas, thousands of low-cost condominium houses are to be constructed to address the problem of housing in the coming four years.<sup>138</sup> In Ambo, condominium houses are being constructed and the construction is being speeded up to alleviate the housing problem in the town.<sup>139</sup> Further, the government is planning to construct many low-cost condominiums houses in other urban areas such as Harar.<sup>140</sup> This, therefore, creates an opportunity to enjoy the right to housing for those who can afford to pay for the houses. The fact that payment is demanded may not be go contrary to the right to housing since the right to housing does not necessarily imply the right to be housed for free. At this juncture, it should be remembered that the construction of and plans to construct condominium houses in these urban areas do not have anything to do with the Condominium Proclamation because the Proclamation applies only to Addis Ababa and Dire Dawa.

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<sup>135</sup> Articles 3 and 9(1), Appropriation Proclamation

<sup>136</sup> n 126 above

<sup>137</sup> n 114 above

<sup>138</sup> n 116 above

<sup>139</sup> n 117 above

<sup>140</sup> n 115

The other non-legislative measure that Ethiopia has taken and that can serve as an indirect response to housing problems in the country is the permission of private housing providers into the system. This was not possible under the previous regime. But the current government has opened up its system for private housing providers to engage in housing business. Consequently, there are some national private housing providers particularly in Addis Ababa such as *Hayat* and *Zenebe Firew real estate developers* which started providing houses even before the enactment of the Condominium Proclamation. Moreover, there are foreign entities such as the German Development Agency (GTZ) which have been allowed to build low-cost houses in the country.<sup>141</sup> Such measures facilitate the enjoyment of the right to housing for those who can pay for the houses built by these private housing providers.

Further, the government is currently trying to reduce bank interest rates on housing loans.<sup>142</sup> This serves as an incentive to those who want to get loans from banks to buy or build their own houses. It is an enabling measure in the sense that individuals will be given the opportunity to own their own houses through their own efforts and at their own costs. From the perspective of the government, such measure would amount to promoting the enjoyment of the right to housing. It can also amounts to a direct measure to realize the right to housing.

In conclusion, as the above discussions show, there are both legislative and non-legislative measures which have been taken and which address the housing problems in the country. Of particular interest is, however, the fact that the legislative measures were not adopted to primarily enforce the right to housing although they incidentally, to certain extent, produce the desired result for the realization of the right to housing.

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<sup>141</sup> *Germans to build cheap housing in Ethiopia*, <<http://www.afrol.com/articles/14889>>(accessed 7 July 2007)

<sup>142</sup> n 110 above, p. 9

## Chapter 4

### Violations of the right to housing in Ethiopia<sup>143</sup>

#### 4.1. Introduction

As discussed in chapter two, human rights entail the obligations to respect, protect, promote and fulfill the rights either immediately or progressively. Thus, states violate human rights when they fail to perform any of these obligations either immediately or progressively.<sup>144</sup> The right to adequate housing entails all these obligations. Accordingly, it will be violated if any of the obligations are not performed either immediately or progressively, as the case may be. Immediate obligation is an obligation to take steps towards the full realization of the right while progressive obligation is an obligation to fully realize the right over time.<sup>145</sup> So, with regard to immediately realizable obligations, failure to take or delay in taking steps towards the full realization of the right to housing would amount to its violation. With regard to the possible steps that can be taken, states are free to adopt any measures they deem appropriate for the enforcement of the right to housing. But these steps towards that goal must be taken within a reasonably short time and such steps should be deliberate, concrete and *targeted as clearly as possible towards meeting the obligations to enforce the right to housing*.<sup>146</sup> Presumably, such steps include the adoption of legislation<sup>147</sup> and/or policies specifically devoted to the realization of the right to housing.

The progressive obligation, on the other hand, obliges states to take every step necessary within their capacity. It is an obligation to move as expeditiously and effectively as possible towards the full realization of the rights recognized.<sup>148</sup> Yet, the progressiveness of the obligation does not relieve a state from meeting what is known as 'minimum core obligations'. Every state has an obligation, irrespective of scarcity of resources, to provide significant number of its citizens with basic shelter or housing; if it fails to meet this generally accepted international minimum standard of achievement which is within its powers to meet then it will violate the right to housing by omission.<sup>149</sup> If the failure is due to genuine lack of resources the state must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.<sup>150</sup> So, the progressive obligation is a demanding obligation as it requires states to turn every stone to realize the right to housing and demonstrate that they have done so in default of which they will be presumed violators of the right to housing.

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<sup>143</sup> In this work, the term *steps* or *measures* refer to a range of efforts such as making laws, formulating policies, seeking international cooperation, subsidizing housing rents and granting equal access to housing that should be made to realize the right to housing.

<sup>144</sup> n 14 above, paragraph 6

<sup>145</sup> See chapter two on states' obligations

<sup>146</sup> n 1 above, paragraphs 1-2 (Emphasis added)

<sup>147</sup> n 1 above, paragraph 3

<sup>148</sup> n 1 above, paragraph 9

<sup>149</sup> n 14, paragraph 15

<sup>150</sup> n 1 above, paragraph 10

It is important to note that what is expected of a state to discharge its obligation in relation to the right to housing is not taking measures at any cost but taking reasonable measures. What then constitutes *reasonable measures*? In *Grootboom case*, the CCT stated that a reasonable housing policy has to target both those who can afford to pay for housing and those who cannot<sup>151</sup> although the poor are particularly vulnerable and their needs require special attention.<sup>152</sup> So, a measure has to be *inclusive* to be reasonable. If it omits particularly those groups which are vulnerable, it can hardly be reasonable. For the CCT, particularly housing programmes [or policies] that exclude significant segment of the society are not reasonable and compatible with the right to housing.<sup>153</sup> The other index for measuring reasonableness is the available resources.<sup>154</sup> If what is taken is not compatible with the resource capacity of a state then it can hardly be reasonable.

However, it should be noted that a measure that is not reasonable for one group may be reasonable for another. For instance, for those who can afford to pay for housing, the state's primary obligation lies in unlocking the system, providing access to housing stock and a legislative framework to facilitate self-built houses through planning laws and access to finance.<sup>155</sup> Yet, this measure cannot be reasonable for those who cannot afford to pay for their houses. With regard to them, state's obligation goes beyond unlocking the system and extends to the provision of housing.

The following part will briefly consider how Ethiopia has failed to discharge its obligations to respect, protect, promote and fulfill the right to housing either immediately or progressively in the light of the above introductory points.

## **4.2. Conducts violating the right to housing**

A state can violate the right to housing through its positive and negative conducts. It may take measures which are contrary to its obligation to realize the right to housing (positive violative conduct) or fail to take measures that are expected of it to realize the right to housing (negative violative conduct). Some of these conducts will be discussed below.

