

The Recognition and Implementation of Children's Socio-economic Rights in Ethiopian Law

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‘Dedicated to street-dwelling children of Ethiopia whose misery and agony convicts the conscience of mankind in general!’

Abstract

This research examines the current recognition and implementation of children's socio-economic rights in Ethiopian law. Ethiopia has ratified international instruments of children's rights, to wit, the Convention on the Rights of the Child and the International Convention on Economic, Social, and Cultural Rights as well as regional instruments such as the African Charter on the Rights and Welfare of the Child and these instruments are made to be part of the Ethiopian law. However, there is neither a translation nor publication of these instruments and these facts obstruct their implementation, as the working language of domestic courts is different from the language of the instruments. Ethiopia also does not incorporate children's socio-economic rights in its Constitution. Neither does it have separate legislation on children's rights.

Despite the commitment shown by its ratification of international children's rights instruments, Ethiopia has not yet done anything meaningful towards the realisation of children's socio-economic rights. Mere ratification of international instruments cannot rectify the lifelong hardship of Ethiopian children without actual implementation. Hence, this dissertation discusses the incorporation of children's socio-economic rights in the Federal Democratic Republic of Ethiopia's Constitution, domestication of international children's rights instruments and the lack of a separate act outlining children's rights in the Ethiopian legal system in order to establish why current child law in Ethiopia does not solve the suffering of Ethiopian children.

The current reality with regard to children's socio-economic rights in Ethiopia is not an insurmountable hurdle. This dissertation recommends translation into the domestic working language of Ethiopian courts and publication of international children's rights instruments in order to ease the problem regarding awareness of the laws, as well as their status and validity. Ethiopia could enact a separate act for children's rights, as well as enshrine the socio-economic entitlements of children in its Constitution. The South African experience is also worthy of consideration. Ethiopian courts should interpret domesticated international instruments by relying on the FDRE Constitution as a legal ground.

Opsomming

Hierdie navorsing handel oor die huidige erkenning en uitvoering van die sosio-ekonomiese regte van kinders in Ethiopiese reg. Ethiopië het internasionale instrumente atstukke van kinderregte bekragtig, na wete, die Konvensie van die Regte van die Kind en die Internasionale Konvensie oor Ekonomiese, Sosiale en Kultuurregte, sowel as regionale instrumente, soos die Afrika-handves oor die Regte en Welsyn van die Kind, en hierdie instrumente vorm deel van die Ethiopiese reg. Daar bestaan egter geen vertaling of publikasie van hierdie instrumente nie, wat hul implementering belemmer, aangesien die voertaal van plaaslike howe verskil van die taal van die instrumente. Die sosio-ekonomiese regte van kinders word ook nie in die Ethiopiese grondwet ingesluit nie, en die land beskik ook nie oor aparte wetgewing aangaande kinderregte nie.

Ten spyte van die ooglopende toewyding wat getoon word in die vorm van die bekragtiging van internasionale kinderregte instrumente, het Ethiopië nog niks van waarde uitgerig ten opsigte van die verwesenliking van die sosio-ekonomiese regte van kinders nie. Die blote bekragtiging van internasionale instrumente, sonder implementering, kan nie die lewenslange ontberinge van Ethiopiese kinders regstel nie. Daarom bespreek hierdie skripsie die inlywing van die sosio-ekonomiese regte van kinders in die grondwet van die Federale Demokratiese Republiek van Ethiopië; die inburgering van instrumente aangaande internasionale kinderregte; en die tekort aan aparte wetgewing in die Ethiopiese regstelsel wat kinderregte uiteensit, om sodoende vas te stel hoekom huidige kinderregte in Ethiopië nie die lyding van Ethiopiese kinders verlig nie.

Die huidige realiteit rondom die sosio-ekonomiese regte van kinders in Ethiopië is nie 'n onoorkomelike probleem nie. Hierdie skripsie stel voor dat vertaling na die plaaslike voertaal van Ethiopiese howe, sowel as die publisering van instrumente oor internasionale kinderreg plaasvind, om sodoende die probleem aangaande bewustheid van die wette, sowel as hulle status en geldigheid, te verlig. Ethiopië kan ook 'n aparte wet vir kinderregte implementeer en ook die sosio-ekonomiese regte van kinders in sy grondwet insluit.

Die Suid-Afrikaanse ondervinding rakende kinders se sosio-ekonomiese regte is ook oorwegingswaardig. Ethiopiese howe behoort geratifiedeerde internasionale instrumente te interpreteer met inagneming van die FDRE-grondwet as gronde vir geldigheid.

Key Words

Children

Domestication

Dualist

Implementation

Incorporation

Monist

Publication

Recognition

Socio-economic rights

Translation

Abbreviations

- 1 ACRWC – African Charter on the Rights and Welfare of the Child
- 2 CRC – Convention on the Rights of the Child
- 3 FDRE – Federal Democratic Republic of Ethiopia
- 4 ICCPR- International Convention on Civil and Political Rights
- 5 ICESCR – International Convention on Economic, Social and Cultural Rights
- 6 NGOs – Non-governmental Organisations
- 7 NPA – National Plan of Action
- 8 OAU – Organisation of African Unity
- 9 SERAC – Social and Economic Rights Action Centre
- 10 UDHR – Universal Declaration of Human Rights
- 11 UNGA – United Nations General Assembly

Table of Cases

- 1 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C)
- 2 Inter-American Court on Human Rights Advisory Opinion on the Juridical Status and Human Rights of the Child OC-17/02, 28 August 2002
- 3 *Negaso Gidada v The House of Peoples Representatives and the House of Federation* Federal High Court Appeal File No. 41183 2004
- 4 *Tsedale Demise v Kifle Demise* Federal Supreme Court Cassation Division File No. 23632 2000

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1 Introduction

Socio-economic rights are rights to material conditions for human well-being.¹ They create entitlements to rights such as food, health care services, water, and housing.² They also require positive action by the state and their enforcement often has budgetary implications. Children are also entitled to socio-economic rights, yet these rights of children remain an overlooked area. Children as a group are particularly vulnerable due to different aspects of childhood: they are immature both physically and emotionally and thus dependent on adults for their development, care, and guidance. This vulnerability is further worsened when the children are raised in impoverished circumstances³ and thus many Ethiopian children currently live in a vicious cycle of complicated problems.⁴

Children, mainly due to their mental and physical immaturity, need special care and (legal) protection. It is commonly accepted internationally that children represent a special category of vulnerable persons; their fundamental rights consequently require additional and specific legal protection. As a result different categories of children's socio-economic rights are specifically recognised and protected in both international and regional children's laws and other instruments such as the Convention on the Rights of the Child⁵ (hereafter CRC), the International Convention on Economic, Social and Cultural Rights⁶ (hereafter ICESCR), and the African Charter on the Rights and Welfare of the Child⁷ (hereafter ACRWC).

Ethiopia has ratified and incorporated the ICESCR,⁸ the CRC⁹ and the ACRWC¹⁰ in its domestic law. According to the Ethiopian Constitution (hereafter FDRE Constitution) international agreements ratified by Ethiopia form an integral part of domestic law and are implemented in the same manner as national laws enacted by

1 Brand and Heyns *Socio-Economic Rights* 3.

2 Brand and Heyns *Socio-Economic Rights* 3.

3 Liebenberg *Socio-Economic Rights* 228-229, Chirwa DM Combating Child Poverty: The Role of Economic, Social and Cultural Rights in Sloth-Nielsen *Children's Rights in Africa* 91-93.

4 Refer to Section 1.1 below.

5 Convention on the Rights of the Child 1989.

6 International Convention on Economic Social and Cultural Rights 1966.

7 African Charter on the Rights and Welfare of the Child 1990.

8 Ethiopia acceded to the ICESCR in 11 June 1993. Refer to United Nations Treaty Collection <https://treaties.un.org/>.

9 Convention on the Rights of the Child Ratification Proclamation 10 of 1992.

10 Ethiopia acceded to the ACRWC in 2002. Refer to Claiming Human Rights <http://www.claiminghumanrights.org/>.

the legislature.¹² Section 13(2)¹³ of the FDRE Constitution also provides that the interpretation of fundamental rights and freedoms enshrined therein must conform to standards set by international human rights instruments adopted by Ethiopia.

1.1 Problem Statement

In Ethiopia socio-economic rights that pertain to all human beings (inadequate as they are)¹⁴ are included in the bill of rights¹⁵ enshrined in the FDRE Constitution and the directory of state policy principles.¹⁶ However, the FDRE Constitution articulates socio-economic rights only in general and vague terms. The provisions are legislated in imprecise or vague terminology making it difficult to claim them in court. Under section 90 of the FDRE Constitution basic socio-economic rights are stipulated as social objectives rather than directly enforceable rights. The FDRE Constitution, apart from incorporating international children's rights instruments into domestic law, does not specifically provide for children's socio-economic rights. Unlike the Constitution of the Republic of South Africa¹⁷ the FDRE Constitution does not recognise children's socio-economic entitlements. Ethiopia has also yet to enact a separate act that details children's rights in general and their socio-economic rights in particular.¹⁸

Worst of all, the implementation of domesticated international human rights instruments (including instruments that embody children's socio-economic rights) is uncertain because it is stained with ambiguity and controversy. According to the FDRE Constitution ratification suffices for the domestication of international treaties, while on the other hand it is mandatory to publish a translated version of ratified international documents.¹⁹ Courts are required by law to take into account laws that

12 The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1 of 1995. Section 9(4) provides that "[a]ll international agreements ratified by Ethiopia are an integral part of the law of the land".

13 Section 13(2) of the FDRE constitution states that "[t]he fundamental rights and freedoms specified in [the bill of rights] 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".

14 Mayessa *The Integrated Approach* 91.

15 Section 41 of the FDRE constitution.

16 Section 90 and 89 of FDRE constitution.

17 Refer to Section 28 of the Constitution of the Republic of South Africa Act 108 of 1996.

18 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 59.

19 Refer to Section 9(4) of the FDRE constitution and Section 2(2) and (3) of the Federal Negarit Gazeta Establishment Proclamation No. 30 of 1995.

are published in the Negarit gazeta which is the official gazeta for publication of all federal laws. The laws must be published in the working language of courts which is also not the language of international treaties. Consequently the judiciary hesitates to apply international instruments. There is neither an act nor a judicial decision that settles the matter so far.

Therefore, even though Ethiopia has ratified international children's rights instruments their implementation is virtually non-existent or uncertain. There is neither a constitutional provision nor an act that details children's socio-economic rights.²⁰ International instruments ratified by Ethiopia have not yet been put into action and tested before courts despite the vicious circle of poverty that continues to haunt children's very survival.²¹ In addition to the legislative failure, unjust and backward societal tradition,²² failure of government responsibility and lack of accountability all contribute to the deprivation of children's socio-economic rights. Different forms of violations of children's human rights are common in Ethiopia and the societal tradition endorses and tolerates child exploitation. In short, the poverty and ignorance that permeates the community is nowhere more explicitly noticed than in the condition of children in Ethiopia.²³

As a signatory to international children's rights instruments Ethiopia has the commitment and responsibility for the realisation of standards and principles of those instruments. The only socio-economic rights of children recognised in Ethiopian law are those rights incorporated in international children's rights instruments ratified by Ethiopia. Yet their domestic status and consequent implementation is open to controversy and doubt.

1.2 Objectives of the Study

This study analyses the extent to which the socio-economic rights of children are recognised in Ethiopian law. It investigates whether mere ratification of international children's rights instruments suffices for their implementation. In order to address the

20 Refer to the Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1 of 1995.

21 Hossain *Human Rights Commissions and Ombudsman* 133-141. The Socio-economic rights of children has not been challenged before Ethiopian courts (at the time of writing).

22 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 53-70.

23 The World Organisation against Torture Unknown Rights of the Child in Ethiopia <http://www.omct.org/files/2001/01/2123/ethiopiacc01.01.pdf>.

realisation of Ethiopia's commitment under international children's rights instruments, emphasis is placed on recognition of socio-economic rights in the FDRE constitution, status of ratified international instruments under the Ethiopian legal system and legislative, executive and judicial measures taken by Ethiopia towards the realisation of international children's rights instruments.

The extent to which domestic laws incorporate obligations of international instruments will be considered. The dissertation analyses the relevance of translation into juridical working language and the publication of ratified conventions for their domestic implementation. It investigates the current reality of Ethiopian children's life and it studies obstacles to the implementation of international instruments on children's socio-economic rights.

The research will be conducted by a literature review of pertinent books, law journal articles, legislations, case laws and internet sources. In order to demonstrate the urgent necessity of legislation that addresses children's rights, a brief discussion of the contemporary situation of children in Ethiopia is outlined hereunder.

1.3 A brief exposition of the reality of children in Ethiopia

African children are victims of twofold disadvantages. Firstly, they cannot defend themselves against violations of their rights because they are children and secondly they live on a continent where children are more prone to violation of human rights than adults.²⁴ Regrettably, children in Africa are the main victims of conflicts, natural calamities, pandemics, starvation, harmful traditional practices and superstitions.²⁵ Because of their childhood and the developmental state they are in, children particularly are vulnerable and thus affected more than adults. Added to their vulnerability, studies demonstrate that an authoritarian parenting style is common in most parts of Ethiopia.²⁶

Currently, Ethiopian children live in a desperate situation.²⁷ Poverty and despair negatively affect and limit the rights to survival and development of millions of

24 Assefa 2014 *Mekelle University Law Journal* 66.

25 Assefa 2014 *Mekelle University Law Journal* 66.

26 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 56.

27 Hossain *Human Rights Commissions and Ombudsman* 133.

children in Ethiopia.²⁸ Child poverty has seldom been distinguished from general poverty and its unique features are rarely recognised. A significant portion of the poor in Ethiopia are children. It affects the normal development and impedes rights and proper living conditions of Ethiopian children.²⁹ Unfortunately,

the infant mortality rate is among the highest in the world with, according to Government reports, about 154 out of every 1,000 Ethiopian children not living beyond the age of five; at least two thirds of under-five's are severely wasted or stunted; desperate poverty affects millions; access to adequate food and shelter is denied to a majority of children; only 18 percent have access to clean water. ...only about a third of the age groups are in primary education; 10 percent or less in any form of secondary education. Basic health services are available to only a small proportion of children; immunisation coverage is improving steadily but remains very low.³⁰

Poverty and malnutrition are the main causes of children's death.³¹ Children enrolled in secondary school number only about 13%.³² The Ministry of Women Affairs and Child Rights Department states that the right to education and health is not fully exercised by the majority of children from lower income families. The survival of Ethiopian children remains vulnerable in many avoidable ways.³³ Of those who escape death, millions do not have an adequate standard of living, social security, education and basic health services.³⁴ Children in Ethiopia are burdened with adult like onuses and responsibilities.³⁵ Poluha³⁶ likens relations between adult and child in Ethiopia to that of patron-client. That is a relationship established between persons who have something to offer the other – even though what is provided by the subordinate is of lesser value than that of super-ordinate. According to Poluha's³⁷

28 Hossain *Human Rights Commissions and Ombudsman* 134.

29 Adem 2012 www.africanchildforum.org.

30 Hossain *Human Rights Commissions and Ombudsman* 134.

31 Humanium Help the children 2012 <http://www.humanium.org/en/ethiopia/>.

32 Humanium Help the children 2012 <http://www.humanium.org/en/ethiopia/>.

33 Hossain *Human Rights Commissions and Ombudsman* 135.

34 Hossain *Human Rights Commissions and Ombudsman* 135.

35 (Kefyalew, 1996:209) in Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 58.

36 Poluha (2004) in Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 56.

37 Poluha (2004) in Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 56.

conclusion relations among adults and young people, teachers and students are strongly repressive and sturdy.

The issue of children's rights in the Ethiopian situation generally gives rise to an uncertain situation. Family relations are mostly harsh and unjust and emancipation from it leads to exploitation and undignified life.³⁸ In urban centres of Ethiopia many children are subjected to street life.³⁹ Children who live on the streets of Ethiopian cities are estimated at about 150,000. About 886,820 children are orphans due to AIDS (which is the highest in sub-Saharan Africa). Access to psychosocial, educational and nutritional care is available only to a small number of them.⁴⁰

Children that live a street life are exposed to more physical health problems and their growth is limited due to health complications.⁴¹ There is no law that disposes of a mechanism for taking care of them and there is no separate domestic legislation that addresses their socio-economic entitlements. Regarding socio-economic rights of children in Ethiopia a UNICEF⁴² official remarked as follows:

I would say socio-economic rights are not improving in Ethiopia. It can be seen by the increasing number of street children, child commercial sex workers, child domestic workers, child prisoners, etc. Child labour endangers the right to education. A victim of child labour will not have access to school. And in the rare occasions where the child goes to school, he/she cannot focus on her/his schooling and development. In addition child labour, especially the hazardous ones jeopardises the mental and physical health and development of the child. The child also cannot grow socially.

Almsgiving is the main source of income for street children and surviving orphans. It goes without saying that this is essentially dehumanising. Some years ago NGOs supported children in different ways – before they were limited by a Charities and Societies Proclamation.⁴³ They would select children based on age and family

38 Nieuwenhuys 2001 *Journal of the International African Institute* 539-540.

39 'Save the Children Sweden' Program Profile 2006/2007 p. 11 as referred to in Goel 2009 *African Journal of Political Science and International Relations* 148.

40 Humanium Help the children 2012 <http://www.humanium.org/en/ethiopia/>.

41 Goel 2009 *African Journal of Political Science and International Relations* 148.

42 Goel 2009 *African Journal of Political Science and International Relations* 152-153.

43 Proclamation to Provide for the Registration and Regulation of Charities and Societies No. 621 of 2009.

situation and provide them with food and clothing and cover school expenses.⁴⁴ The activities of NGOs were later withdrawn following the enactment of the Charities and Societies Proclamation.

Deep-seated poverty, massive population displacement and other socio-economic crisis are among the causes of childhood deprivations in Ethiopia.⁴⁵ Lack of social services, family disintegration, neglect and abuse by parents are also causes that force children into begging.⁴⁶ Among the reasons why children have been drawn into begging is that a significant number had parents who were widowed, disabled or themselves beggars.⁴⁷ Begging limits the opportunity of children to improve their future life. Poverty not only deprives children of food, shelter or other material resources, but also results in social exclusion and sustained forms of structural inequality.⁴⁸ Abebe⁴⁹ rightly states that "[c]hildren are forced to beg by poverty to reproduce the poverty of their families". Poverty is a bottleneck that prevents children from going to school or to acquire skill that enables them to find a job. Besides this, the government does not lend a hand or facilitate a way out of the lifelong plight from which these children are suffering. For most street and other helpless children, education and developing a skill continues to be a remote dream thus keeping them in a ferocious cycle of poverty.⁵⁰ The effect of early-years deprivation resounds throughout life with continuing consequences for health and capacity in adulthood.

According to a UNICEF⁵¹ report four out of five children have to walk more than 15 minutes to locate clean water or else use surface water. Regarding under-five year olds' mortality rates, Ethiopia ranks twentieth in descending order out of 192 countries. Moderate or severe underweight is also experienced by 47% of under-five children. It is estimated that 120,000 children under fourteen are living with HIV/AIDS. There are four million orphaned children due to different causes, and 720,000 children under seventeen are orphaned solely due to AIDS.⁵² Half of nearly

44 Nieuwenhuys 2001 *Journal of the International African Institute* 547.

45 Abebe 2008 *Geografiska Annaler* 274.

46 Abebe 2008 *Geografiska Annaler* 274.

47 Abebe 2008 *Geografiska Annaler* 273.

48 Abebe 2008 *Geografiska Annaler* 282.

49 Abebe 2008 *Geografiska Annaler* 282.

50 Abebe 2008 *Geografiska Annaler* 282.

51 UNICEF 2006

http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev%281%29.pdf.

52 UNICEF 2006

http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev%281%29.pdf.

four million orphans cannot attend school and lack adequate food.⁵³ Famine and war are also major causes of deteriorating conditions for children in Ethiopia.⁵⁴

A study conducted by Save the Children Sweden in 2007 demonstrates that many children in Ethiopia lose their life during childhood: one child out of eight dies before its fifth birthday. Those fortunate enough to survive childhood have to endure the ongoing plight of poverty and vulnerability, and this along with lack of access to quality health care and education is part of many children's life during childhood.⁵⁵ Street children have to cope with severe living conditions where it is not possible for them to have normal physical and psychological development. Their daily life is full of abuse and exploitation as well as multiple health problems due to poor hygiene.⁵⁶

The relationship between family and children is usually harsh and unjust in Ethiopia. Parents are not aware that their children are entitled to nurturing, protection and love⁵⁷ and repressive family traditions add an even greater burden to already hard-hit Ethiopian children.

53 Goel 2009 *African Journal of Political Science and International Relations* 152.

54 Nieuwenhuys 2001 *Journal of the International African Institute* 543.

55 Goel 2009 *African Journal of Political Science and International Relations* 152.

56 Wallace 2005 *Masters of Arts Dissertation American University* 51-53.

57 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 57.

2 Overview of Relevant International and Regional Instruments regarding Socio-economic Rights of Children

2.1 Introduction

In the past a child in general was considered as property and understood in economic terms.⁵⁸ Although this concept ceased to exist later in the 19th century, children historically were obliged to be subservient to their father.⁵⁹ Children can neither create their subsistence from their environment nor do they have a capacity to address their socio-economic needs.⁶⁰ They can be considered just as "[s]ources of potential in need of being developed".⁶¹ Both children and adults have similar general human rights yet, owing to the particular vulnerability of children they further have distinct rights that address their special need for protection.⁶²

Vulnerability of children, especially in cases of violations of their socio-economic rights, necessitates special rules that regulate the rights and privileges of children. Due to their immaturity children are incapable of protecting themselves. They also cannot avail themselves of rules and regulations that are put in place for their protection.⁶³ Owing to their age and physical as well as mental immaturity, infringements of socio-economic rights of children would result in greater physical and psychological effects than on adults.⁶⁴ Special rules that regulate rights and privileges of children are critical due to their susceptibility in relation to their socio-economic rights. Children cannot protect themselves, nor are they capable of availing themselves of rules and regulations that are put in place for their protection. Similar violations can affect children more severely than adults. Motivated by the fact that children are defenceless victims especially during times of war, Eglantyne Jebb established the *Save the Children International Union* in 1920. Afterwards, children's Charter was drafted which ultimately served as the basis for the CRC.⁶⁶

58 Achilihu *Do African Children Have Rights?* 20.

59 Achilihu *Do African Children Have Rights?* 20.

60 Nolan *A Role for the Courts in Alen et al The UN Children's Rights Convention* 337.

61 Boezaart (ed) *Child Law* 339.

62 UNICEF 2005 *Convention on the Rights of the Child*
http://www.unicef.org/crc/index_protecting.html.

63 Nolan *A Role for the Courts in Alen et al The UN Children's Rights Convention* 337.

64 Nolan *A Role for the Courts in Alen et al The UN Children's Rights Convention* 338.

66 Achilihu *Do African Children Have Rights?* 20.

The Declaration of Geneva as passed by the League of Nations in September 1924 was the earliest human rights instrument issued on the rights of the child. It emphasised the mandates of caring for and protecting children and focused on their basic material needs as well as essential conditions for normal development.⁶⁹ However, the Geneva Declaration was not legally binding; it was merely a document of a moral and political nature. A Declaration of the Rights of the Child which is more precise and broad was later issued in 1959 under the auspices of the United Nations General Assembly (UNGA). This declaration elevated the welfare of the child from only being the responsibility of the family to be the concern of the community and the state as well.⁷⁰

Currently the notion that children are subjects and bearers of socio-economic rights is well recognised. These rights are a detailed bundle of entitlements meant to address specific facets of child poverty.⁷¹ If the early life of a child is marred by poverty, especially persistent poverty, the child is at a higher risk of poor physical development.⁷² Violations of children's socio-economic rights have both short-term physical and psychological effects, as well as long-term developmental consequences. International children's rights instruments also consistently emphasise children's socio-economic rights in order to reduce the consequences of the deprivation of those rights.

2.2 International instruments pertaining to socio-economic rights of children

2.2.1 The CRC

The CRC is a momentous legal and political achievement in the development of children's rights. It recognises children as independent holders of rights.⁷³ The CRC was adopted by the General Assembly of the United Nations in 1989. As a universal treaty it is the first of its kind for the protection and promotion of children's rights. It details the rights intended to protect children from poverty, neglect, and abuse. The

69 Achilihu *Do African Children Have Rights?* 22.

70 Achilihu *Do African Children Have Rights?* 22-24.

71 Van Bueren 'Combating Child Poverty: Human Rights Approaches' (1999) 21 (33) Human Rights Quarterly 680, 681.

72 Rosa and Dutschke 2006 Child Rights at the Core
<http://ci.org.za/depts/ci/pubs/pdf/rights/workpap/CHILDRIGHTSATTHECORE.pdf> 4.

73 Achilihu *Do African Children Have Rights?* 19-20.

CRC erases the historic concept that children are mere "[p]roperty of their parents or helpless objects of charity".⁷⁴ It is the first children's rights instrument that significantly protects and promotes the dignity of children.⁷⁵

The CRC has a considerable impact on how states protect children's rights. One of the most significant achievements of the CRC is that it regulates the actions of State parties towards the rights of their children.⁷⁶ It has more detailed and comprehensive contents and substantive rights than other human rights instruments.⁷⁷ It is indeed the first human rights instrument that places equal emphasis on all civil and political as well as economic, social and cultural rights. In its inclusion of a wide range of entitlements and a full canon of rights, the CRC departs from most previous human rights instruments and explicitly heralds the interdependence and indivisibility of human rights. All children under the age of eighteen are entitled to the full panoply of rights and privileges provided under the CRC.⁷⁸

The Committee on the Rights of the Child (hereinafter referred to as the Committee) supervises the implementation of the Convention. The power of the Committee was previously limited to receiving state reports.⁷⁹ However, by virtue of Optional Protocol to the Convention on the Rights of the Child on a communications procedure the Committee was empowered to receive and consider individual and interstate communications.⁸⁰ The CRC lacks direct methods of enforcement and sanctions for non-compliance with its standards.⁸¹ Nevertheless, State parties to the Convention are obliged to take legislative, administrative, and other actions to implement all the rights enshrined in the CRC. They are bound to realise socio-economic rights in line

74 UNICEF 2005 *Convention on the Rights of the Child* http://www.unicef.org/crc/index_protecting.html.

75 UNICEF 2005 *Convention on the Rights of the Child* http://www.unicef.org/crc/index_protecting.html.

76 Boezart (ed) *Child Law* 309-310.

77 Achilihu *Do African Children Have Rights?* 31.

78 Achilihu *Do African Children Have Rights?* 32-33.

79 Rosa and Dutschke *Child Rights at the Core* A Project 28 Working Paper May 2006 4.

80 Refer to articles 5, 10, and 12 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, A/HRC/17/L.8.

81 Achilihu *Do African Children Have Rights?* 33. All other UN human rights treaties also lack the direct method of enforcement and sanctions for failure to comply with their standards.

with their maximum available resources.⁸² Signatories are required to submit regular reports to the Committee on how the rights are being realised.⁸³

The interpretation and application of the Convention is guided by four crucial general principles. These are the best interest of the child, the principle of non-discrimination, the principle of participation, and the right to maximum survival and development as a general principle.⁸⁴ These principles are critical benchmarks for State parties who are required to meet their obligations within the context of their national conditions and within their available means.⁸⁵ Nonetheless, this should not be used as a pretext for failure to act by signatories. In terms of article 4 of the CRC, signatories are required to undertake measures of economic nature “[t]o the maximum extent of their available resources and, where needed, within the framework of international cooperation”.⁸⁶

The Convention incorporates children’s rights to socio-economic provisions. It regulates proper implementation of the basic economic and social needs of children.⁸⁷ The primary economic responsibility is essentially with parents or legal guardians⁸⁸ and parties to the Convention are bound to ensure that the upbringing and development of the child is the common responsibility of both parents.⁸⁹ Parents and legal guardians are entitled to appropriate support from their states in their efforts to fulfil their responsibility towards children.⁹⁰ Signatory states to the CRC are also obligated to respect and ensure rights and privileges provided therein without any discrimination.⁹¹ This obligation entails the duty to abstain from any sort of violation of children’s rights as well as the commitment to realise them.

82 Proudlock *Children’s Socio-economic Rights* in Boezaart (ed.) *Child Law* 313. Also see Article 4 of the Convention together with General Comment 5 General Measures of Implementation of the Convention on the Rights of the Child (art. 4, 42 and 44 para 6) CRC/GC/2003/5.

83 United Nations Human Rights
<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>.

84 Refer to Articles 3(1), 2, 12(1) and 6 of CRC.

85 Refer to Article 27 of CRC.

86 Howe and Covell 2003 *Human Rights Quarterly* 1072.

87 The Convention enshrines the right to survival and development (Art. 6), highest attainable standard of health care (Art.24), basic economic security (Art. 27) and education (Art. 28).

88 Rosa and Dutschke *Child Rights at the Core* A Project 28 Working Paper May 2006 8.

89 Refer to Article 18(1) of CRC.

90 Refer to Article 18(1) of CRC. Article 27 of the Convention further provides that state parties “take appropriate measures to assist parents and others responsible for the child... and shall in case of need provide material assistance and support programmes”.