### **4.2.1. Absence of specific housing law and national housing policy**

Legislative measure is of central importance for the realization of the right to housing. A state must take appropriate legislative measure to *fulfill* the right to housing.<sup>156</sup> It must pass a law to prohibit arbitrary eviction by private housing providers and government organs so as to discharge its duty to *protect* and *respect* housing right. It must also take legislative measure to create conducive environment for housing provisions by anyone who wants to engage in housing business to discharge its duty to *promote*. Indeed, legislative measure is the starting points for the realization of

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<sup>151</sup> Pierre De Vos, Grootboom, *The Right of Access to Housing and Substantive Equality as Contextual Fairness*, SAJHR, JUTA Law, Lansdowne, 2001, p 272

<sup>152</sup> n 74 above, paragraph 36

<sup>153</sup> As above, paragraph 43

<sup>154</sup> As above, paragraph 46

<sup>155</sup> As above, paragraph 36

<sup>156</sup> n 14 above, paragraph 6 (Emphasis added)

the right to housing.<sup>157</sup> However, as discussed before, this legislative measure should be targeted as clearly as possible towards meeting the obligations to enforce the right to housing. This then demands the existence of specific legislative measure aiming at the realization of the right to housing

In Ethiopia, there are few laws, as discussed in chapter three, which have relation with the realization of the right to housing. Nonetheless, the link between these laws and housing right is so thin primarily because they are not meant to realize the right to housing but to serve different societal goals. However, Ethiopia's obligation, for instance, under article 2(1) and 11(1) of the ICESCR, article 1 of the ACHPR and other human rights treaties it has ratified, is the obligation to take legislative measure which is deliberate, concrete and targeted as clearly as possible towards meeting the obligations to enforce the right to housing. Such obligation demands the enactment of a law that has the realization of the right to housing as (at least one of) its primary purposes. The laws discussed in the preceding chapter do not fulfill these criteria. They do not recognize the right to housing together with the obligation to enforce it; nor do they provide for protection against violations of the right to housing like arbitrary evictions. Thus, it would be safe to conclude that Ethiopia has not undertaken the kind of legislative measure that is it is expected to. By failing to do so, Ethiopia has violated its immediate obligation, by omission, under these international treaties to realize the right to housing.

Interestingly, the fact that the full realization of socio-economic rights can only be achieved progressively does not alter the obligation on the state to take those steps that are within its power immediately and other steps as soon as possible.<sup>158</sup> The burden is on the state to show that it is making progress towards the full realization of the rights.<sup>159</sup> Legislative measure can be taken with little difficulty. This makes it very difficult for Ethiopia to demonstrate that it has made every effort it could to take specific housing legislation to realize the right to housing but in futile. Indeed, although it ratified the ICESCR in 1994, Ethiopia has not submitted its reports to the ESCRs Committee on the measures it has taken hitherto.<sup>160</sup> This might be an indication that the country has nothing to report to the Committee.

The other measures human rights treaties require to be adopted to realize the housing right they recognize are policies. Policies are statements that prescribe and routinize the course of action.<sup>161</sup> They are used extensively by governments to carry out their many complex functions,<sup>162</sup> including housing provisions. In Ethiopia, without prejudice to other policies which incidentally respond to the housing needs of citizens, there is no specific national housing policy aiming at the realization of

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<sup>157</sup> n 74 above, paragraph 67

<sup>158</sup> n 9 above, p 576

<sup>159</sup> As above

<sup>160</sup> The reports were due on the 30<sup>th</sup> of June 1995, 2000, and 2005 <[http://www.ohchr.org/english/bodies/cescr/docs/e\\_c12\\_38\\_2.doc](http://www.ohchr.org/english/bodies/cescr/docs/e_c12_38_2.doc)>(accessed 7 September 2007)

<sup>161</sup> n 44 above, p. xiii, 3

<sup>162</sup> As above

the right to housing. The absence of such policy, which is also the starting point for the realization of the right to housing<sup>163</sup> may be an indication of the country's stand that housing issues do not deserve priority<sup>164</sup> and hence there is no need to formulate and implement national housing policy therefor. This is, however, contrary to the spirit of many human rights treaties that recognize the right to housing. As the enjoyment of the right to housing is a basis for the enjoyment of all other rights, the right to housing needs to be given special attention and realized.

Under Article 90(1), the Constitution also obliges the government to use housing as one of the guiding principles for policy formulation. But the fact that there is no specific housing policy so far may show that that constitutional principle is not used. Similarly, article 41(4) obliges the state to allocate its resources to the provision of social services which include housing. But without specific legislative or policy framework, to enforce this constitution obligations is very difficult. Thus, one can argue that Ethiopia has violated its general duty, under article 9(1), to implement the Constitution and its specific duty, under article 13(1), to enforce the human rights the Constitution recognizes.

Therefore, it can be concluded that due to its failure to adopted specific housing legislation or national housing policy which must be deliberate, concrete and targeted as clearly as possible towards the realization of housing rights, Ethiopia has failed to take adequate measures to properly implement its immediately obligation to realize the right to housing. The repercussion of this failure is that it will very difficult for Ethiopia to discharge its progressive obligations as the performance of immediate obligations paves the way for the performance of progressive obligations. So, until such time that the immediate obligations are adequately discharged, the performance of the progressive obligations might be postponed. But progressive obligations do not authorize states to postpone their obligations to some distant or unspecified time in the future<sup>165</sup> in as long as they can do something to discharge them. Postponement of these obligations simply shows the state's unwillingness to discharge its duty, which is different form inability.<sup>166</sup>

#### **4.2.2. Discrimination in housing**

Some of the existing measures, as discussed in chapter three, that can address the housing needs of individuals' are discriminatory in nature. For instance, access to the condominium houses is granted only to those who can pay. If a person cannot afford to pay for these houses either at once or by instalments, then he/she will not be entitled to them. Similarly, the attempt to reduce bank interest rates to 7% for housing loans benefits only those who qualify for the loans. Obviously, those who have no/little income will not qualify for the loans. So, the poor, who have no/little

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<sup>163</sup> n 74 above, paragraph 67

<sup>164</sup> One may argue that the construction of low-cost condominium houses exemplifies that housing is seen as priority issue. But the fact that these houses are being built for the purpose of effectively using of urban land, not to ease the housing problems of urban residents, militates against such argument.

<sup>165</sup> n 9 above, p 576

<sup>166</sup> As above



income but who are more vulnerable are not benefiting from these measures. The requirements are such that only those who are comparatively advantaged can meet them. Accordingly, the homeless are still homeless and they are not targeted by these measures although they deserve priority.

The type of discrimination reflected by these measures is indirect. Indirect discrimination takes place when a requirement or condition is applied which although having equal application to all people cannot be met as easily by persons of a particular sex, race etc.<sup>167</sup> In the present case, the indirect discrimination is based on economic status. Only those who are economically advantaged can get access to the housing provisions either directly from the government or benefit from the bank interest rate the government is trying to reduce. This is contrary, for instance, to the 1986 Declaration on the Right to Development which obliges states to ensure the equality of opportunities for all in their access to basic housing.<sup>168</sup>

There are also some measures which constitute direct discrimination in housing. For instance, the application of the Condominium Proclamation is limited to two cities, Addis Ababa and Dire Dawa.<sup>169</sup> Although the Proclamation was not meant to realize the right to housing,<sup>170</sup> it has bearing on the realization of the right to housing to the extent that it ultimately results in the availability of houses for those who can afford to pay for such houses. The scope of application of this Proclamation should have been extended to all part of the country so that it will be inclusive to enable those individuals living other cities to enjoy their right to housing. Therefore, to the extent the Proclamation fails to include these individuals, it directly discriminate against them on the basis of residence. Moreover, the construction of condominium houses by the government both at federal and regional levels is limited only to some major cities and towns although housing problems exist in other parts of the country, too. This is another direct discrimination based on residence. Furthermore, some activities which are being performed to upgrading debilitated houses do not take into account those people with very low income<sup>171</sup> thereby resulting in another direct discrimination based on economic status.

These, direct or indirect, discriminatory measures are contrary to both international law and the Constitution. For instance, article 2(2) of the ICESCR and article 2 of the ACHPR prohibit discrimination of *any kind* in the enjoyment of the rights they recognize. Both of them recognize the right to housing. Accordingly, the discriminatory satisfaction of this right violates these treaties. Likewise, article 25 of the Constitution prohibits discrimination based on *any status*. Thus, the

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<sup>167</sup> Christopher Handy, *Discrimination in Housing*, Sweet and Maxwell, London, 1993, p 10

<sup>168</sup> Article 8(1), UN Declaration on the Right to Development, UN GA Resolution 41/128, 4 December 1986

<sup>169</sup> Article 3 of the Condominium Proclamation

<sup>170</sup> The purpose of the proclamation is enabling the government to make effective use of urban land and city beautification.

<sup>171</sup> n 126 above

above discriminations based on *residence* and *economic status* contravene article 25 of the Constitution.

#### 4.2.3. Delay in granting access to land

Another practice that is contrary to the right to housing is delay in granting access to land. Access to land is an element of the right to housing. But in Ethiopia, it takes long time (usually years) to get plot of land from the government to build one's own house. For instance, in Addis Ababa, the land supply system is regarded as sluggish to the extent of affecting even private housing supply.<sup>172</sup> This practice has, consequently, pushed prices for residential houses beyond the reach of the large majority of the city dwellers.<sup>173</sup> Nevertheless, the government, as the owner of the land, can grant easy and fast access to land to those in need of it to enable them to enjoy their right to housing. Failure to do so is a violation of the duty to *fulfill* the right. If the procedures are improved to open up opportunities for those who can afford building their own houses, the government will have the chance to respond to the housing needs of those who cannot afford building their own houses by diverting its budget.

#### 4.2.4. Forced evictions<sup>174</sup>

Forced eviction is a practice involving the involuntary removal of persons, permanently or temporarily,<sup>175</sup> from their homes or land which is directly or indirectly attributable to the state.<sup>176</sup> It constitutes a gross violation of the right to adequate housing;<sup>177</sup> a method of 'de-housing' and one of the most supreme injustices any individual, family, household or community can face;<sup>178</sup> and a practice contrary to the dignity of people.<sup>179</sup> In Africa the practice is widely spread,<sup>180</sup> to which Ethiopia is not an exception. There are practices of forced evictions in both urban and rural areas of Ethiopia. For instance, this year about 111 households of Bole Sub-City, Addis Ababa, were forcibly evicted and their houses demolished after they were order to leave their homes within seven days and without being given alternative accommodation.<sup>181</sup> Moreover, in November 2004, 463 houses of the Guji people (one of the tribes in the southern part of Ethiopia) were burned down by Ethiopian park officials and local police to coerce them to leave the land they made their home for centuries.<sup>182</sup>

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<sup>172</sup> n 110 above, p. 7

<sup>173</sup> n 20 above

<sup>174</sup> Only arbitrary evictions will be discussed here.

<sup>175</sup> n 1 above, paragraph 4

<sup>176</sup> n 16 above, pp 5-6

<sup>177</sup> As above, pp 33-34

<sup>178</sup> As above, p 4

<sup>179</sup> See chapter two

<sup>180</sup> Public Statement of Amnesty International on World Habitat Day (3 October 2005) <<http://web.amnesty.org/library/Index/ENGAFR010032005>> (accessed 30 May 2007)

<sup>181</sup> See statement on 27 May 2007 by APAP, local human rights NGO, condemning the forced eviction at Ethiopia: Bole Sub-City Eviction Order Violation of Law of Land – APAP, Daily Monitor (29 May 2007), <<http://allafrica.com/stories/200705310424.html>> (accessed 9 July 2007)

<sup>182</sup> *World Rainforest Movement Bulletin*, No 105, April 2006, See at Ethiopia: Dutch conservation organization involved in eviction of thousands of tribal people <<http://www.wrm.org.uy/bulletin/105/Ethiopia.html>> (accessed 9 July 2007)

By engaging in these practices, Ethiopia has been violating its duty to *respect* the right to housing. From the perspective of its Constitution, too, forced eviction cannot be justified<sup>183</sup> for it goes contrary to different constitutionally guaranteed rights.<sup>184</sup>

### 4.3. Factors contributing to the violation of the right to housing

Some of the conducts that amount to violations of the right to housing and for which Ethiopia can be held responsible have been discussed before. It is also necessary to appreciate that some of these violations are caused and aggravated by different, legal and non-legal, intervening factors. Some of them will be discussed below.

#### 4.3.1. Lack of awareness

Ankumah argues:

...many people familiar with basic human rights principles are not aware that economic, social and cultural rights are human rights. Their familiarity with human rights is limited to civil and political rights. In order to implement economic, social and cultural rights, it is important that their beneficiaries are aware that the rights in question exist. Without awareness that the rights exist, it will be difficult to put them into effect.<sup>185</sup>

In Ethiopia, many people including some legal professionals are not aware of the existence and content of these rights. Others do not make distinction between ESCRs recognized as directive policy principles and ESCRs recognized as human rights. For instance, housing is *expressly* recognized under the Constitution not as a human right but as a directive policy principle. Some lawyers believe that there is *expressly* guaranteed and enforceable right to housing under the Constitution. Just to mention one example of lack of (adequate) awareness about the ESCRs in general, one researcher conducting a research for fairly well known national human rights NGO stated, in her research, that *[t]he Ethiopian Constitution has recognized a number of socio-economic rights as justiciable human rights*.<sup>186</sup> The problem with this assertion is that the expression *a number of* is too much. In fact, such rights are very few.<sup>187</sup> The Constitution mostly imposes duties on the government to provide different services to people without guaranteeing corresponding rights thereto.

So, since no one can claim or promote what he/she does not know, lack of (adequate) awareness about ESCRs in general is an obstacle to exercising or the realization of the right to housing. Particularly, among the legal professionals, the absence of publication of human rights treaties in the *Negarit Gazeta*, official legal newspaper, contributes to the lack of (adequate) awareness. Further, the failure of the Ethiopian Human Rights Commission, a body that is responsible for

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<sup>183</sup> According to article 40(4 and 5) of the Constitution, Ethiopian peasants and pastoralists have the right to be protected against eviction or displacement.

<sup>184</sup> For instance, insofar as it has the effect of depriving people of their livelihood, it will be contrary to the rights to life and dignity. From these rights, the right to housing flows and then the practice violates housing rights, too.

<sup>185</sup> n 39 above

<sup>186</sup> Rakeb Messele, *Enforcement of Human Rights in Ethiopia*, Research subcontracted by APAP, 2002, (unpublished), p 28 (Emphasis added)

<sup>187</sup> See articles 41 and 42 of the Constitution

translating these treaties into local vernaculars to make them accessible to all,<sup>188</sup> to discharge its responsibility, together with the absence of vigilant civil society organizations to promote and defend ESCRs in general, has contributed to the lack of (adequate) awareness about ESCRs in general and the right to housing in particular.