91 Refer to Article 2 of CRC.

The ACRWC in contrast provides for parental responsibilities.⁹² In terms of article 20(1) parent or other persons responsible for the child shall have the primary responsibility of the upbringing and development of the child. They also are duty bound to ensure the best interest of the child, to fulfil necessary conditions needed for the development of the child and to protect inherent dignity of the child in domestic discipline.⁹³ The ACRWC under article 20 (2) (a) however provides an obligation for states parties to assist parents in case of need.

Signatory states to the CRC are required to take all appropriate legislative, administrative and other measures for enforcement of the rights provided in the CRC.⁹⁴ Measures taken by member states in terms of article 4 of the CRC should be to the extent of their available resources. The CRC further encompasses fundamental provisions for the socio-economic rights of children. These include (the) child's right to maximum survival and development,⁹⁵ appropriate assistance to parents in the performance of their child nurturing duties,⁹⁶ highest attainable standard of health and facilities for treatment and rehabilitation of health,⁹⁷ social security,⁹⁸ adequate standard of living for overall development of a child⁹⁹ and the right to education, including free and basic education.¹⁰⁰

The Committee on the Rights of the Child introduced the concept of progressive realisation of socio-economic rights.¹⁰¹ Since it is not possible to realise some rights on demand, the Committee states that:

[art. 4] reflects a realistic acceptance that lack of resources – financial and other resources – can hamper the full implementation of economic, social and cultural rights in some states; this introduces the concept of 'progressive realisation' of

92 Beiter *The Protection of the Right to Education* 221.

93 Refer to Article 20 (1)(a) (b) (c) of ACRWC.

94 Refer to Article 4 of CRC.

95 Refer to Article 6 of CRC.

96 Refer to Article 18 of CRC.

97 Refer to Article 24 of CRC. The Convention mainly focuses on access to primary and preventive health care, adequate nutritious food and clean drinking water.

98 Refer to Article 26 of CRC. Yet, there is no specific indication of funding by the state.

99 Refer to Article 27 of CRC. Signatories are expected to fulfil a standard of living needed for physical, mental, spiritual, moral and social development of every child. The African Charter on the Rights and Welfare of the Child lacks a provision of this kind. In terms of article 20 of the latter parents bear the primary responsibility of ensuring the best interest of the child and to facilitate the conditions of living necessary for the child's development while States Parties are required to assist parents and other persons responsible for the child.

100 Refer to Article 28 of CRC.

101 General Comment 5 of the Committee on the Rights of the Child, CRC/GC/2003/5 para 8.

such rights. States need to be able to demonstrate that they have implemented 'to the maximum extent of their available resources' and, where necessary, sought international cooperation....

However, Lloyd¹⁰² argues that article 4 of the Convention jeopardises the enforcement of all socio-economic and cultural rights as it provides that "[s]tates shall take implementation measure(s) to the maximum extent of their available resources".

2.2.1.1 General principles of the CRC

2.2.1.1.1 The principle of the best interest of the child

Although the best interests of the child do not have a precise definition in the CRC, it is related to the wellbeing of a child.¹⁰³ The principle of the best interests is determined on an *ad hoc* basis. It depends upon different circumstances of a particular child such as the level of maturity and age of the child, the child's environment and the presence or absence of parents.¹⁰⁴ In terms of this principle it is imperative to consider the situation of the child before passing any decision that affects his/her life. It is mandatory to take the principle into account in all legislation that affects the well-being of children.

2.2.1.1.2 The principle of non-discrimination

This principle entails the elimination and avoidance of any sort of discrimination based on irrational and unacceptable grounds.¹⁰⁵ It is based on the notion that any child should enjoy his/her rights and should not ever be subjected to any discrimination. State parties are also required to protect every child from such discrimination. The principle of non-discrimination rejects any form of discrimination based on race, family background, religion, sex, language, culture, and their abilities. It avoids unfair treatment of any child on any grounds.¹⁰⁶

102 Lloyd 2002 *African Human Rights Law Journal* 14.

103 UNHCR www.unicef.org/violencestudy/pdf/BIDGuidlines-provisionalreleaseMay06.pdf 6.

104 UNHCR www.unicef.org/violencestudy/pdf/BIDGuidlines-provisionalreleaseMay06.pdf 6.

105 Refer to Article 2(1) of CRC.

106 UNICEF Unknown www.unicef.org/crc/files/guiding_Principles.pdf .

2.2.1.1.3 The right to life, maximum survival and development

The right to development and survival as provided under article 6 of the Convention is one of the general principles fundamental to its implementation. This right specifically embraces a holistic concept that embodies the physical, mental, spiritual, psychological and social development of a child and its purpose is to empower a child for an individual life in a free community.¹⁰⁷ It is meant to protect the inherent right to life of a child. States recognise that all children have the inherent right to life.

In terms of article 6 of the CRC State parties are compelled to ensure to the maximum extent possible the survival and development of the child. This responsibility entails an obligation to realise physical health as well as economic, social, and cultural development.¹⁰⁸ In order to ensure the right to development of a child, the Convention has also given significant emphasis to the child's right to education,¹⁰⁹ to rest and leisure¹¹⁰ and to enjoy his or her own culture, religion, and language.¹¹¹ It goes further than protection from killing and indeed extends to survival and development.

2.2.1.1.4 The principle of participation

The principle of participation is meant to respect the views of the child. It is important to listen to the child in order to understand his/her actual interest. Children have the right to express their opinion on what they think should happen and to have that opinion taken into account in any matter affecting them. This principle confers the right to be listened to by their parents and other decision-makers on issues that affect them. The level of maturity is taken into account while listening to the view of the child.¹¹² The principle of the best interest of the child as a primary consideration in all actions concerning the child is a fundamental standard against which

107 Hodgkin and Newell 'The Child's Right to life and Maximum Survival and Development' in Hodgkin *et al* (eds) *An Implementation Handbook* 85-95, 94.

108 Franklin B (ed) *Children's Rights* x-xi and Jansen Van Rensburg L and Oliver MP International and Supra-national Law 626-627 in Murray *The utilisation of socio-economic rights of children* 12.

109 Refer to Article 28 of CRC.

110 Refer to Article 31 of CRC.

111 Refer to Article 30 of CRC.

112 UNICEF Unknown www.unicef.org/crc/files/guiding_Principles.pdf.

compliance of State parties with the requirements of the Convention should be measured.¹¹³ Realisation of socio-economic rights depends upon available resources, and if such resources are available it can be argued that those rights should be realised immediately.¹¹⁴

2.2.2 *The ICESCR*

Human rights are *mutatis mutandis* children's rights.¹¹⁵ The ICESCR applies to all men and women and implicitly to children.¹¹⁶ Its preamble recognises that human rights are indivisible, interlinked and that all are equal in terms of their importance. However, children's rights cannot be addressed fully and coherently by mere implied application of ICESCR.

Children and young persons are accorded distinct protection and assistance under the ICESCR. It specifically provides that:

[s]pecial measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation.¹¹⁷

According to Van Bueren¹¹⁸ this provision can be interpreted broadly in order to advance the rights of children. She argues that article 10(3) of the ICESCR provides the basic principle that every child, due to its vulnerability, is entitled to distinct protection and assistance in addition to socio-economic rights pertinent to all persons. This provision obliges State parties to refrain from discrimination against particular groups of children and to make sure that vulnerable groups are provided with special protection and assistance in order to avoid inequality.¹¹⁹

Article 12(1) of the ICESCR guarantees the rights of everyone to the enjoyment of the best attainable standard of health. The ICESCR further recognises the right of everyone to free compulsory primary education. In terms of article 2 of the ICESCR

113 Achilihu *Do African Children Have Rights?* 32.

114 McGoldrick 'The United Nations Convention on the Rights of the Child' 1991 *International Journal of Law and Family* 138 as referred to in Boezart (ed) *Child Law* 313-314.

115 Boezart (ed) *Child Law* 333.

116 Van Bueren *The International Law* 203.

117 Refer to Article 10(3) of ICESCR.

118 Van Bueren 1999 *South African Journal on Human Rights* 56.

119 Van Bueren 1999 *South African Journal on Human Rights* 56.

socio-economic rights are meant to be realised progressively depending on available resources. The Economic, Social and Cultural Rights Committee stated that articles 3, 10(3) 13(2)(a) of the ICESCR can also be construed to protect children's rights. This assertion shows that those rights can be capable of instant implementation by courts and other stakeholders in many domestic legal systems.¹²⁰ It further elucidates the concept of progressive realisation as a duty that binds states to act as quickly and effectively as possible in their efforts to realise the rights in full.¹²¹

In addition to the progressive realisation of socio-economic rights, parties to the ICESCR are bound to meet a minimum core obligation to satisfy at least essential rights.¹²² A minimum core obligation is provided as a very minimum standard to be satisfied since a dignified human existence requires a minimum level of subsistence.¹²³ Courts are therefore empowered to scrutinise whether states properly prioritise in their allocation of resources in order to achieve their minimum core obligation.¹²⁴ Although the ICESCR permits State parties to consider what they can afford in their effort to realise socio-economic rights, they are also required to demonstrate that every resource at their disposal has been used to the maximum extent as their main priority.¹²⁵

The principle of maximum extent of available resources under article 2 of the ICESCR indicates that a satisfactory budget scrutiny be conducted.¹²⁶ Yet signatory states to the ICESCR are not obliged to go beyond what they can afford.¹²⁷ The requirement remains however that they are compelled to implement socio-economic rights of children to the maximum extent of their available resources.¹²⁸

120 General Comment 3 (1990) UN Doc E/1991/0f UN Committee on Economic, Social and Cultural Rights 5.

121 General Comment 3 (1990) UN Doc E/1991/0f UN Committee on Economic, Social and Cultural Rights 9.

122 General Comment 3 (1990) UN Doc E/1991/0f UN Committee on Economic, Social and Cultural Rights 10.

123 Rosa and Dutschke *Child Rights at the Core A Project 28 Working Paper* May 2006 12.

124 Rosa and Dutschke *Child Rights at the Core A Project 28 Working Paper* May 2006 13.

125 Heyns and Brand *Law Democracy and Development* 153-167,160.

126 Rosa and Dutschke *Child Rights at the Core A Project 28 Working Paper* May 2006 11.

127 General Comment 3 (1990) UN Doc E/1991/0f UN Committee on Economic, Social and Cultural Rights 9.

128 Refer to Article 2 of ICESCR.

2.3 Regional instruments pertaining to socio-economic rights of children

2.3.1 The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (ACRWC), also referred to as the African Children's Charter, was adopted by the Organisation of African Unity (OAU) as it was then on 11 July 1990 and entered into force on 29 November 1999. The African Children's Charter was adopted due to different political and legal motives. The political motive was a perception of marginalisation of African countries during the drafting process of the CRC, while the legal reason provided at the time was that there was a need to address issues particular to African children.¹²⁹ Another justification for adoption of the African Children's Charter was the particular difficulties of realising children's socio-economic rights in poor economic realities.¹³⁰

The African Children's Charter deals with all rights in a comprehensive manner. It encompasses the whole range of civil, political, economic, social and cultural rights (without their traditional distinction), and consequently has been acclaimed as the most enlightened of the conventions on the rights of the child.¹³¹ Indeed it has a critical place in the legal evolution of African human rights progress. Its incorporation of children's rights in a comprehensive manner strengthens the global principles enshrined in the CRC.¹³² It is also hailed as introducing critical progress for its exclusion of limitative clauses similar to article 4 of CRC – to the maximum extent of their available resources.¹³³ The traditional concept of progressive realisation attached to socio-economic rights has been lifted by the African Children's Charter so that socio-economic rights, although they entail positive obligations, are meant to be realised instantly.¹³⁴

The family is considered as a natural unit and basis of society under the African Children's Charter.¹³⁵ Children have the right to reside with their parents as well as a

129 For detailed discussion of the rationale behind the African Children's Charter refer to Boezart (ed) *Child Law* 335.

130 Llyod 2002 *African Human Rights Law Journal* 14.

131 Van Bueren *The International Law* 402.

132 Llyod 2002 *African Human Rights Law Journal* 21.

133 Llyod 2002 *African Human Rights Law Journal* 14.

134 Chirwa *International Journal of Children's Rights* 158.

135 Refer to Article 18(1) of the ACRWC.

right to parental care.¹³⁶ The right to acquire nationality and to be a member of a broader community is guaranteed to every child. It is therefore imperative to ensure that no child is stateless.¹³⁷ There are four general principles that are important for the interpretation and application of the provisions of the ACRWC. These are the best interest principle (which is the prime consideration), the principle of non-discrimination, the principle of participation and the principle of maximum survival and development.¹³⁸

Parents or other responsible persons for the child have the main responsibility for the upbringing and development of the child. They are required to secure within their abilities and financial capacities, conditions of living necessary to the child's development.¹³⁹ Although the primary responsibility for supporting a child rests upon parents and guardians, states are still obliged to provide children with material assistance either directly or through their parents or guardians.¹⁴⁰ Pursuant to article 5 of the African Children's Charter the member states are also directed to ensure the survival and development of the child to the maximum extent possible.

The rights of socio-economic provision¹⁴¹ are also included in the ACRWC. It however does not address the right to an adequate standard of living for development of a child and/or parents' social security right meant to maintain living standard of a child. In order for a child to fully develop his/her potential, he/she needs to be healthy and have access to education. These rights can only be realised if a resource is allocated by the state as they are socio-economic in nature.¹⁴² Basic education is stipulated without qualification. The ACRWC states that children should have the right to education inclusive of free and compulsory basic education.¹⁴³ As opposed to the CRC, the ACRWC frames the right to education more fully and it provides measures to promote female children as well as protect girls who fall

136 Refer to Article 19 of the ACRWC.

137 Boezart (ed) *Child Law* 333.

138 Refer to Articles 4, 3, 4(2) and 5 of ACRWC.

139 Refer to Article 20(1) of ACRWC.

140 In terms of Article 20(2) of ACRWC, state parties are under obligation to support parents or guardians in harmony with their means and national conditions; by supplying material assistance and support programs, particularly with regard to nutrition, health, education, clothing and housing, provided they are needy.

141 The rights of provision provided in the ACRWC include the rights to survival and development (Art. 5), education (Art. 11), health and health services (Art. 14), and adequate nutrition and safe drinking water (Art. 14(2)(c)).