#### 4.3.2. Poverty

Poverty has continued making governments' responses to human rights challenges mere palliatives absent enforceable plans.<sup>189</sup> It has the effect of nullifying economic and social rights in general.<sup>190</sup> This effect becomes glaring and more serious in poor countries like Ethiopia. The total budget of the country is very small that it cannot respond to the housing needs of many people. Just to give few examples, for 2004/2005, the total budget of the country was twenty two billion seventy million thirty nine thousand six hundred ninety Birr (22,070,039,690),<sup>191</sup> and for 2003/2004 nineteen billion two hundred sixty million two hundred eleven thousand twenty eight Birr (19,260,211,080).<sup>192</sup> This is a small amount of budget for total government expenditure for a year. For instance, the *housing* budget of South Africa in the year 2006/2007 is R6, 860,883,000<sup>193</sup> while it is R8, 877, 608, 000 for the year 2007/2008.<sup>194</sup> This is huge amount of money when it is compared to the total annual budget of Ethiopia for all government expenditures. Hence, it is possible that housing problems, which by itself is partly caused by poverty, continue to be problems in Ethiopia in as long as poverty is not adequately dealt with. This makes expecting Ethiopia to realize the right to housing as other states very difficult. This is why some attribute the failure of the country to provide housing to those in need of it to lack of sufficient financial capacity.<sup>195</sup> In fact, given the capacity of the state, the realization of the right to *adequate* housing (as envisaged in the Committee's General Comment 4) in Ethiopia, right now, seems a dream than a reality. Many people need roofs over their heads, not the other corollary services such as ventilation, something which they might consider as items of luxury. As the Supreme Court of India said, the houses they need can be mud-made.<sup>196</sup>

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<sup>188</sup> Article 6(8), Ethiopian Human Rights Commission Establishment Proclamation, Proclamation No. 210/2000, *Federal Negarit Gazeta of the Federal Democratic Republic Of Ethiopia*, 2000

<sup>189</sup> n 3 above, p 1

<sup>190</sup> Redson Edward Kapindu, *Poverty Reduction Strategies and the Right to Health and Housing: The Malawian and Ugandan Experiences*, (2006) 6 AHRLJ, JUTA Law, p 496

<sup>191</sup> Article 2, Proclamation No.419/2004, Federal Government Budget Proclamation, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 2004. Currently, one dollar stands against almost nine Birr.

<sup>192</sup> Article 2, Proclamation No.358/2003, Fiscal year Budget proclamation, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 2003

<sup>193</sup> *Republic of South Africa National Treasury: Estimates of National Expenditure 2006*, National Treasury, South Africa, p 641. Currently, one dollar stands against almost seven Rand.

<sup>194</sup> *Republic of South Africa National Treasury: Estimates of National Expenditure 2007*, National Treasury, South Africa, p 557

<sup>195</sup> n 110 above, p. 9

<sup>196</sup> n 105 above

### 4.3.3. Weak national human rights institution

In 2002, Ethiopia established Human Rights Commission.<sup>197</sup> The objectives of this Commission include educating the public to be aware of human rights to enhancing its tradition of respect for and demand for enforcement of human rights, seeing to it that human rights are protected, respected and fully enforced, and taking necessary measures where they are violated.<sup>198</sup> Moreover, the Commission has the power and duty to recommend the revision of existing laws, enactment of new laws and formulation of policies.<sup>199</sup>

Nonetheless, many people including legal professionals lack (adequate) awareness about ESCRs. No action for the right to housing is made against the government hitherto due to lack of awareness about the existence of the right. Moreover, there is no specific housing law or national housing policy. Therefore, it is very difficult to say that the Commission is discharging its responsibilities properly and such failure impacts on the enjoyment of the right to housing.

Generally, although there are some actions that can serve as responses to the housing problems in the country, some of them are remain inadequate while others are not inclusive. This means, Ethiopia is not adequately discharging its duties to realize the right to housing. Indeed, many intervening factors have resulted in and aggravated the violation of the right to housing in the country. Yet, still something more (positively or negatively) and tangible could have been done to enforce the right to housing.

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<sup>197</sup> n 188 above, article 3

<sup>198</sup> As above, articles 5, 6(3)

<sup>199</sup> As above, article 6(5)

## Chapter 5

### Remedies for violation of the right to housing in Ethiopia

#### 5.1. Introduction

The word 'remedies',<sup>200</sup> in its procedural sense, refers to the process by which arguable claims of human rights violations are heard and decided by any competent bodies while in its substantive sense refers to the outcome of the proceedings, the relief afforded the successful claimant.<sup>201</sup> So, when states are obliged to provide for effective remedies<sup>202</sup> when human rights are violated these remedies include both procedural and substantive remedies. But the obligation to provide for remedies is secondary since it comes into picture only when states' primary obligations are violated.<sup>203</sup> In relation to the right to housing the primary duty of a state is to respect, protect, promote and fulfill the right either immediately or progressively while its secondary duty is to provide for effective procedural and substantive remedies in case these obligations are violated. The next part will briefly consider the legal remedies, procedural and substantive, available for the violation of the right to housing in Ethiopia. The focus will be on constitutional remedies, by taking into account the experience of South Africa, and some human rights treaties.

#### 5.2. Remedies under constitutional law

The Constitution of South Africa stipulates that the CCT, which has the final say on constitutional matters,<sup>204</sup> must be accessible to any person either directly or from any court.<sup>205</sup> It is as the result of this procedural remedy that housing cases such as the *Grootboom case* were able to find their ways to the CCT. With regard to substantive remedy, the Constitution of South Africa gives the CCT the power to make any order it deems necessary to discharge its responsibilities<sup>206</sup> and such order binds all persons to whom and organs of the states to which it applies.<sup>207</sup> Consequently, the CCT has been making different orders it deemed necessary. For instance, in the *Grootboom case*, the CCT found the South African government in violation of its duty to realize the right to access to adequate housing by failing to have a programme that targets people in deplorable conditions.<sup>208</sup> Then, it made a declaratory order that the housing programme must include reasonable measures to provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations.<sup>209</sup> In *Modderklip cases*, the CCT ordered the

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<sup>200</sup> Although in international and national laws other terms such as *reparation* and *redress* are used, human rights instruments generally use the term *remedies* for violations of human rights. See Dinah Shelton, *Remedies in international Human Rights Law*, 2<sup>nd</sup> Ed, Oxford University Press, New York, 2005, p 8

<sup>201</sup> As above, p 7

<sup>202</sup> In *Jawara v The Gambia*, the African Commission noted that effective remedy is a remedy that can be pursued without impediment, that offers a prospect of success and that is capable of redressing the complaint. See Godfrey M Musila, *The Right o an Effective Remedy under the African Charter on Human and Peoples' Rights*, (2006) 6 AHRLJ, JUTA Law, p 446

<sup>203</sup> n 200 above, p 7

<sup>204</sup> Section 167(3), South African Constitution

<sup>205</sup> As above, section 167(6)

<sup>206</sup> As above, section 172(1)(b)

<sup>207</sup> As above, section 165(5)

<sup>208</sup> n 74 above, paragraphs 66, 69

<sup>209</sup> n 74 above, paragraph 99

government of South Africa, thinking that it violated its obligation to realize the right to access to adequate housing, to pay damage to the property owner whose land was occupied by unlawful occupiers for want of access to land and housing.<sup>210</sup>

The procedural and substantive remedies recognized in South Africa are not limited to the CCT. Other courts can also grant these remedies when they deal with constitutional matters. For instance, the CCT's remedies in the *Modderklip* cases were preceded by the decision of the SCA.<sup>211</sup> In the *City of Johannesburg v Rand Properties (Pty) Ltd and Others*,<sup>212</sup> Witwatersrand Local Division High Court issued an order prohibiting eviction of people from the building they occupied until alternative adequate accommodation is provided as envisaged under section 26(1) of the South African Constitution. Therefore, one can say that there are adequate remedies that the Constitution of South Africa recognizes for South African courts to apply when the right to housing is violated.

In Ethiopia, the power to interpret the Constitution is given to the HOF<sup>213</sup> which is one of the Federal Houses with semi-legislative power.<sup>214</sup> Article 83(1) of the Constitution stipulates that *all constitutional disputes shall be decided by the House of the Federation*. There is a debate whether this provision excludes the judiciary from interpreting the Constitution. But the contextual interpretation<sup>215</sup> of the provision leads to the conclusion that, at least as far as the provisions on human rights are concerned, article 83(1) intends to give the HOF the power to *finally* decide on constitutional disputes. This is so because under article 13(1) of the Constitution all organs of the government at all levels are obliged to enforce the Constitution and interpretation of the Constitution is one of the ways of enforcing it for the judiciary.<sup>216</sup> On the other hand, article 6(3) of the Federal Courts Proclamation No.25/1996 stipulates that *where a case brought before them gives rise to issues of Constitutional interpretation, Federal courts shall refer the case to the Council of Constitutional Inquiry [the body assisting the HOF] prior to giving decision on the matter*.<sup>217</sup> This provision may strengthen the position that courts cannot interpret the constitution directly but use it to interpret other laws. So, because of this controversy, the following part will not allude to what possible remedies courts can make for the violations of housing rights but the HOF. Then, what are the procedural and substantive remedies the Constitution provides in case human rights are violated? Procedurally, article 37(1) of the Constitution stipulates that *everyone has the right to bring a justiciable matter to, and to obtain a decision or judgement, a court of law or any other competent body with judicial power*. The fact that the right to housing is justiciable is not

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<sup>210</sup> Mia Swart, *Left Out in the Cold? Crafting Constitutional Remedies for the Poorest of the Poor*, (2005) 21SAJHR, JUTA Law, Lansdowne, 2005, p 230

<sup>211</sup> As above

<sup>212</sup> n 90 above

<sup>213</sup> Article 62(1) of the Constitution

<sup>214</sup> See articles 53, 99, and 105(1)(c) of the Constitution

<sup>215</sup> n 74 above, paragraph 22

<sup>216</sup> See also articles 9(2) and 79(1) of the Constitution

<sup>217</sup> Federal Courts Proclamation No.25/1996, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 1996

subject to debate. In the Constitution, it is impliedly recognized as an element of other rights which are justiciable. Further, since article 13(2) of the Constitution authorizes, for the purpose of interpretation, consulting international human rights instruments ratified by Ethiopia and under some of these instruments the right to housing is justiciable, the right to housing that can be inferred from the Constitution is justiciable. Consequently, any person who feels that his/her right to housing is not realized or otherwise violated can approach the HOF, a body with judicial power on constitutional matters, and obtain decision or judgement thereon. Thus, like in South Africa, the Constitution of Ethiopia provides for a constitutional procedural remedy for the violation of the right to housing.

With regard to substantive remedies, the Constitution is not clear on whether the HOF can grant such remedies and what type of remedies it can grant. It simply provides that the HOF has the power to interpret the Constitution and all constitutional disputes shall be [finally] decided by the HOF. But one obvious remedy the HOF can make is the declaration of invalidity of any conduct contravening the Constitution. Article 9(1) of the Constitution provides that *[a]ny law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect*. So, the HOF in the event it finds laws and/or decisions of government organs contrary to the Constitution can say these laws and/or decisions shall have no effect. But the challenge that remains unresolved is if a person challenging the constitutionality of the action or inaction of the government demands that something be done or abstained from, it is not enough that the HOF declares the action or inaction invalid. The relief the person seeks should be decided on, too. The question then is whether the HOF can order the government to take actions or refrain from taking actions beyond declaring them unconstitutional. For instance, can the HOF order the government to have national housing legislation and/or policy which targets the realization of the right to housing as clearly as possible? Can it order the government to divert some of its budgets to the provision of housing to those who cannot afford to pay for their own houses? Nowhere in the Constitution is this power expressly given to the HOF.

However, the interpretation of article 37(1) seems to suggest that the HOF can make such orders. According to article 37(1) everyone has the right to bring a justiciable matter to, and *to obtain a decision or judgement by, a court of law or any other competent body with judicial power*. Insofar as the HOF is an organ with judicial power on constitutional matters and everyone has the right to bring a justiciable matter before it to obtain *decision or judgement* on the matter, the decision or judgement the HOF makes can include the relief sought by the concerned party. For instance, like the CCT,<sup>218</sup> the HOF can order the government to allocate a reasonable part of its budget to respond to the housing needs of those who cannot pay for their own houses while leaving the determination of the precise amount of the budget to be allocated to the government. Then, assuming that all the conducts which are 'constitutionally suspect'; that is, which violate the right to

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<sup>218</sup> n 74 above, paragraph 66



housing as discussed in the preceding chapter, are impugned before the HOF, what possible remedies can and should the HOF order? Some of them will be discussed below.

As discussed before, the absence of law or national housing policy that is specifically devoted to the realization of the right to housing amounts to the violation of right to housing. The HOF can then declare this omission invalid as per article 9(1) of the Constitution because, firstly, it violates the impliedly guaranteed right to housing and, secondly, it is contrary to the government's duty (under article 41(4)) to provide housing to those in need of it as social service. Then the HOF can order the Ethiopian government to have such law and/or policy to facilitate the enjoyment of the rights to housing. According to the CCT, it is also necessary to devote reasonable part of the national housing budget to the amelioration of the situation of people in desperate need of housing.<sup>219</sup> In like manner, the HOF can order the government to allocate some part of its budget, particularly from the budget that is used to build condominium houses for those who can pay back for them, to provide housing to those who cannot pay for their own houses.

With regard to the discriminatory measures discussed before, the HOF can declare them contrary to article 25 equality clause and hence invalid by virtue of article 9(1) of the Constitution. Then, the HOF can, for example, order the government to allocate some of the condominium houses, so that the measure will be inclusive, to those people who are in need of housing but who are incapable of paying for their own houses. Likewise, it can order the government to launch reasonable construction of houses in other parts of the country where there are housing problems.

In relation to the practices of forced evictions, they violate different constitutionally guaranteed rights such as the right to life (article 15) and the right to dignity (article 24(1)), from which the right to housing can be inferred, and peasants' and pastoralist' right to be protected against eviction and displacement, respectively, under article 40(4 and 5) of the Constitution. Hence, the HOF can declare them unconstitutional. But the remedy the HOF can provide in this case can be different since damage is already caused and reinstatement may not be possible. The HOF can order the government to pay compensation to the victims and probably give them adequate accommodations if they are not yet accommodated.

In respect of the delay in getting access to land, it should be noted that as per article 40(3) of the Constitution, the government owns land so that it can deploy it for common benefit and development.<sup>220</sup> If the government is not granting easy access to land to people when they need it then the purpose of vesting ownership right of land in the government will be jeopardized. Consequently, the HOF can declare that the delay in granting access to land is constitutionally untenable and then remind the government of the purpose of the Constitution while vesting ownership right of land in it; that the sluggish land acquisition process is contrary to that purpose

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<sup>219</sup> As above

<sup>220</sup> See also article 89(5) of the Constitution

as far as the right to housing is concerned; and urge the government to improve these procedures so as to enable individuals to get easy access to land to enjoy their housing rights.