142 Boezart (ed) *Child Law* 333.

143 Refer to Article 11(3)(a) of ACRWC.

pregnant at school. Regarding secondary education member states are obliged to progressively make it free and accessible for all.¹⁴⁴

Even though the ACRWC does not detail a right to social security it sets out health care services in a more detailed manner. The right to health care is a qualified right; nevertheless children are entitled to the best attainable standard of health care.¹⁴⁵ With a pre-condition of the availability of resources, member states of the ACRWC have a commitment towards mentally or physically disabled children in terms of access to education and recreational opportunities as well as access to public places.¹⁴⁶ State parties are also bound to give citizenship to children born within their national boundaries provided that the child is not granted nationality by another state.¹⁴⁷

Regarding protection for child refugees where it is impossible to locate the parents, legal guardians, or close relatives of a child, he/she is entitled to the same level of protection as any other child deprived of his/her family environment for any reason.¹⁴⁸ The ACRWC has three basic principles – the best interest of the child; non-discrimination and the pre-eminence of the African Children's Charter over harmful cultural practices and customs.¹⁴⁹ The African Committee of Experts on the Rights and Welfare of the Child supervises the African Children's Charter. It has the power to hear communications from states and from any person, group, or non-governmental organisations (NGOs).¹⁵⁰

144 Refer to Article 11(3)(b) of ACRWC.

145 Refer to Article 14(1) of ACRWC.

146 Refer to Article 13 of ACRWC.

147 Refer to Article 6(4) of ACRWC. Refer also to Boezart (ed) *Child Law* 338.

148 Refer to Article 23(3) of ACRWC.

149 Boezart (ed) *Child Law* 336.

150 Rosa and Dutschke *Child Rights at the Core* A Project 28 Working Paper May 2006 13.

3 The Recognition of Children's Socio-economic Rights in Ethiopian Law

3.1 Introduction

International human rights instruments in general, and instruments that embody children's socio-economic rights in particular, are imported into domestic legal systems through legal process. Hongju¹⁵¹ states that domestication of international human rights norms "[o]ccurs when an international norm is incorporated into the domestic legal system through executive action, legislative action, judicial interpretation, or some combination of the three". Constitutions and other subsidiary legislation should protect human rights and the judiciary is required to interpret them.

International human rights treaties typically impose twofold obligations upon State parties. Firstly, states are obliged to enact laws to ensure that the standards and principles of the treaty have been complied with, after which they are furthermore required to abstain from conduct that is contrary to the provisions of the treaty. Accordingly, this part of the research will analyse the position of Ethiopian law and more particularly the internalisation of children's socio-economic rights into its legal system. It will also assess whether the legal recognition of children's socio-economic rights suffices to discharge international commitments undertaken by Ethiopia.

3.2 Incorporation of socio-economic rights of children in the Constitution of the Federal Democratic Republic of Ethiopia

3.2.1 The relevance of constitutional provisions for socio-economic rights of children

As a supreme law of all domestic laws any Constitution has powerful potential in terms of its legal force. It can be used to boost domestic implementation of international children's socio-economic rights instruments. One of the ways by which states discharge international human rights commitments is by incorporating them into their Constitutions. The standards and principles of human rights instruments acquire constitutional protection when they are included in the texts of national Constitutions. The rationale behind codifying human rights standards and principles in a nation's constitutive document is due to the fact that the constitution gives them

151 Hongju 1999 *Indiana Law Journal* 1397-1417.

an advanced level of protection.¹⁵² The Constitution is at the apex in the hierarchy of domestic laws; thus it commands higher levels of protection to its provisions and principles.

Recognising children's rights in domestic Constitutions (in particular their socio-economic rights) is crucial for the realisation and juridical enforcement of those rights. It is easier to direct the attention of courts to the words of a text that pronounces its intention clearly than implicit rights that lie quietly within the dense web of a Constitution.¹⁵³ Hence, incorporating children's rights specifically in the text of a constitution provides a persuasive claim for justice that cannot be neglected easily.¹⁵⁴ Besides, since a Constitution is typically at the pinnacle of the hierarchy of laws and is the supreme law of any country, inclusion of human rights in the constitutional text is meant to guarantee their non-derogation by subsequent legislation.¹⁵⁵

Human rights norms can be recognised either directly or indirectly in Constitutions. It can be incorporated directly in the text of the Constitution, or indirectly by a constitutional provision that provides for international human rights instruments undertakings to prevail over contrary domestic law.¹⁵⁶ Children's socio-economic rights can be specifically integrated in the wording of a constitution as is the case of the South African Constitution.¹⁵⁷ The Committee¹⁵⁸ prefers recognition of children's rights in domestic Constitutions.¹⁵⁹ It advocates insertion of a section on children's

152 Allan *Constitutional Justice* 121.

153 Tobin 2005 *South African Journal on Human Rights* 104.

154 Tobin 2005 *South African Journal on Human Rights* 104.

155 Mahoney *The Challenge of Human Rights* 177.

156 Darrow and Alston 'Bills of Rights in Comparative Perspective' in Alston *Promoting Human Rights* 469-470.

157 Art. 28 of the Constitution of the Republic of South Africa Act 108 of 1996.

158 The Committee on the Rights of the Child is a monitoring body of the CRC. It is composed of 18 independent experts of high moral standing and recognized competence elected from signatory states to oversee state party's compliance with their commitments under the CRC. In its deliberations, it examines reports submitted by a state party. Though the committee has no coercive powers, its observation and recommendations are persuasive on how the CRC should be implemented.

159 Refer for instance to Committee on the Rights of the Child, Concluding Observations for Switzerland CRC/C/15/Add182 (7 June 2002) Para 3(a) (welcomed the adoption of 'the new Constitution which enshrines provisions on the rights of the child'); Committee on the Rights of the Child, Concluding Observations for Eritrea CRC/C/15/Add204 Para 6 ('notes that the new constitution generally conforms to the principles and provisions of the Convention'); Committee on the Rights of the Child, Concluding Observations for Poland CRC/C/15/Add194 (4 October 2002) Para 3 ('welcomes the State party's adoption of a new constitution in 1997 which embodies many of the principles of the Convention on the Rights of the Child'); Committee on the Rights of the Child, Concluding observations for Nepal CRC/C/15/Add 57

rights in domestic Constitutions which entail core standards and ideals of the Convention. The Committee promotes the notion that children, together with adults, are holders of human rights.¹⁶⁰ For detail discussion of the position and status of CRC and ACRWC in the Ethiopian law refer to section 3.3.1 and 3.3.2 below.

3.2.2 Socio-economic rights of children in the Federal Democratic Republic of Ethiopia's Constitution

Basic socio-economic rights of children are not included in the FDRE Constitution.¹⁶¹ The constitutional text fails to specifically address children's fundamental socio-economic entitlements such as the right to food, shelter, health, education and other economic and social rights that belong to children. Section 13(2) however, provides that international human rights covenants ratified by Ethiopia are guidelines for interpreting the bill of rights guaranteed in the Constitution. The fundamental rights and liberties enshrined in the Constitution are required to be interpreted in a manner conforming to international human rights instruments. Apart from general human rights that pertain to all human beings including children, the FDRE Constitution does not specifically deal with socio-economic rights of children.¹⁶²

In comparison to the civil and political rights secured therein the FDRE Constitution devotes only a small number of provisions to general socio-economic rights.¹⁶³ It provides other socio-economic rights as direct principles of state policy.¹⁶⁴ Unfortunately those scanty socio-economic rights mentioned in the FDRE Constitution are formulated in crude and vague terminology which consequently paves a way for controversy and contradiction. The FDRE Constitution has failed to

(7 June 1996) Para 3; Committee on the Rights of the Child, Concluding Observations for Belgium CRC/C/15/Add178 (13 June 2002) Para 3; Cote d'Ivoire CRC/C/15/Add155 (8 June 2001) Para 3; Committee on the Rights of the Child, Concluding Observations for Cambodia CRC/C/15/Add128 (28 June 2000) Para 4.

160 Committee on the Rights of the Child General Comment No. 5 General measures of implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6) CRC/GC/2003/5 (27 November 2003) Para 21.

161 Constitution of Federal Democratic Republic of Ethiopia (hereinafter Constitution of FDRE) Proclamation No. 1 of 1995.

162 The only article that deals with Child rights in the FDRE constitution is Section 36, and it safeguards right to life, name and nationality of children, to know and be cared for by their parents or legal guardians, to be protected from exploitative labour and not be forced to undertake work that may harm their education, health and well-being, as well as to be free from cruel and inhuman treatment in schools or child care institutions. Sub-section 2 of the same article further incorporates the principle of the best interests of the child.

163 See for instance, Section 41 of FDRE Constitution.

164 For example refer to Sections 90 and 89 of FDRE constitution Proclamation No. 1 of 1995.

afford a balanced protection to civil, political and economic, social, and cultural rights.¹⁶⁵ It is difficult to pinpoint the rights protected and to identify the extent of their protection. It is also hardly possible for the judiciary to contextualise and give a viable remedy where these socio-economic rights are claimed.

Moreover, the FDRE Constitution frames basic socio-economic rights in a manner that impedes the possibility of claiming them. They are framed as government obligations not as individual rights. Some socio-economic rights are incorporated under the National Policy Principles and Objectives, thereby jeopardising their judicial protection.¹⁶⁶ The responsibility of fulfilling the minimum obligation of providing basic socio-economic rights to children whose parents cannot afford same must be imposed upon the government, and this obligation should be integrated in the text of the constitution. The South African Constitution enshrines basic socio-economic rights of children while the judiciary interprets such rights. In this regard the experience of South Africa as elaborated in the following section¹⁶⁷ testifies to the relevance of including basic socio-economic rights of children in a Constitution.

The only socio-economic rights of children imported into the Ethiopian legal system are those embodied in the international children's rights instruments ratified and domesticated by Ethiopia in terms of its Constitution.¹⁶⁸ The failure of the Constitution to embrace these rights in its text certainly limits the possibility of the holders of these rights to claim them in cases of breach, or where the government groundlessly fails to realise them.

The FDRE Constitution accords 'special protection' to children as opposed to 'rights' (especially socio-economic rights) that children can directly claim.¹⁶⁹ Granting special protection to children indicates the tendency to treat them as objects that needs to be protected, rather than as independent holders of rights that belong to them. In this regard reference may be made to the Inter-American Court on Human Rights¹⁷⁰ which opined that children are subjects entitled to rights. They are not only objects of protection. The court further asserted that true and full protection of children entails

165 Mayessa *The Integrated Approach* 91.

166 Mayessa *The Integrated Approach* 91.

167 South African experience will be briefly discussed under Section 3.2.4.

168 Section 9 of constitution of FDRE Proclamation No. 1 of 1995.

169 Tobin 2005 *South African Journal on Human Rights* 107-109.

170 Inter-American Court on Human Rights Advisory Opinion on the Judicial Status and Human Rights of the Child OC-17/02, 28 August 2002 Para 137(1) and (8).

their broad enjoyment of all their rights including their economic, social, and cultural rights. The court also shows the practical possibility of transforming the special protection documents into rights-based documents – the path Ethiopia needs to follow for effective realisation of the socio-economic rights of children.

Seen from this perspective the conclusion may well be drawn that Ethiopian children are reduced to mere objects for whose care and protection the state takes responsibility. However, children should not be considered as objects whose special protection depends upon the wilful action of state or other stakeholders but as subjects of legally enforceable rights. The FDRE Constitution, which fails to recognise children as holders of rights in their capacity as children, is an indication of the fact that it treats them as mere objects that deserve special protection – a notion currently out of favour and which should be laid to rest. An analysis of the text of the FDRE Constitution demonstrates that children in Ethiopia are not treated as bearers of socio-economic rights in particular. It mainly focuses on the simple concerns of safeguarding the care and protection of children.¹⁷¹

3.2.3 *Recommendations of the Committee*

By ratifying a treaty a state undertakes, for instance under section 4 of the CRC to take all appropriate legislative, administrative and other measures for the implementation of the rights which are recognised. It is however, within the discretion of states to decide on measures that need to be taken. Accordingly, some states claim that guarantying human rights for everyone (in their national constitutions) by itself is adequate to ensure observance of those rights for children too. The claim was queried by the Committee, which stated that the test must be whether the particular rights are actually realised for children in the sense that they can be directly claimed before the courts.¹⁷² Concerning the necessity of incorporating norms of ratified human rights instruments in domestic Constitutions, Alston and Darrow¹⁷³ point out that:

171 Refer to Section 36 of constitution of FDRE Proclamation No. 1 of 1995.

172 Committee on the Rights of the Child General Comment No. 3 (2003) General Measures of Implementation of the Convention on the Rights of the Child CRC/GC/2003/5 (27 November 2003) Para 21.

173 Darrow M and Alston P 'Bills of Rights in Comparative Perspective' in Alston *Promoting Human Rights* 469.

[i]t is becoming increasingly difficult for a state to demonstrate that it has taken all appropriate measures in the absence of some kind of constitutional recognition of human rights' standards.

Nevertheless, the reality of children's rights within a certain state, and the status accorded to them in the Constitution of that state does not necessarily show a relationship. The suggestion that countries whose Constitutions exclude children's rights perform inadequately, is not necessarily true. On the contrary, states in whose Constitutions children's rights are visible sometimes offer little protection in practice.¹⁷⁴ Tobin¹⁷⁵ however, logically concludes that:

[s]tates which rely on general human rights provisions in their constitutions as the foundation upon which to promote children's rights start with a significantly less comprehensive range of rights than those whose constitutional arrangements have been drafted with at least some consideration of the need to provide special recognition for children's rights.

It is important to provide a special place for children's rights in the text of a domestic constitution. In its recommendation to the Solomon Islands, the Committee emphasised the need to harmonise constitutional provisions with the provisions and principles of the CRC.¹⁷⁶ Moreover, the Committee¹⁷⁷ in its recommendation to Jamaica stated that:

[t]he Government of Jamaica, within the framework of the constitutional reform and legislative review currently under way, ensures that the principles and provisions of the Convention are fully incorporated into the Constitution and other national legislation.

The recommendations of the Committee favour inclusion of children's rights (including socio-economic rights) in domestic Constitutions. However, it is not clear whether these recommendations support the notion that state responsibility to take appropriate legislative measures necessarily includes a duty to constitutionalise the

174 Tobin 2005 *South African Journal on Human Rights* 104-105.

175 Tobin 2005 *South African Journal on Human Rights* 105.

176 Committee on the Rights of the Child, Concluding Observations for the Solomon Islands CRC/C/15/Add208 (2 July 2003) Para 6(a).

177 Committee on the Rights of the Child, Concluding Observations for Jamaica CRC/C/15/Add32 (15 February 1995) Para 18.

principles of the CRC.¹⁷⁸ For instance the Committee¹⁷⁹ in its concluding observation for Norway recommended that:

[i]n case the Government of Norway should decide to amend its Constitution to include a special provision on the incorporation of certain human rights treaties in its Constitution, the Committee would like to encourage the incorporation of a reference to the Convention on the Rights of the Child.