These are some of the remedies that can be obtained from the HOF if the violation of the right to housing is challenged before it. With respect to the enforcement of these orders, unlike section 165(5) of the South African Constitution which obliges all persons and government organs to which the decision of the CCT applies to enforce the decision, the Ethiopian Constitution does not make such clear stipulation. Yet, it stipulates that *all citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it.*<sup>221</sup> Accordingly, it can be argued that since ensuring the observance of and obeying the Constitution necessarily imply observing and obeying decisions on the Constitution, anyone to whom the decision of HOF applies is bound to enforce it.

### 5.3. Remedies under international law<sup>222</sup>

Although it is a major international instrument on ESCRs, the ICESCR does not provide for individual complaint mechanism. If individuals cannot take their cases to the ESCR Committee (absence of procedural remedies), then there will be no substantive remedies. Similarly, CEDAW does not provide for individual complaint mechanism. However, article 2 of its Protocol recognizes individual complaint mechanism thereby enabling any rural woman who claims that her right to housing is violated to approach the CEDAW Committee. The CEDAW Committee will then make recommendations in the form of remedies, on the possible measures to be taken to comply with the CEDAW and communicate it to the state concerned.<sup>223</sup> However, these recommendations cannot apply to Ethiopia right now because Ethiopia has not ratified the Protocol.

Unlike the above two documents, the ACHPR provides for individual complaint mechanism. Any person can bring action under the ACHPR before the African Commission claiming the violation of the right(s) and freedom(s) the ACHPR recognizes.<sup>224</sup> The right to housing is not explicitly recognized under the ACHPR. However, in the *SERAC* case, the African Commission stated:

Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14[the right to property], 16 [the right to enjoy the best attainable state of mental and physical health] and 18(1) [the protection accorded to the family] reads into the Charter a right to shelter or housing...<sup>225</sup>

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<sup>221</sup> Article 9(2) of the Constitution

<sup>222</sup> Only remedies for individual complaints will be considered here.

<sup>223</sup> Articles 7-9 of the Protocol to the CEDAW

<sup>224</sup> Article 55(1), ACHPR

<sup>225</sup> n 52 above

Therefore, any Ethiopian who feels that his/her right to housing is violated can take his/her case to the Commission.<sup>226</sup> With regard to substantive remedies, the Commission is not clearly mandated to order remedies for human rights violations.<sup>227</sup> But its protective mandate, under article 45(2), entails that states should not violate the rights and freedoms the ACHPR recognizes, and if they violate them, that victims should be reinstated.<sup>228</sup> Accordingly, the Commission has given many remedial orders by interpreting this protective mandate some of which have resources implications.<sup>229</sup> The Commission can, therefore, order that the Ethiopian government to allocates reasonable amount of resources to the provision of housing to those who cannot pay for their own housing. This order (remedy) is not binding but it can be effective particularly because the Commission's stand towards following up the implementation of its recommendations is becoming more demanding. For instance, according to one of its recent resolutions,<sup>230</sup> Ethiopia will be required to report back to the Commission within 90 days on the steps it has taken to enforce the order (recommendation). Failure to report to the Commission will have political ramifications, by way of shaming, as the Commission will ultimately report the same to the AU Assembly of Heads of States and Governments.

Therefore, as the above discussions show, there are both constitutional and international remedies for the violation of the right to housing in Ethiopian. But, unlike the constitutional remedies, the international remedies under some treaties do not apply to Ethiopia. Moreover, even those remedies which are applicable to Ethiopia, such as the one emanating from the ACHPR, are not binding but recommendations. Yet, insofar as there are some following up procedures and also they have shaming and naming effects they can be helpful, if tried, for the realization of housing rights.

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<sup>226</sup> See article 56(6), ACHPR.

<sup>227</sup> n 51 above, p 409,430

<sup>228</sup> n 26 above, p 181

<sup>229</sup> n 51 above, p 409,430

<sup>230</sup> *ACHPR/Res.97(XXXX)06: RESOLUTION ON THE IMPORTANCE OF THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS BY STATE PARTIES*

## Conclusion and recommendations

### Conclusion

The right to housing is a basic human right the satisfaction of which serves as a basis for the enjoyment of all other rights. Hence, it is necessary to take adequate measures for its realization. Ethiopia has recognized the right to housing. The aim of this research is, therefore, to answer the question: Has Ethiopia adopted adequate measures to realize the right to housing? It proceeded on the hypothesis that Ethiopia has not adopted adequate measures to realize the right to housing. The finding of the research shows that indeed Ethiopia has not adopted adequate measures to realize the right. Those measures which are in place and which address issues pertaining to the right to housing remain inadequate. Firstly, Ethiopia is supposed to take measures which must be deliberate, concrete and targeted as clearly as possible towards the realization of the right to housing. These types of measures include specific housing legislation and/or policy or legislation or policy which has the realization of the right to housing as at least one of its primary purposes which are missing in Ethiopia. Secondly, those measures which can address issues pertaining to the realization of the right to housing are inadequate because they were not adopted to implement housing rights but to serve different societal goals. Moreover, some of these measures like the construction of condominium houses in some urban areas are discriminatory. Hence, Ethiopia stands in violation of its duty to realize the right to housing as recognized under international treaties it ratified and in its own Constitution. Although, there are some causes and catalysts that have contributed to the failure to take adequate measures (positively and negatively) to realize the right to housing, this failure remains actionable for which, if impugned, some international and national remedies are available.

### Recommendations

As discussed before, Ethiopia does not have any specific housing legislation which creates right to housing or obligation to realize the right to housing or protect people against acts contravening their right to housing. Yet, for meaningful realization of the right to housing, such legislation is desirable and even sometimes indispensable.<sup>231</sup> Certainly, the right to housing cannot be relatively realized through legislation alone.<sup>232</sup> Nonetheless, such legislation is a starting point to guarantee the realization of a right.<sup>233</sup> Therefore, it is recommended that Ethiopia enacts specific housing law with national application within which regional governments can act (either by making further laws or formulating policies) to realize the right to housing.

Moreover, the government has been constructing and distributing low-cost condominium houses to some people in some urban areas. The construction of the houses has been taking place at the expense of the government although those who have been and will be given the houses will pay

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<sup>231</sup> n 1 above, paragraph 3

<sup>232</sup> n 29 above

<sup>233</sup> n 74 above, paragraph 67

for them. Regardless of their vulnerability and need of special attention, however, those who cannot pay for the houses have not been entitled to these houses. Those who live in areas where the construction of the houses is not taking place are also out of the picture. It is, therefore, recommended that the government allocates some of these houses to these people who cannot afford to pay for them and undertake reasonable similar construction in other parts of the country where there are housing problems. Because, it is the government that is constructing the houses by using public finance and these people must get some benefits derived from the use of public fund as citizens of the country. In fact, under article 41(3), the Constitution stipulates that *every Ethiopian has the right to equal access to publicly funded social services*. By allocating some of the houses to those who cannot afford to pay for them and also by extending the construction of similar houses to the other parts of the country, the government will be able to respect this constitutional provision in particular and the right to equality of individuals in general.

Further, as the previous discussions revealed, getting access to land to build one's own house is difficult. The procedures are said to be sluggish. Nonetheless, those people who need plot of land to build their own houses will eventually get the land. Such practice is incompatible with housing rights. Indeed, it amounts to violating the obligation to fulfill the right to housing. The practice is more culpable in Ethiopia where land is owned by the government and granting easy access to it is possible but it is delayed. Therefore, it is recommended that the government improves its bureaucracy to let people get easy access to land to enable them to enjoy their housing rights.

## **Bibliography**

### **Laws and Declarations**

African Charter on Human and Peoples' Rights

Appropriation of Land for Government works and Payment of Compensation for Property Proclamation, Proclamation 401/2004, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 2004

Condominium Proclamation, Proclamation No.370/2003, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 2003

Constitution of the Federal Democratic Republic of Ethiopia, 1994

Constitution of the People's Democratic Republic of Ethiopia, 1987

Constitution of the Republic of Cameroon, Law No. 96-06 of 18 January 1996

Constitution of the Republic of South African, Act 108 of 1996

Convention on the Elimination of All Forms of Discrimination Against Women

Decree No 91/324 of 09 July 1991, *fixant les conditions d'attribution et d'occupation de logements administratifs*, REPUBLIQUE DU CAMEROON

Decree No 91/323 of 09 July 1991, *fixant les plafonds des loyers et les taux de l'allocation de logement des membre du Gouvernement et assimilés*, REPUBLIQUE DU CAMEROON

Ethiopian Human Rights Commission Establishment Proclamation, Proclamation No. 210/2000, *Federal Negarit Gazeta of the Federal Democratic Republic Of Ethiopia*, 2000

*Extension of Security of Tenure Act*, Act NO. 62, 1997, Republic of South Africa, Government Gazette

Federal Courts Proclamation No. 25/1996, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 2<sup>nd</sup> Year, No. 13, Addis Ababa, 15<sup>th</sup> February, 1996

Federal Government Budget Proclamation, Proclamation No. 419/2004, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 2004

Fiscal year Budget proclamation, Proclamation No. 358/2003, *Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia*, 2003

*HOUSING ACT*, Act No. 107, 1997, Republic of South Africa, Government Gazette

Imperial Constitution of the Empire of Ethiopia, 1931

International Covenant on Economic, Social and Cultural Rights

Optional Protocol to the Convention on the Elimination of Discrimination against Women

*Prevention of Illegal Eviction from and Unlawful Occupation of Land*, Act No. 19 of 1998, Republic of South Africa, Government Gazette

*Rental Housing Act*, Act No. 50, 1999, Republic of South Africa, Government Gazette

Revised Constitution of the Empire of Ethiopia, 1955

UN Declaration on the Right to Development, UN GA Resolution 41/128, 4 December 1986

Universal Declaration of Human Rights

## Books

- Akumah, Evelyn A (1996), *The African Commission on Human and Peoples' Rights*, V 16, Martinus Nijhoff Publishers, The Hague, London, Boston
- Awasthi, S.K. and Katoria, P.P. (2005), *Law Relating to Protection of Human Rights*, 2<sup>nd</sup> ed, Orient Publishing Company
- Bankie, B.F., Marias, C., and Namiseb, J.T., (Compilers) (1998), *The Southern African Human Rights Reader Towards Creating a Sustainable Culture of Human rights*, UNESCO
- Beddard, Ralph, and Hill, Dilys M, (Eds) (1992), *Economic, Social and Cultural Rights Progress and Achievement*, St. Martin's Press, New York
- Conway, Jean (2002), *Housing Policy*, The Gildredge Press, United Kingdom
- Currie, Iain, and Waal, Johan de (2006), *the Bill of Rights Handbook*, 5<sup>th</sup> ed, JUTA and Co. Ltd, South Africa
- Donnelly, Jack (2003), *Universal Human Rights in Theory and Practice*, 2<sup>nd</sup> ed, Cornell University, USA
- Eze, Osita (1996), *Study on the Right to Adequate Housing in Nigeria*, Shelter Rights Initiative, Lagos
- Goldewijk, Berma Klein, Baspeinerio, Adalid Contreras, and Carbonari, Poulou Cesar, (eds), *Dignity and Human Rights: The Implantation of Economic, Social and Cultural Rights*, Intersentia Translational Publishers, T.M.C. ASSER PRESS
- Hall, Anthony and Midgley, James (2004), *Social Policy for Development*, SAGE Publication, London, Thousand Oaks, New Delhi
- Handy, Christopher (1993), *Discrimination in Housing*, Sweet and Maxwell, London
- Heyns, Christof, (ed) (2004), *Human Rights Law in African: International Human Rights Law in Africa*, V 1, Martinus Nijhoff Publishers, Leindon/Boston
- Khoza, Sibonile, (ed) (2007), *Socio-Economic Rights in South Africa*, 2<sup>nd</sup> Ed, Community Law Centre, University of Western Cape, South Africa
- Kothari, Miloon, 'Priority Issues and Impediments to Realizing the Rights to Adequate Housing' in Berma Klein Goldewijk, Adalid Contreras Baspeinerio and Poulou Cesar Carbonari (eds), *Dignity and Human Rights: The Implentation of Economic, Social and Cultural Rights*, Intersentia
- Midgley, James, Tracy, Martin B., and Livermore, Michelle, (Eds) (2000), *The Handbook of Social Policy*, SAGE Publication, London, New Delhi, Thousand Oaks
- Nmehielle, Vincent O. Orlu (2001), *The African Human Rights System, Its Laws, Practice, and Institutions*, International Studies in Human Rights, Volume 69, Martinus Nijhoff Publishers, The Hague/London/New York
- Ramcharan, Bartrand G (ed) (2005), *Judicial Protection of Economic, Social and Cultural Rights: Cases and Materials*, V 22, Martinus Nijhoff, Leiden/London
- Republic of South Africa National Treasury: Estimates of National Expenditure* (2007), National Treasury, South Africa

*Republic of South Africa National Treasury: Estimates of National Expenditure* (2006), National Treasury, South Africa

Shelton, Dinah (2005), *Remedies in international Human Rights Law*, 2<sup>nd</sup> Ed, Oxford University Press, New York

Teymur, Necdet, Markus, Thomas A, and Woolley, Tom, (Eds) (1988), *Rehumanizing Housing*, Butterworths, London, Boston, Durban, Singapore, Sydney, Toronto and Wellington

*UN Fact Sheet Number 1-25*, 4<sup>th</sup> Ed (1996), Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund

United Nations (2006) *Forced Evictions and Human Rights*, Fact Sheet No. 25, Centre for Human Rights, United Nations, Geneva

Viljoen, Frans, 'Introduction to the African Commission and the Regional Human and Rights System' in Christof Henys (ed) (2004) *Human Rights Law in African: International Human Rights Law in Africa*, V 1, Martinus Nijhoff Publishers, Leindon/Boston

### **Articles**

Akonumbo, Atangcho Nji, *HIV/AIDS law and policy in Cameroon: Overview and challenges*, (2006) 6 AHRLJ, No. 1, JUTA Law

*Ethiopia: Dutch conservation organization involved in eviction of thousands of tribal people* (2006), World Rainforest Movement Bulletin, No 105

Grant, Evadne, *Enforcing Social and Economic Rights: The Right to Adequate Housing in South Africa* (2007) African Journal of International and Comparative Law, V 15, PT1, Edinburgh University Press, Edinburgh

Kapindu, Redson Edward, *Poverty Reduction Strategies and the Right to Health and Housing: The Malawian and Ugandan Experiences*, (2006) 6 AHRLJ, JUTA Law