Even though Levit¹⁸⁰ optimistically argues that constitutionalisation of human rights increases the possibility of identifying and claiming them, the Argentinean experience shows that mere constitutionalisation of international human rights norms by itself is far from being a guarantee of their realisation.¹⁸¹ The practice in Argentina highlights that mere constitutionalisation will not automatically enhance compliance with international instruments.¹⁸² In Argentina (as is the case in Ethiopia) the rule of law has yet to be firmly anchored. The domestication system that is based on law, and law alone, is unlikely to be successful.¹⁸³ For internalisation of human rights to be successful it "[m]ust be a dynamic, multifaceted process that engages a myriad of transnational actors from social, political, as well as legal, spheres".¹⁸⁴ In Argentina potential beneficiaries of the law are ignorant of the constitutional changes and the potential of the Constitution is yet to be unleashed by lawyers. According to Levit,¹⁸⁵ even though Argentina domesticated international instruments on paper it does not yet obey, let alone comply with, international human rights instruments.

According to Tobin,¹⁸⁶ recommendations of the Committee, together with state obligations to take appropriate legislative measures under article 4 of the CRC, have generated a sense of expectation that children's rights should receive constitutional protection. Many states allocate a provision in their Constitutions that recognise a special status of children. This approach is in line with the Committee's assertion that mere inclusion of children rights in national Constitutions does not necessarily

178 Tobin 2005 *South African Journal on Human Rights* 90.

179 Committee on the Rights of the Child Concluding Observations for Norway CRC/C/15/ Add23 (25 April 1994) Para 14.

180 Pupavac 1998 *Human Rights Law Review* 342.

181 Tobin 2005 *South African Journal on Human Rights* 97.

182 Levit 1998 -1999 *Columbia Journal of Transnational Law* 281.

183 Levit 1998 -1999 *Columbia Journal of Transnational Law* 281.

184 Levit 1998 -1999 *Columbia Journal of Transnational Law* 281.

185 Levit 1998 -1999 *Columbia Journal of Transnational Law* 313.

186 Tobin 2005 *South African Journal on Human Rights* 90.

guarantee respect for those rights. Full implementation of children's rights may require further legislative and other measures.¹⁸⁷

3.2.4 *The South African experience*

Regarding inclusion of children's socio-economic rights in the text of domestic Constitutions it is important to consider the example of the South African Constitution.¹⁸⁸ Section 28(1)(c) guarantees the right to basic nutrition, shelter, basic health care services and social services to every child and it is unqualified.¹⁸⁹ It is also important to note that other socio-economic rights under sections 26(2) and 27(2) are qualified as the state is required to take legislative and other measures within its available resources.

The constitutional right under section 28 specifically provides for children, while other socio-economic rights guaranteed to everyone are also enshrined in the bill of rights. Socio-economic rights guaranteed for a child under this section are wider in scope than those provided under sections 26 and 27¹⁹⁰ – sections that detail socio-economic rights pertaining to every person. The objective of children's socio-economic rights is "[t]o guarantee for children a certain basic subsistence level" that is not adequately addressed by general socio-economic rights.¹⁹¹ Therefore section 28(1)(c) of the South African Constitution guarantees a minimum level of socio-economic rights needed for survival of a child. It does not provide for comprehensive and detailed socio-economic entitlements as contemplated by other wide-ranging socio-economic rights.¹⁹² Furthermore, socio-economic entitlements of children provided under section 28 of the Constitution entitle the beneficiaries of the right to directly demand provision of basic nutrition, shelter, basic health care services, and social services.¹⁹³

187 CRC/GC/2003/5 (27 November 2003) Para 21.

188 Constitution of the Republic of South Africa Act 108 of 1996.

189 Bekink & Brand 'Constitutional Protection of Children' in Davel *Introduction to Child Law in South Africa* 188.

190 Robinson 2003 *Potchefstroom Electronic Law Journal* 63.

191 Bekink & Brand 'Constitutional Protection of Children' in Davel *Introduction to Child Law in South Africa* 187.

192 Bekink & Brand 'Constitutional Protection of Children' in Davel *Introduction to Child Law in South Africa* 187. Further see *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C).

193 Bekink & Brand 'Constitutional Protection of Children' in Davel *Introduction to Child Law in South Africa* 188.

The inclusion of specific socio-economic rights in the South African Constitution enables the holders of the right to claim the realisation thereof before the courts. In the case of *Grootboom v Oostenberg Municipality*¹⁹⁴ the government was challenged to provide adequate basic shelter or housing to applicants. The applicants, (which included children) lived in an informal locality under appalling conditions. The land they settled on was privately owned and they were evicted in a damaging and aggressive manner. They lost all their property and belongings as their shacks were bulldozed.

Before the Constitutional Court the argument raised included that in terms of section 28(1)(c) of the Constitution, children are entitled to an unqualified right to shelter. It was contended that the right of children to shelter, unqualified as it is, is a minimum obligation required by government to fulfil. Section 28(1)(c) specifically provides for children's socio-economic rights. In interpreting this section the Constitutional Court held that where parents are not capable, the responsibility to provide shelter for children is borne by the state.¹⁹⁵ The judgment of the Constitutional Court was based on sections 26(1), 26(2) and 28(1)(c). The Court differentiated between children who lived without, and children who lived with family support.¹⁹⁶ It held that a child has the right to parental or family care in the first place and the right to alternative appropriate care only where that is lacking.¹⁹⁷ According to the court the state's obligation to provide shelter to children is only secondary to that of parents. The obligation of the state is direct and immediate regarding children who were detached from the family environment.¹⁹⁸

However, the court noted that the obligations of the state towards children who live in a family environment are to provide the legal and administrative infrastructure to realise rights guaranteed under section 28.¹⁹⁹ Thus in terms of section 28(1)(c) the primary obligation to provide shelter to parents and their children is not borne by the state if children are being cared for by their parents or families.²⁰⁰ As opposed to

194 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C).

195 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C).

196 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C) para 77.

197 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C) para 77.

198 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C) para 77.

199 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C) Para 78.

200 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C) Para 77.

what was held in the High Court, the Constitutional Court stated that section 28 does not force the state to provide shelter on demand to parents and their children.²⁰¹

The court concluded that parents are the primary caregivers²⁰² while the state is merely an alternative and bears an obligation under section 28(1)(c) in cases where a child is removed from his/her parents. Even though parents are not allowed to claim under section 28(1)(c) the state is however obliged to assist families with²⁰³

[a]ccess to land in terms of Section 25, access to adequate housing in terms of Section 26, as well as access to health care, food, water, and social security in terms of Section 27. It follows from this judgment that Sections 25 and 27 require the state to provide access on a programmatic and coordinated basis, subject to available resources. One of the ways in which the state would meet its Section 27 obligations would be through a social welfare programme providing maintenance grants and other material assistance to families in need in defined circumstances.

In this regard the ruling of the court reflects article 27(3) of the CRC which states that signatories within their means are required to take appropriate measures to assist parents to provide for the need of their children and "[s]hall in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing".²⁰⁴ Therefore, the ruling of the court is based on the constitutionally recognised and unqualified socio-economic rights of children guaranteed specifically for them.

It is interesting to note that according to the ruling of the Constitutional Court it is the responsibility of the state to provide the necessary socio-economic provisions to children who are not in the care of their parents. For instance, orphans and street children are entitled to basic privileges like housing, nutrition, basic education, and health services. The court endorses the rights recognised by the constitution. It is suggested that even though there is no corresponding provision in the FDRE Constitution it is suggested that Ethiopia follow the example of the Constitutional Court of South Africa since the court interpreted socio-economic entitlements of

201 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C) para 79.

202 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C) para 77.

203 *Grootboom v Oostenberg Municipality* 2000 3 BCLR 277 (C) para 78.

204 Proudlock *Children's Socio-economic Rights* in Boezart (ed) *Child Law* 300.

children recognised in the Constitution in a way that mirrors the principles of article 27(3) of CRC. The jurisprudence of South Africa regarding socio-economic rights of children proves that it is invaluable to include the socio-economic rights of children in a domestic Constitution. It indicates that inclusion of children's socio-economic rights in a Constitution may lead to instant and adequate implementation of those rights.

3.3 *Integration of socio-economic rights of Children in Ethiopian law*

3.3.1 *Monist versus dualist approaches*

The domestication of international conventions follows either a monist or dualist approach.²⁰⁵ The former places both international and domestic laws on the same footing so that domestic courts can invoke international conventions without any domestic enabling legislation even where the enabling legislation is required by the convention itself. The latter treats international law and domestic law differently so that enabling legislation (to which the treaty should be annexed or which rewrites the treaty) from the national legislature is mandatory for the incorporation of international convention into domestic law.

There are two different arguments concerning Ethiopia's domestication approach. In terms of article 55(12) of the FDRE Constitution, international agreements are negotiated and concluded by the executive and ratified by the legislature. Article 2(2) and (3) of the Federal Negarit Gazette Establishment Proclamation²⁰⁶ requires publication of all federal laws in the official law gazette.²⁰⁷ Pursuant to these provisions Ethiopia can be categorised as a follower of a dualistic approach, because domestic law is required to be promulgated for implementation of international instruments. However, ratification proclamations issued by Ethiopia so far have only three or four articles stating the short title, organ responsible for implementation, ratification, and effective date. There is neither a ratification proclamation that enshrines the content of ratified human rights conventions, nor a translation of these conventions into language accessible for the courts.

205 Oppenheim *International Law of Treaties* 37-38.

206 The Federal Negarit Gazeta Establishment Proclamation establishes Federal Negarit Gazeta in which all laws of federal government should be published.

207 Federal Negarit Gazeta Establishment Proclamation No. 3 of 1995.

On the other hand a look at the hierarchy of laws in Ethiopia indicates that Ethiopia adopts a monistic approach. Section 9(4)²⁰⁸ and section 13(2)²⁰⁹ of the FDRE Constitution lead to the conclusion that ratified human rights conventions have higher, or at least equal, status to the bill of rights enshrined in the Constitution. International human rights instruments adopted by Ethiopia are guidelines for the interpretation of the bill of rights of the FDRE Constitution. Therefore it can be concluded that Ethiopia does not adhere to one specific approach of domestication until differing arguments can be settled by the legislature or courts.

3.3.2 *Ethiopian approach to the internalisation of human rights*

The FDRE Constitution does not have a provision that particularly address the socio-economic rights of children, yet an analysis of its provisions shows that international child's rights instruments can be applied directly. As discussed supra the ratified international children's rights instruments are according to the FDRE Constitution part and parcel of domestic law.²¹⁰ This implies that duly ratified international instruments "[c]an independently – even where there is no corresponding right in the constitution or other laws – provide a basis for a cause of action in Ethiopian Courts".²¹¹ Ratified human rights instruments are an integral part of the law of the land. However, Soboka²¹² argues that for the human rights instruments to be applied practically mere ratification is inadequate.

Signature and adoption processes are sufficient for the inclusion of international treaties into Ethiopian law.²¹³ As opposed to rewriting the whole text of a convention, a single act of ratification suffices to domesticate an international human rights instrument.²¹⁴ According to the monist approach, international norms determine the fundamental norms of the national legal system. And, "[i]t is the basic norm of the international legal order which is the ultimate reason of the validity of the national

208 Section 9(4) of the Constitution of the FDRE Proclamation No.1 of 1995 states that "[a]ll international agreements ratified by Ethiopia are an integral part of the law of the land".

209 Section 13(2) of Constitution of the FDRE Proclamation No. 1 of 1995 provides that "[t]he 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".

210 Section 9(4) of Constitution of the FDRE Proclamation No. 1 of 1995. It states that "[a]ll international agreements ratified by Ethiopia are an integral part of the law of the land".

211 Abebe *The Potential Role of Constitutional Review* 164.

212 Soboka 2009 *Journal of Ethiopian Law* 50.

213 For competing arguments on the domestication approach of Ethiopia refer to Section 3.3.1.

214 Section 9(4) of Constitution of the FDRE Proclamation No. 1 of 1995.

legal order, too."²¹⁵ In Ethiopia after a convention is ratified by the legislature, only the statement of ratification is published in the *Negarit Gazeta*. It can therefore be argued that the original version of a treaty becomes the law of the country upon the publication of its statement of ratification.²¹⁶ Soboka²¹⁷ argues that the Constitution intends to treat domestic laws differently from international treaties. He further asserts that ratified treaties (including instruments that embody children's socio-economic rights) are special types of norms incorporated into the domestic legal system.²¹⁸

3.3.3 *Controversies with regard to the Ethiopian domestication approach*

Currently incorporation, status and validity of international treaties in general and human rights instruments in particular are marred by controversy. Section 9(4) of the FDRE Constitution is the source of the controversy.²¹⁹ The argument behind section 9(4) is raised in connection with sections 2(2) and (3) of the Federal Negarit Gazeta Establishment Proclamation No. 3 of 1995. Section 2(2) of this proclamation provides that all laws of the Federal Government shall be published in the Federal Negarit Gazeta and under section 2(3) it states that all federal or regional legislative, executive and judicial organs, as well as any natural or juristic person, shall take judicial notice of laws published in the Federal Negarit Gazeta. The cumulative reading of these articles leads to the conclusion that *publication* is a precondition for any law to be part of Ethiopian law and to regulate the conduct of government and the people as well as for the courts to take judicial notice of it.

The possibility of applying international instruments directly, even though they are not published in the official law gazette, is therefore open to argument. According to Idris²²⁰ publication of international instruments in the official law gazette is a mandatory precondition for the courts to rely on them. Practically there is no comprehensive publication of international instruments in Ethiopia.²²¹ Idris²²² further argues that it is only if the full body of the international instruments is published in the

215 Brownlie *Principles of Public International Law* 31-32.

216 Yohannes and Assefa 2012 www.africanchildforum.org 8.

217 Soboka 2009 *Journal of Ethiopian Law* 152.

218 Soboka 2009 *Journal of Ethiopian Law* 152.

219 Gebregiorgis 2009 *Ethiopian Human Rights Law Series* 44.

220 Idris 2000 *Journal of Ethiopian Law* 113.

221 Refer to Section 3.3.1 above.

222 Idris 2000 *Journal of Ethiopian Law* 113.

official law gazette that courts may take judicial notice of them. His arguments are also based on the fact that the President of the Republic is constitutionally bound to proclaim all laws and international instruments ratified by Ethiopia in the Negarit Gazeta.²²³ Besides, in terms of Establishment Proclamation of Federal Negarit Gazeta²²⁴ the state is obliged to publish all federal laws after which courts are required to take judicial notice of those laws. Yet, basing his argument on section 57 of the FDRE Constitution, Gebreamlak²²⁵ contends that publication of an act of parliament is not an essential requirement for its entry into force. He states that the proclamation that approves the ratification of a treaty will have legal effect after the lapse of a certain time period, even before its publication in the Federal Negarit Gazette. Neither the proclamations nor the provisions of the Constitution imply publication as a precondition for incorporation.²²⁶

According to Abebe²²⁷ insisting on the publication requirement renders section 9(4) of the FDRE Constitution meaningless. The purpose of this section is to do away with the necessity of publication. Had the Constitution intended different scenarios for the legality of international instruments, it would unequivocally have added publication as a precondition, which is not the case. Also a ratification proclamation by itself can be considered as one form of publication. Further, courts are not precluded from taking judicial notice of laws that are not proclaimed in the Negarit gazette – including international instruments.