Musila, Godfrey M., 'The Right o an Effective Remedy under the African Charter on Human and Peoples' Rights' (2006) 6 AHRLJ, JUTA Law

Sacco, Solomon Franc, 'A Comparative Study of the implementation in Zimbabwe and South Africa of the international law rules that allow compulsory licensing and parallel importation for HIV/ADIS drugs' (2005) 5 AHRLJ, JUTA Law

Senders, Mignon, *Women and the Right to Adequate Housing*, (1998) 2 NQHR, Kluwer Law

Swart, Mia, *Left Out in the Cold? Crafting Constitutional Remedies for the Poorest of the Poor*, (2005) 21SAJHR, JUTA Law, Lansdowne

Vos, Pierre De, Grootboom: *The Right of Access to Housing and Substantive Equality as Contextual Fairness*, (2001) 17 SAJHR, JUTA Law, Lansdowne

### **Cases**

*City of Johannesburg v Rand Properties (Pty) Ltd and Others*, 2006(6) BCLR 728 (W), Case No O4/10330; 04/10331; 04/10332; 04/10333; O3/24101; 04/13835



*The Government of the Republic of South Africa and Others v Irene Grootboom and Others*, Case CCT 11/00, 2000

*Sir Dawda K. Jawara v. the Gambia*, Communication Nos. 147/95 and 149/96, Communication No.155/96, African Commission Human and Peoples' Rights

*Olga Tellies and Others v Bombay Municipal Corporation and Others*, (AIR (1986) SC 180)

*P.G. Gupta v State of Gujarat and Others* (1995 Supp (2) SSC 182)

*Port Elizabeth Municipality v. Various Occupiers*, 2004 (12) BCLR 1268 (CC)

*President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd* 40 2005 (5) SA 3 (CC)

*The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria*, Communication No.155/96, African Commission Human and Peoples' Rights, 2001

### **Websites**

Bekele, Kaleyesus, Ethiopian Reporter-City administration to build 161,000 condos, <<http://www.ethiopianreporter.com/modules.php?name=News&file=article&sid=16375>> (accessed 28 August 2007)

Bihon, Azeb Kelemework, *Housing for the poor in Addis Ababa*, p. 6, <<http://www.google.com/search?hl=en&sa=X&oi=spell&resnum=0&ct=result&cd=1&q=Ministry+of+Urban+Development+and+housing+in+ethiopia&spell=1>> (accessed 28 August 2007).

*Brief Description on the Problems and Project Ideas of the City of Gondar*, prepared by City Council of Gondar, 10 January 2006, <<http://www.ci.corvallis.or.us/council/mail-archive/ward4/docaeX7WH2qQg.doc>> (accessed 7 July 2007)

Degregorio, Jen, *Bethesda firm sues Cameroon over failed housing development*, Daily Record, The (Baltimore), December 12, 2006 <[http://findarticles.com/p/articles/mi\\_qn4183/is\\_20061212/ai\\_n16907729](http://findarticles.com/p/articles/mi_qn4183/is_20061212/ai_n16907729)> (accessed 22 September 2007)

Ethiopia: Dutch conservation organization involved in eviction of thousands of tribal people, *World Rainforest Movement Bulletin*, No 105, April 2006, <<http://www.wrm.org.uy/bulletin/105/Ethiopia.html>> (accessed 9 July 2007)

Ethiopian Reporter: *Ambo Town Constructing Condominium Houses* <<http://www.ethiopianreporter.com/modules.php?name=News&file=categories&op=newindex&catid=31>> (accessed 28 August 2007)

*Germans to build cheap housing in Ethiopia*, <<http://www.afrol.com/articles/14889>>(accessed 7 July 2007)

<[http://www.ohchr.org/english/bodies/cescr/docs/e\\_c12\\_38\\_2.doc](http://www.ohchr.org/english/bodies/cescr/docs/e_c12_38_2.doc)> (accessed 7 September 2007)

Mekelle Housing Development Agency, Launching construction of condominium houses, <<http://www.waltainfo.com/EnNews/2007/Apr/21Apr07/27883.htm>> (accessed 28 August 2007)

Michael, Eskinder, *EthioBlog - Ethiopia - Condos on rent for millennium*, <[http://nazret.com/blog/index.php?title=ethiopia\\_condos\\_on\\_rent\\_for\\_millennium&more=1&c=1&tb=1&pb=1](http://nazret.com/blog/index.php?title=ethiopia_condos_on_rent_for_millennium&more=1&c=1&tb=1&pb=1)> (accessed 28 August 2007)

Public Statement of Amnesty International on World Habitat Day (3 October 2005) <<http://web.amnesty.org/library/Index/ENGAFR010032005>> (accessed 30 May 2007)

Ethiopia: Bole Sub-City Eviction Order Violation of Law of Land – APAP, *Daily Monitor* (29 May 2007), <<http://allafrica.com/stories/200705310424.html>> (accessed 9 July 2007)

Tadesse, Daniel, *Reflections on the Situation of Urban Cadastres in Ethiopia*, Addis Ababa, Ethiopia, April 7, 2006 <<http://www.mdpafrica.org.zw/ALGAF%202002-6/algaf%20VI/ALGAF%20VI%20Session%20III%20Reflections%20on%20the%20Situation%20of%20Urban%20Cadastres%20in%20Ethiopia.doc>> (accessed 7 July 2007)

Tefere, Jember, and Wondimu, Admassie, *Integrated Holistic Approach and Urban Development Project Housing, Experience in Addis Ababa, Ethiopia*, <[http://216.239.59.104/search?q=cache:hR5o\\_WDtObAJ:www.blpnet.org/learning/casebooks/hic2/ethiopia.pdf+Housing+problems+in+Ethiopia&hl=en&ct=clnk&cd=12&gl=za](http://216.239.59.104/search?q=cache:hR5o_WDtObAJ:www.blpnet.org/learning/casebooks/hic2/ethiopia.pdf+Housing+problems+in+Ethiopia&hl=en&ct=clnk&cd=12&gl=za)> (accessed 7 July 2007)

Tesfaye, Abraham, *Problems and prospects of housing development in Ethiopia* <<http://emeraldinsight.com/Insight/ViewContentServlet?Filename=Published/EmeraldFullTextArticle/Articles/1130250102.html>> (accessed 7 July 2007)

The Reporter (English Weekly Newspaper): An interview on the right to housing with Frenesh Tessema, coordinator of research and publication at APAP, local Human Right NGO, 29 September, 2006, <<http://216.239.59.104/search?q=cache:WzNQ4cgzZUkJ:www.apapeth.org/Docs/Interview%2520Right%2520to%2520Housing.pdf+Housing+problems+in+Ethiopia&hl=en&ct=clnk&cd=7&gl=za>> (accessed 7 July 2007)

### **Other sources**

*ACHPR/Res.97(xxxx)06: RESOLUTION ON THE IMPORTANCE OF THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS BY STATE PARTIES*

Committee on Economic, Social and Cultural Rights, General Comment 4, *The Right to Adequate Housing*, (Sixth Session, 1991), U.N. Doc. E/1992/23, Annex III at 114 (1991), reprinted in *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003)

Discussion with Dr. Atangcho Nji Akonumbo, my supervisor, on issues pertaining to the realization of the right to housing in Cameroon

*Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, Maastricht, January 22-26, 1997

Messele, Rakeb, *Enforcement of Human Rights in Ethiopia*, Research subcontracted by Action Professionals' Association for the People (APAP), 2002, (unpublished)

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