Yeshanewu²²⁸ asserts that international instruments are considered as distinct from other federal laws, both by the Constitution and other laws. The duty of publishing all federal laws in the official law gazette therefore does not necessarily apply to them. He concludes that courts are bound to apply self-executing international instruments (that do not need implementation measures or legislation) regardless of their publication. Despite publication courts are duty bound to take judicial notice of

223 Section 71(2) of FDRE Constitution.

224 Proclamation to provide for the Establishment of Federal Negarit Gazette No 3 of 1995.

225 Gebregiorgis 2009 *Ethiopian Human Rights Law Series* 44.

226 See Rakeb Messele Enforcement of Human Rights in Ethiopia 15 (2002) in Mgbako *et al* 2008 *Fordham International Law Journal* 5.

227 Abebe *The Potential Role of Constitutional Review* 165.

228 Yeshanewu 2008 *African Human Rights Law Journal* 288.

international instruments. The requirement of publication therefore adds no validity to international instruments which are already valid through ratification.²²⁹

A realistic interpretation of section 9(4) of the FDRE Constitution should do away with the requirement of publication with regard to international instruments whose basic purpose is to regulate the obligations of government and to provide for entitlements for individuals.²³⁰ The purpose of publication is to inform rights holders. Government is fully aware of the contents of human right instruments during the entire process of deliberation to ratification. It should not be allowed to benefit from its failure to fulfil its responsibility of publishing ratified international instruments. Therefore, ratified international instruments can be applied by courts where there is no national legislation that gives effect to constitutionally recognised rights.²³¹

It can be soundly concluded that the only vital condition precedent necessary for the incorporation and legality of international human rights instruments into Ethiopian law is its ratification,²³² not necessarily its publication. Nevertheless Tobin²³³ argues that by failing to translate, publish, and disseminate the CRC government can to some extent undermine or neutralise its effect and value.

Furthermore, according to Levit²³⁴ even in Argentina whose Constitution is well known for its broad incorporation of international human rights norms, the internalisation project is nascent and virtually invisible. Levit additionally points out that courts are generally unaware of norms enshrined in international human rights instruments, whereas the laws themselves are difficult to locate.²³⁵ Consequently she²³⁶ concludes that:

in a society where the search for law is so cryptic, those who are not trained to access the law, or those who cannot afford to hire someone so trained, stand highly disenfranchised – unable to negotiate through the dense web of rights.

229 Abebe *The Potential Role of Constitutional Review* 165.

230 Yeshanewu 2008 *African Human Rights Law Journal* 289.

231 Abebe *The Potential Role of Constitutional Review* 166.

232 Gebregiorgis 2009 *Ethiopian Human Rights Law Series* 45. See also Alemayehu 2008 *Journal of Ethiopian Law* 147.

233 Tobin 2005 *South African Journal on Human Rights* 99.

234 Pupavac 1998 *Human Rights Law Review* 313.

235 Pupavac 1998 *Human Rights Law Review* 337 341.

236 Pupavac 1998 *Human Rights Law Review* 342.

The CRC and ACRWC are among various international human rights instruments ratified by Ethiopia. The Constitution further provides that courts are required to be guided by the principles of these instruments in their duty of interpreting the constitutional bill of rights. In view of the above Mayessa argues that all Ethiopians have the constitutional right to the provision of such international human rights instruments²³⁷.

Publication is not necessarily a precondition that precludes courts from taking judicial notice of ratified international instruments. Judicial practice in Ethiopia supports this conclusion.²³⁸ The Cassation division of the Federal Supreme Court interprets domestic family law in line with the CRC principle of the best interests of the child.²³⁹ Likewise, the Federal Supreme Court adjudicates by applying the International Convention on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) by asserting that it has the mandate to interpret domestic law in harmony with the Constitution and international law.²⁴⁰ Regardless of publication in the Negarit Gazeta courts can apply ratified international instruments.²⁴¹

Despite the irrelevance of publication for the validity and application of international instruments it is still crucial, as it informs citizens so that they can demand their rights. It is important for the full realisation of the rights included in the instruments and it is also one of the commitments states are bound to fulfil.²⁴² Nonetheless, the basis of validity of international instruments is their ratification not publication. Therefore the judiciary is entitled to apply a right directly even though there is no analogous right in the Ethiopian Constitution or other laws.²⁴³

The Federal Supreme Court Cassation division referred directly to article 3(1) of the CRC as well as section 36(2) of the FDRE Constitution in its effort to guarantee the best interest of the child.²⁴⁴ The Cassation bench decision can be considered as

237 Mayessa *The Integrated Approach* 120.

238 Abebe *The Potential Role of Constitutional Review* 166.

239 *Tsedale Demise v Kifle Demise* Federal Supreme Court Cassation Division File No. 23632 2000.

240 *Negaso Gidada v The House of Peoples Representatives and the House of Federation* Federal High Court Appeal File No. 41183 2004.

241 Ethiopian Human Rights Commission 2011
<http://ehrc.org.et/LinkClick.aspx?fileticket=7nDDzAMpwzM%3d&tabid=106>.

242 Abebe *The Potential Role of Constitutional Review* 167.

243 Abebe *The Potential Role of Constitutional Review* 167.

244 *Tsedale Demise v Kifle Demise* Federal Supreme Court Cassation Division File No. 23632 2000.

removing the controversial necessity of publication for the validity of international instruments as it invokes a provision of the CRC directly in its child custody decision.

Concerning the relevance of the contemporary system of domesticating human rights instruments adopted by Ethiopia (though arguably inadequate), Soboka²⁴⁵ correctly asserts that:

depositing ratification instruments with relevant treaty depository bodies, issuing ratification proclamations to incorporate the treaties into the law of the land, and publishing those proclamations in the Negarit Gazette are unmistakable and unequivocal indicators of legislative intent to abide by ratified international treaties in Ethiopia.

3.4 *Domestic act on socio-economic rights of children*

The activity of the Ethiopian legislature is self-contradictory regarding international human rights instruments. While it on the one hand ratified international human rights instruments it did nothing to guarantee their genuine realisation on the other. It failed to enact a law that details the human rights instruments for children. Those ratified documents are neither translated into judicial working language, nor are they published in the official law gazette, thereby jeopardising their implementation. There is no law that contextualises children's socio-economic rights principles heralded by international child rights conventions.

The domestication of international human rights instruments and subsequent implementation thereof is highly controversial in Ethiopia. Courts are confused on the issue whether to apply international child rights instruments ratified without them being translated into national law. Even though the confusion is tackled by pursuing one line of argument that supports an automatic implementation of ratified international human rights norms, in practice the judiciary is highly ignorant of the content of these human rights documents. The content of international human rights documents is not available in domestic publications and there is no system by which the judiciary can access them.

Moreover, some socio-economic rights included in the FDRE Constitution are formulated in crude and general wording, which adds real hurdles to their

245 Soboka 2009 *Journal of Ethiopian Law* 159-160.

interpretation. Their realisation, along with children's socio-economic rights enshrined in the CRC and ACRWC, requires legislation that comprehensively details children's rights. The Committee, in its concluding observation to Ethiopia's report, recommends a comprehensive legislative review and adoption of a comprehensive children's act that adopts international children's rights norms.²⁴⁶ It further recommends the publication of international children's rights instruments in the official gazette in order to ease the difficulty on awareness of, and access to, instruments that embody children's rights norms.²⁴⁷

At present there is no comprehensive specific law that recognises children's rights in Ethiopia.²⁴⁸ Children's rights in general, and their socio-economic rights in particular, have not been regulated by an independent statute. The only measure taken by Ethiopia is the ratification of international conventions that embody children's socio-economic rights. Yet, as stipulated above, the status, validity and subsequent implementation of ratified international human rights instruments are prone to controversies which have not yet been settled. The implementation of international law mainly depends upon viable domestic legal system. Accordingly, a domestic legal system is required to put a realistic and conducive framework in place in its legislative, judicial, and executive branches so that rights guaranteed in international instruments can be realised domestically.²⁴⁹

Since a contrary domestic law cannot override international human rights treaties, it is crucial and mandatory to harmonise domestic laws and practices with international human rights norms. Concerning the interplay and status of ratified treaties in Ethiopia, Soboka²⁵⁰ rightly concludes that "[r]atified treaties ... occupy the status of the supreme law of the land". However, an independent law that specifically deals with children can adopt standards and principles of international children's rights norms into Ethiopian jurisprudence. This may be significant for ease of reference.

246 CRC/C/ETH/CO/3 Committee on the Rights of the Child Concluding observations on Ethiopia 2006 Para 9.

247 CRC/C/ETH/CO/3 Committee on the Rights of the Child Concluding observations on Ethiopia 2006 Para 9.

248 African Child Policy Forum Unknown <http://www.acerwc.org/wp-content/uploads/2012/05/English-ACERWC-Ethiopia-Harmonisation-of-Laws-on-Children.pdf>. 2.

249 Soboka 2009 *Journal of Ethiopian Law* 138.

250 Soboka 2009 *Journal of Ethiopian Law* 141 154.

3.5 Ethiopian case law on the socio-economic rights of children

An independent judiciary is one of the most significant institutions in democratic systems. It is indispensable for the protection of human rights. The judiciary is a main branch of government by which the protective responsibility of a state is discharged.²⁵¹ In Ethiopia an independent judiciary with exclusive judicial power was established by the FDRE Constitution.²⁵² However, due to various factors the judiciary is an ineffective and weak branch of government especially on issues of human rights and state accountability. Ethiopian courts are in a confused mind set on the feasibility of the direct application of ratified international human rights norms, let alone setting a precedent recognising the fundamental principles and standards of international children's rights norms in their rulings.

Besides, courts are ignorant of the principles and standards laid down by ratified children's rights instruments as they are neither published nor translated into judicial working language. The content of a treaty remains alien to them even after its ratification.²⁵³ Even though the problem of accessing those international children's rights instruments could be surmounted by a judge's independent research, the legality of directly applying unpublished and untranslated content of an international children's rights instrument is unclear and open to doubts and arguments. As a result courts hesitate to apply the instruments that embody children's rights norms and thus they have not been able to fulfil the legislative gap on socio-economic rights of children.

There is no direct and binding case law on the socio-economic rights of children in Ethiopia. However, in a ruling on a child rights case²⁵⁴ the Cassation bench of the Ethiopian Federal Supreme Court relied on the CRC, albeit only in an indirect way. Nonetheless to the extent it relies on the CRC its decision is invaluable. Because the decision of the Cassation bench with at least five judges is binding on lower courts, it is bound to serve as a precedent for them.²⁵⁵

251 Regassa 2009 *Mizan Law Review* 289.

252 Section 79(1) of constitution of FDRE Proclamation No. 1 of 1995.

253 Yohannes and Assefa 2012 www.africanchildforum.org 8.

254 *Tsedale Demise v Kifle Demise* Federal Supreme Court Cassation Division File No. 23632 2000.

255 Section 10(4) of Federal Courts Proclamation No. 25 of 1996.

Yet, this indirect application does not necessarily indicate that Ethiopian courts are at liberty to directly and exclusively apply international instruments.²⁵⁶ The Cassation bench decision does not automatically allow courts to recognise a right which is provided in international instruments but not in the FDRE Constitution. According to Abebe²⁵⁷ it is arguable if the Cassation division had come up with "[t]he same conclusion if the principle of the best interest of the child was not recognised under the Ethiopian Constitution and domestic law." It is worthy of note that the court did not refer to the ACRWC.²⁵⁸

The purpose of incorporating international instruments into the domestic legal system would be defeated if the relevance and application of those instruments is narrowly construed. The Cassation bench referred to the principle of the CRC because international instruments are guidelines in the interpretation of domestic human rights legislation. The court referred to the best interest of the child principle of the CRC as a standard that supports a similar principle endorsed by the FDRE Constitution.

Despite scholars' doubt on whether the Cassation division would invoke a CRC principle to endorse its ruling had that principle not been included in the text of the FDRE Constitution, the judgment could be used as a precedent to recognise and apply other rights enshrined in the CRC and ACRWC. Even though the ruling of the Cassation division does not directly invoke a right protected in the CRC, it could serve as a stepping stone for the lower courts and for subsequent precedents to judicially import the principles of international children's rights documents into the Ethiopian legal system.

256 Abebe *The Potential Role of Constitutional Review* 167.

257 Abebe *The Potential Role of Constitutional Review* 167.

258 Abebe *The Potential Role of Constitutional Review* 167.

4 The Implementation of Children's Socio-economic Rights in Ethiopian Law

4.1 Introduction

Ratification of an international human rights treaty is not an end in itself; rather it is a means to an end. Consistent efforts are expected from states for implementation of international covenants. International human rights norms structurally depend upon national laws and procedures for their domestic implementation.²⁵⁹ Implementation of human rights refers to actual measures taken by states in order to enhance respect for human rights and also to prevent their violations. Standards of protection of human rights can truly be measured in light of effectiveness and adequacy of a mechanism designed for their realisation.²⁶⁰ Domestic realisation of international human rights covenants requires a cooperative and joint effort of the state legislature, executive and judiciary. The duty of ratifying states to implement international human rights treaties domestically is followed by four basic obligations to respect, protect, promote, and fulfil such rights.

The African Commission in its landmark *Social and Economic Rights Action Centre (SERAC) case*²⁶¹ underscored that:

[i]nternationally accepted ideas of the various obligations endangered 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 fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties. ... Each layer of obligation is equally relevant to the rights in question.

The implementation of socio-economic and cultural rights (of children) largely depends upon economic capacity. Nevertheless, measures required for implementation of these rights correspondingly include enactment of national laws, as well as ensuring the compliance of administrative practices with children's rights

259 Vazquez 2008 *Harvard Law Review* 14. Further refer to Chapter 3.

260 Refer to Section 2.3 above.

261 African Commission on Human and Peoples' Rights Comm. No. 155/96 2001 *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria* 15th Annual Activity Report Para 44.

standards.²⁶² Although implementation of human rights standards requires their incorporation into domestic law, most conventions entitle states to decide on how to implement those standards. Yet, under article 4 of the CRC, State parties are bound to pass national laws for domestic implementation of its standards.

Socio-economic rights are as important as civil and political rights regarding the level of protection accorded to them and when it comes to socio-economic rights of children – due to their vulnerability – special attention is important. Legislation that details their socio-economic rights is essential for the realisation of those rights at grassroots level. Nonetheless, the breaches of economic, social, and cultural rights are all too often tolerated by the international community.²⁶³ States can protect international human rights treaties in three crucial modes: they can enshrine basic human rights' norms in their constitution, enact implementing legislation specific to human rights, as well as establish human rights institutions.²⁶⁴ This chapter examines a legal mechanism designed by Ethiopia for the implementation of children's socio-economic rights (only from a legal point of view).

4.2 Measures taken for implementation of children's socio-economic rights

Obligations to respect, protect, promote and fulfil are borne by states following their recognition of socio-economic rights.²⁶⁵ The obligation to fulfil (in the context of children's socio-economic rights) entails the provision by the state at its own expense of the socio-economic needs of children whose families cannot afford to provide. In light of that the implementation of children's rights instruments in Ethiopia is flimsy and "[i]t is no exaggeration to say (that recognition of the) human rights of a child are still a myth in underdeveloped countries like Ethiopia".²⁶⁶ In Ethiopia the

262 Icelandic Human Rights Centre Implementation Unknown <http://www.humanrights.is/the-human-rightsproject/humanrightscasesandmaterials/humanrightsconceptsideasandfora/theconceptsofhumanrightsanintroduction/implementation/>.

263 Goel 2009 *African Journal of Political Science and International Relations* 151.

264 Refer also to section 3.1 above.

265 University of Minnesota Human rights Library 1997 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html Para 6.

266 Goel 2009 *African Journal of Political Science and International Relations* 154.

right to food and basic health care services is a fundamental human right that often goes unmet.²⁶⁷ Further

[a]lluding to the irony of having rights that their children cannot enjoy, parents often attribute children's rights discourse as: '*lam aleng besemai wetetuanem alay*' (meaning 'I have a cow but I neither see nor drink her milk').

Research conducted by Goel²⁶⁸ reveals that the practical situation concerning socio-economic rights of children in Ethiopia is troubling even though the Ethiopian economy has been increasing for five years in succession. The state is obliged to assist holders of relevant rights to gain access to socio-economic entitlements. That obligation is primarily achieved through adopting pragmatic strategies, rules, and laws (including judicial measures) that facilitate and standardise access to socio-economic rights.²⁶⁹

As mentioned above the main responsibility for implementing human rights lies with state authorities, namely the legislature, executive, and judiciary.

4.2.1 Legislature

Enacting a domestic law that addresses children's rights lays a foundation for implementation of these rights. The ratifying state's obligation to make changes to domestic legislation in order to cope with the undertakings of a ratified treaty is basically a standard that is self-evident.²⁷⁰ Ratification of international children's rights instruments that protect the rights of children means little unless their standards are incorporated into domestic law.²⁷¹ The process of ameliorating domestic laws to meet the standards set forth by international children's rights documents has been crucial in the realisation of children's rights.²⁷²

267 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 60.

268 Goel 2009 *African Journal of Political Science and International Relations* 152.

269 University of Minnesota Human rights Library 1997 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights http://www1.umn.edu/humanrts/instate/Maastrichtguidelines_.html Para. 6 and 7.

270 Permanent Court of International Justice Advisory Opinion The Exchange of Greek and Turkish Populations (1925) PCIJ Reports series B No. 10.

271 UNICEF 2006 The state of the world's Children excluded and invisible http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev%281%29.pdf.

272 UNICEF 2006 The state of the world's Children excluded and invisible http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev%281%29.pdf.

A combination of duties imposed upon Ethiopia requires it to prepare and maintain legislative and other measures that are coherent with its convention commitments to provide domestic force to ratified human rights documents.²⁷³ In its duty to protect socio-economic rights duly ratified by it, Ethiopia is obliged to issue laws and procedures. It is required to issue legislation that espouses rights and guarantees that are incorporated in the instruments that it has ratified.²⁷⁴ The duty to promote entails the obligation to facilitate the enjoyment of rights that are legally protected.²⁷⁵

The legislature has the primary role and direct accountability for providing detailed statutes including [children's] socio-economic rights.²⁷⁶ Separate legislation is crucial as it would be more detailed and precise in its formulation than mere constitutional principles and international norms.²⁷⁷ On the one hand it boosts their justiciability and accountability and on the other reduces wilful malevolence of government.

In order to give effect to its commitment the government is required to enact laws that detail the human rights of children as enshrined in the international human rights instruments. Such laws should also address the special circumstances of children in Ethiopia. They should make the rights claimable before courts and the courts should be supported to overcome any lingering confusion in order that they can adjudicate the omission or commission of the state. Failure of the government to enact legislation that properly addresses and clears any doubt as to the status, recognition, validity and also the implementation of the socio-economic rights of children, cannot serve as a valid excuse when a claim for a right is instituted or when the responsibility of the government to discharge its international duty is questioned. Failure of the government to realise children's socio-economic rights under the pretext of a lack of domestic legislation or deficiencies thereof is inexcusable.²⁷⁸

Scarcity of human and material resources restricts the enforcement and implementation of child sensitive laws and policies in Ethiopia. Scarcity of resources is a challenging obstacle to realise human rights within a reasonable period of time for developing countries. It is not easy for a state to change children's lives at once,

273 Soboka 2009 *Journal of Ethiopian Law* 140.

274 Soboka 2009 *Journal of Ethiopian Law* 140.

275 Refer to Chapter 2.

276 Kibret *Competence and Legitimacy of Ethiopian Court* 77.

277 In this regard an instance can be South African Children's Act 38 of 2005.

278 Brownlie *Principles of Public International Law* 34.

yet states can keenly look for international cooperation in order to ensure their adherence to international standards²⁷⁹ – at least to attain the minimum standards required for dignified survival of children. Ethiopia however, bans NGOs that work for realisation of children's rights.²⁸⁰

The position of the Ethiopian government is ambivalent regarding the idea of children's rights. In 2009 the legislature passed the Charities and Societies Act²⁸¹ which restricts local and international NGOs and civil society organisations from working on human rights issues. NGOs that work on the advocacy of child-focused rights are halted by this law.²⁸² Even though international children's rights instruments are ratified by Ethiopia²⁸³ (despite the equivocality of their status and validity)²⁸⁴ domestic legislation is still mandatory. It is essential, especially when the formulation of rights involves special categories of children and when it concerns their socio-economic rights. The realisation of such rights can easily be overlooked, particularly in countries like Ethiopia where resources are a main setback and pretext for government to evade its duty to realise conventional duties. In this regard Henkin²⁸⁵ rightly states that:

[t]he international law of human rights parallels and supplements national law, superseding and supplying the deficiencies of national constitutions and laws, but it does not replace and indeed depends on national institutions.

Even though Ethiopia considers that most of its legislation ensures harmony with the international children's rights norms so far nothing meaningful has been done regarding children's socio-economic rights. Currently there is no separate legislation that truly details socio-economic entitlements of children in Ethiopia except ratified and domesticated international children's rights conventions. The Ethiopian

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- 279 Icelandic Human Rights Centre Implementation Unknown <http://www.humanrights.is/the-human-rightsproject/humanrightscasesandmaterials/humanrightsconceptsideasandfora/theconceptsofhumanrightsanintroduction/implementation/>.
 - 280 Proclamation to Provide for the Registration and Regulation of Charities and Societies No. 621 of 2009.
 - 281 Proclamation to Provide for the Registration and Regulation of Charities and Societies No. 621 of 2009.
 - 282 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 60.
 - 283 Refer to Chapter 1 above.
 - 284 Refer to section 3.3 above.
 - 285 Henkin Louis The Rights of Man Today (1979) 95 in Soboka 2009 *Journal of Ethiopian Law* 140.

legislature did not even enact a law that addresses children's rights in a special and detailed manner. There are different social, traditional, religious, and economic situations to which Ethiopian children are exclusively subjected and these special situations need to be addressed both in detail and in a specific way, while the guarantees enshrined in international instruments should also be adopted in a way that endorse and extend better protection of children's rights.

As set out under Chapter Three international human rights instruments are not translated into the judicial working language, so "[t]heir implementation at the domestic level is close to nil".²⁸⁶ Availability of human rights instruments to the general public depends upon their translation which would also enable ordinary citizens to easily refer to them. Publication of ratified and translated international human rights norms in the official law gazette enhances their accessibility to both the courts and ordinary citizens.²⁸⁷ Neither translation nor publication has so far been made by the government in Ethiopia. The only instance where the CRC was referred to is by the Cassation bench of the Federal Supreme Court and that was only an indirect reference.²⁸⁸

4.2.2 Executive

Children are both the past and the future of any nation. Their survival and healthy development determines the future of any people.²⁸⁹ Strong legislation, if any, is meaningless without adequate financial means to implement and enforce those laws and policies.²⁹⁰ The Committee in its concluding observation to Ethiopia's initial report suggested that available resources should be budgeted towards the realization of economic, social and cultural rights of children as well as their rights to health, education, and rehabilitation.²⁹¹

The CRC underpins policy developments in Ethiopia. Important policy instruments such as *Ethiopia's National Plan of Action for Children 2003-2010 and Beyond* was

286 Messele *Enforcement of Human Rights in Ethiopia* 39.

287 Messele *Enforcement of Human Rights in Ethiopia* 39.

288 Refer to section 3.5 above.

289 Hossain *et al Human Rights Commissions and Ombudsman Offices* 135.

290 UNICEF 2006 The state of the world's Children excluded and invisible http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev%281%29.pdf.

291 University of Minnesota Human rights Library 1997 Concluding Observations of the Committee on the Rights of the Child, Ethiopia, <http://www1.umn.edu/humanrts/crc/ethiopia1997.html>.

drafted largely on the standards of the CRC.²⁹² However, a study conducted in the Gedeo Province of Ethiopia demonstrates that there is no permanent structure that deals with children's issues in public institutions. In fact, strategic documents like the ACRWC and Ethiopia's National Plan of Action for Children are not even recognised by the officials at zonal and district levels.²⁹³ This is true for most parts of Ethiopia.

Future lives of children can be moulded, limited or expanded by government policies. Basic decisions taken by government, for instance in terms of prioritisation of the national budget, affect children's development. In addition to economic constraints the inadequacy of institutions established for children's rights is a main factor that hinders the implementation of international children's rights instruments. Even though Ethiopian children face severe problems, some executive officials do not have an awareness concerning children's rights as enshrined in international child right documents.²⁹⁴

Developing the children and their lifestyle is severely affected by public health and other policies. In short, "[a]lmost every area of government policy affects children to some degree, either directly or indirectly, positively or negatively".²⁹⁵ Therefore:

children's need for an independent watchdog to monitor their relationship with government is particular and very strong. There must be adequate data collection, disaggregated to reveal discrimination against ... children, and indicators and targets must be set and monitored.

4.2.3 Judiciary

The judiciary has a very influential role in the implementation of human rights. The effect of international children's rights norms cannot be evaluated in the abstract only on the basis of the constitution and legislation of a given country.²⁹⁶ It also depends upon whether or not courts and other legal actors apply human rights standards in

292 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 59.

293 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 60.

294 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 59.

295 Hossain *et al Human Rights Commissions and Ombudsman Offices* 137.

296 Icelandic Human Rights Centre Implementation Unknown <http://www.humanrights.is/the-human-rightsproject/humanrightscasesandmaterials/humanrightsconceptsideasandfora/theconceptsofhumanrightsanintroduction/implementation/>.

their decisions.²⁹⁷ Like the legislature which employs its own system of importing human rights instruments into the domestic legal system, the judiciary is also required to look for methods of translating the guarantees of international human rights instruments into domestic reality through rational interpretation and implementation.²⁹⁸

The role of the judiciary in the realisation and effect of international human rights norms is indispensable. Because what counts in the final instance is whether they invoke human rights norms in their rulings.²⁹⁹ Full incorporation of children's rights principles into domestic law enables courts to easily apply the standards. In cases where the principles are not fully written into domestic legislation, courts can use international children's rights principles as a guideline and as a minimum standard that should be attained by the state.³⁰⁰

The Committee recommends that the state should strengthen the implementation of the constitution in order to promote children's rights.³⁰¹ Among the reasons why it is compelling for Ethiopia to have legislation that addresses the package of rights in detail is that there is a lack of qualified judges. Ethiopian judicial personnel have limited knowledge and exposure to international human rights norms even where there is a will for independent learning.³⁰²

Ethiopian courts can apply or rely on international human rights' instruments in two different ways: courts can apply human rights instruments indirectly by invoking those instruments as interpretive guidelines for the constitution and other domestic legislation, or they could apply international human rights instruments by directly

297 Icelandic Human Rights Centre Implementation Unknown <http://www.humanrights.is/the-human-rightsproject/humanrightscasesandmaterials/humanrightsconceptsideasandfora/theconceptsofhumanrightsanintroduction/implementation/>.

298 Soboka 2009 *Journal of Ethiopian Law* 160.

299 Martin Schenin International Human rights in National Law in Raija Hanki and Markku Suksi (ed) *An Introduction to the International Protection of Human Rights* (2002) 421 in Soboka 2009 *Journal of Ethiopian Law* 150.

300 Icelandic Human Rights Centre Implementation Unknown <http://www.humanrights.is/the-human-rightsproject/humanrightscasesandmaterials/humanrightsconceptsideasandfora/theconceptsofhumanrightsanintroduction/implementation/>.

301 Committee on the Rights of the Child Concluding Observations for Niger CRC/C/15/Add179 (13 June 2002) Para 10(a).

302 Messele *Enforcement of Human Rights in Ethiopia* 40.

relying on them even though they are not domesticated by national legislation.³⁰³ In doing so they can pave a way for (currently unsettled) domestic implementation of international children's rights instruments. Courts can directly implement the principles and standards enshrined in international child socio-economic rights instruments (CRC, ACRWC & ICESCR) and they can also ensure that the interpretation of other child sensitive domestic legislation is in line with those children's rights instruments.³⁰⁴

The absolute supremacy of the FDRE Constitution is not amenable for aligning its bill of rights to international standards according to the argument of some scholars who read subordination of the constitution to international human rights norms.³⁰⁵ That is contrary to the supremacy clause of the FDRE Constitution and this is a quandary for the judiciary, where litigation involves conflict between the Constitution and international conventions.

The absence of a provision in domestic law for the socio-economic rights of children, and the crude formulation of general socio-economic rights in the Constitution, demand a significant reliance on ratified human rights treaties for the exposition of general socio-economic rights, as well as those recognised in the Constitution.³⁰⁶ Thus, in such circumstances, relying upon international treaties could (and should) be more of a principle than an exception.³⁰⁷

The Cassation bench of the Ethiopian Federal Supreme Court ruled on a child rights case³⁰⁸ by invoking the CRC and the FDRE Constitution in order to interpret domestic family law. The interpretation of the Cassation Division of the Federal Supreme Court is binding on lower courts, therefore its decision in children's rights cases endorses the use of international covenants in the interpretation of domestic legislation.³⁰⁹ Yet, Ethiopian courts seldom refer to international instruments in their decisions. They hardly apply international human rights documents even to underpin

303 Abebe *The Potential Role of Constitutional Review* 161.

304 Further refer to Section 3.5 of Chapter 3.

305 Kibret *Competence and Legitimacy of Ethiopian Court* 87.

306 Alemayehu 2008 *Journal of Ethiopian Law* 147-148.

307 Soboka 2009 *Journal of Ethiopian Law* 155.

308 In the Case of Tsedale Demise v Kifle Demise Federal Supreme Court Cassation Division File No. 23632 2000.

309 Abebe *The Potential Role of Constitutional Review* 161.

their rulings (indirect application) let alone base their judgement exclusively on international instruments.³¹⁰

Nonetheless, the ruling of the Cassation bench³¹¹ in which CRC was invoked to secure the best interest of the child by overriding contrary domestic legislation is expected to be legally followed by lower courts so that they can base their rulings on international instruments. Besides, the best interest of the child currently transcends the CRC and is rightly regarded as part of international customary law.³¹² The rights of the child as enunciated in the CRC have been accepted by almost all states of the world – except the United States of America, Somalia and South Sudan.³¹³ This worldwide acceptance of children's rights serves as a solid ground for its principles and standards to attain the status of international customary law.³¹⁴ Hence the best interest of the child has attained the norm of customary international law.³¹⁵ Ethiopian courts therefore have sufficient grounds to invoke the rights guaranteed in the CRC.

According to Yeshanewu³¹⁶ the basic reason why courts usually avoid reference to international instruments is due to the fact that there is no full publication of the text of these instruments.

4.3 Obstacles that hinder the implementation of socio-economic rights of children in Ethiopia

The problem of implementation of children's socio-economic rights begins in the FDRE Constitution. It fails to give sufficient recognition to general socio-economic rights in its text. All general socio-economic rights are classified under one heading economic, social and cultural rights which gives a sense that the notion of

310 Yeshanewu 2008 *African Human Rights Law Journal* 279-289.

311 In the Case of Tsedale Demise v Kifle Demise Federal Supreme Court Cassation Division File No. 23632 2000. In the case the Court relied on CRC to determine whether a surviving parent who has been given an absolute guardianship right over a child can be denied that right if the best interest of the child so requires and, accordingly the Court rules that if it is in the best interest of the child the surviving parent can be denied the custody of the child, irrespective of clear subsidiary domestic law to the contrary.

312 Smith *Texts and Materials* 15.

313 The South Sudanese parliament passes a bill to ratify the UN Convention on the Rights of the Child in 2013. So, once it is signed by the President of the Nation, South Sudan will become the 194th nation to ratify CRC.

314 Smith *Texts and Materials* 14-15.

315 Majka and Ensalaco *Children's Human Rights* 73.

316 Yeshanewu 2008 *African Human Rights Law Journal* 287.

indivisibility and interrelatedness of human rights is not given due prominence. These facts also affect the justiciability of socio-economic rights with ease.³¹⁷

The enforcement of human rights conventions in Ethiopia is hampered by general institutional and practical problems.³¹⁸ Implementation, pursuant to the obligation provided by the conventions, entails not only integration of international child rights instruments into domestic legislation, but also making sure that those rights and entitlements of children are realised in full. This responsibility is comprehensive and an all-engaging one.³¹⁹ In this respect, both the CRC and ACRWC enshrine solid provisions that bind states.³²⁰ Any person or organ of a state that has a duty towards the realisation of children's rights is bound by these concrete responsibilities imposed by the international children's rights instruments and State parties are obliged to ensure the realisation of those responsibilities.³²¹ In an endeavour to realise children's socio-economic rights, the decision of government officials is decisive. They can fix budgets and provide money or basic socio-economic services.

The Ethiopian approach to the ratification of a treaty is prone to lead to problems.³²² Firstly, the content of the treaty remains unknown to the courts because they cannot easily trace the text of the treaty. Furthermore, even if the difficulty of finding the text of the treaty is addressed, the treaty is not available in the working language of Ethiopian courts.³²³ The ratification proclamation of international human rights instruments contains no more than a statement of ratification and that exacerbates

317 Messele *Enforcement of Human Rights in Ethiopia* 28.

318 Refer to Assefa *The Making and Status of Treaties in Ethiopia*.

319 Yohannes and Assefa 2012 www.africanchildforum.org 9.

320 Art. 4 of CRC strongly provides that State parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the CRC. With regard to economic, social and cultural rights, State parties shall undertake such measures to the maximum extent of their available resources and, where needed within the framework of international cooperation. Art. 1(1) of ACRWC states that Member States of Organisation of African Unity Parties to the present Charter shall recognise the rights, freedoms and duties enshrined in this Charter and shall undertake the necessary steps, in accordance to their Constitutional processes and with the provisions of the recent charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

321 Yohannes and Assefa 2012 www.africanchildforum.org 10.

322 Refer to Sections 3.3.1 and 3.3.2 above. The problem is worsened by the fact that the Ethiopian judiciary is legally bound to take as law only those texts that are printed in the law gazetas that officially carry law publications.

323 Yohannes and Assefa 2012 www.africanchildforum.org 12.

the confusion of Ethiopian courts. Because of this vicious cycle of confusion, courts may be unwilling to apply human rights treaties in Ethiopia.³²⁴

The Ethiopian legal landscape itself is a hurdle as it is not precise and certain enough regarding children's socio-economic entitlements. According to community members in Dilla (a Zone town in the southern region of Ethiopia), the government should first resolve the underlying causes that undermine the realisation of children's rights.³²⁵ It should discharge its responsibility by eradicating the vicious cycle of poverty, and by changing the deteriorated living conditions of children.³²⁶ It was rightly argued by Montgomery³²⁷ that safeguarding the rights of childhood is a privilege of the rich and almost non-existent for the poor. This scenario must be changed and the law is the right instrument with which to begin the process.

The Ethiopian government is actually trying to take some measures. It has ratified international children's rights instruments and harmonised some domestic legislation to bring it in line with ratified children's rights instruments (most laws that are harmonised in Ethiopia are those related to civil and political rights). It has also prepared a National Plan of Action for Children (2003-2010) and it established a Child Rights Committee from the top (Ministry of Women Affairs) to the lower levels of government. Nevertheless, Goel³²⁸ states that "[e]ffective realisation is not trying" and "[r]atification and harmonisation of law does not mean implementation". Preparing a national plan of action and establishing a Child Rights Committee also does not mean implementation, it is just a step towards it.³²⁹

Attorneys and judges (who understand the language of international human rights documents – English, French, Arabic and Spanish) seldom refer to provisions of human rights instruments. The reason is that similar provisions can be easily located in the FDRE bill of rights.³³⁰ This is not true regarding socio-economic rights of children; they are neither available in the texts of the constitution, nor are they

324 Yohannes and Assefa 2012 www.africanchildforum.org 8.

325 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 62.

326 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 62.

327 Montgomery *et al.* (2003: 36) in Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 67.

328 Goel 2009 *African Journal of Political Science and International Relations* 153.

329 Goel 2009 *African Journal of Political Science and International Relations* 153.

330 Messele *Enforcement of Human Rights in Ethiopia* 39.

guaranteed by independent legislation. Besides, ratified international instruments are not published in the official law gazette, not to mention the absence of their officially translated version.

In countries like Ethiopia the realisation of children's socio-economic rights is generally hampered by a lack of resources, so their implementation cannot be immediate but rather gradual. However, to the extent that there are available resources for the attainment of these rights, the conventions require the same to be claimable. The jurisprudence regarding human rights has already established very well that these socio-economic rights are within the reach of the power of courts.³³¹

The worst part of the challenge to the implementation of socio-economic rights of children in Ethiopia is that the rights recognised in the ICESCR and the socio-economic rights enshrined in the CRC and ACRWC are formulated in a manner that they cannot be invoked before courts of law. These rights are mentioned as "non-self-executing' or 'non-justiciable'" rights.³³² It is therefore the inherent responsibility of the legislature to legislate an implementing statute so that those rights can be claimed before courts of law. Ethiopia is bound to establish the required legal (as well as institutional) framework for the genuine implementation of the children's rights covenants.

Mere ratification and harmonising of domestic laws is far from tackling the deteriorating child situation in Ethiopia.³³³ It needs detailed and comprehensive separate legislation that addresses children's issues specifically. Besides, the attitude of people towards children should be changed and the government is required to create awareness of children's rights.³³⁴ This could be realised amongst other things, by publishing laws that embody children's rights.

Regarding implementation of international children's rights instruments at grassroots level, the committee on the rights of the child advocate that states should develop a

331 Parker 'Resources and Child Rights: an Economic Perspective' in Himes *Implementing the Convention on the Rights of the Child* 34.

332 Yohannes and Assefa 2012 www.africanchildforum.org 9.

333 Goel 2009 *African Journal of Political Science and International Relations* 148.

334 Goel 2009 *African Journal of Political Science and International Relations* 148.

policy that details practicable and comprehensive targets.³³⁵ It is meant to keep states in check and make them accountable for their inaction.³³⁶ Ethiopia accordingly prepared a policy: the first National Plan of Action (NPA) for children and women, drafted to be implemented from 1996 to 2000, was issued in 1994.³³⁷ The second National Plan of Action for Children, (only for children) was issued and came into effect in 2004. It was meant to be implemented from 2003 up to 2010 and beyond. The objective of the National Plan of Action was implementation of the CRC as well as a resolution (known as the World fit for Children) issued by the UN. It however failed to refer to ACRWC.³³⁸

Moreover, it is almost impossible to give effect to socio-economic rights of children in a drastically declining economic situation such as in Ethiopia.³³⁹ Realising the socio-economic needs of children has never been simple, even when there is legislation that guarantees their rights. It cannot happen with the signing of child rights instruments.

In a world in which it is universally recognised that ‘mankind owes to the child the best it has to give’, surely the only reason why children lack rights must be lack of the means to provide them with rights.³⁴⁰

Throughout the world children are often pushed to side lines from enjoying their rights as enunciated in international child rights norms. This is mainly due to severe poverty, maladministration, the uncontrolled spread of major diseases such as

335 Refer to General Comment No.5, *Committee on the Rights of the Child*, CRC/GC/2003/5 para 39; Ledogar R 'Realizing rights through national programmes of action for children' in Himes *Implementing the Convention on the Rights of the Child* 56.

336 Refer to General Comment No.5, *Committee on the Rights of the Child*, CRC/GC/2003/5 para 39; Ledogar R 'Realizing rights through national programmes of action for children' in Himes *Implementing the Convention on the Rights of the Child* 56.

337 Ministry of Labor and Social Affairs (MOLSA) *Final Report on Ethiopia's National Plan of Action for Children* (1996 - 2010 and beyond) 2004 Addis Ababa 30. See also Children, youth and Family Affairs Department (CYFAD) of Addis Ababa 2001 *Challenges in Implementing the Convention on the Rights of the Child in Ethiopia* 2001 7.

338 Ministry of Labor and Social Affairs (MOLSA) 2004 *Ethiopia's National Plan of Action for 2003 up to 2010 and beyond* Addis Ababa 44.

339 Nieuwenhuys 2001 *Journal of the International African Institute* 550.

340 Ennew and Milne (1989: 14) in Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 62.

HIV/AIDS and armed conflict.³⁴¹ Poverty and population increase are two major causes of children not enjoying their basic rights.³⁴²

Other major problems of implementation include societal culture and attitude, poverty and unemployment. The societal perception in Ethiopia is also not as cooperative as it is supposed to be for the realisation of children's rights in general, and their socio-economic rights in particular. The Ethiopian community is very sceptical about new changes. The CRC was for instance received with derision, some saying that it was possibly well designed for Europe and the United States but failed to consider their way of life.³⁴³ According to community members rights of children are a fad – something that will vanish when the child rights based NGOs withdraw their activities.³⁴⁴

In this regard, Bartlett³⁴⁵ emphasises that:

broad social understanding of children's rights throughout society is essential to using the Convention as a framework for change. Without this common understanding, rights-based arguments for initiatives targeted at children can generate misunderstanding and resentment. It is especially important that people accept the principle of non-discrimination, and that their understanding of children's rights extends to those groups they might unconsciously exclude – the children of minority groups, girls hidden from public view, adolescents who may be considered adults, and the poorest and most marginalised children. A real acceptance of the Convention requires nothing less than a change in culture.

Ethiopian society, especially poor families whose life is marred with poverty, does not have an interest in learning about children's rights since they consider the issue of children's rights to be a luxury.³⁴⁶ Ethiopia does not have adequate institutions and skilled manpower, a sufficient budget or a sustainable reporting system. The strong emphasis given to the best interests of the child is considered as incompatible with the notion of the child-family relationship in Ethiopia where the best interest of the

341 UNICEF 2006
http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev%281%29.pdf.

342 Wallace 2005 *Masters of Arts Dissertation American University* 46.

343 Nieuwenhuys 2001 *Journal of the International African Institute* 550.

344 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 60.

345 Bartlett *et al Cities for Children* 251.

346 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 60.

child is inextricably linked with the interests of the whole family. Singling out individual rights of a child in a society where separate rights are neither claimed nor recognised is therefore questionable.³⁴⁷ As is true in different parts of Africa, there is a desire to uphold group solidarity and group rights in Ethiopia and that fact overshadows the needs and interests of individual children and obstructs the implementation of the revolutionary ideals of international children's rights instruments.³⁴⁸

Merely clinging to traditional Ethiopian household customs cannot be effective all the time. Street children, for instance, are responsible for their own lives and children themselves become heads of households when they are orphaned. Even those children who live in traditional household contexts suffer from oppression rooted in the patriarchal household system. Children in a traditional household require consideration of their unique situation. Formulating policies and strategies based only on parents, adults, or families, is insignificant for parents are sometimes the protagonists in the violation of a number of children's rights.³⁴⁹

State parties are required to reconsider all national legislation and policies comprehensively and make sure that they correspond with the CRC. States are also required to take administrative and other measures that are necessary for a well organised system of enforcement of the CRC.³⁵⁰ The legislative, judicial and executive organs of government, both at federal and state level, are obliged to implement the FDRE Constitution – which is the supreme law of the land – as well as the international human rights instruments it incorporates.³⁵¹ The implementation of the socio-economic rights of children as incorporated into the domestic laws of Ethiopia via the constitutional domestication provision³⁵² is the responsibility of all organs of the state.

347 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 60.

348 Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell *Children's Lives in an Era of Children's Rights* 60.

349 Goel 2009 *African Journal of Political Science and International Relations* 152.

350 General Comment No.5 Committee on the Rights of the Child CRC/GC/2003/5. The duty to comprehensively review national legislations and policies entails making the CRC part and parcel of the domestic legal system, incorporating its basic principles and standards in the texts of the Constitution, and re-evaluating child-focused laws in order to harmonise them with the CRC.

351 Section 9 of FDRE Constitution.

352 Section 13 (2) of FDRE Constitution.

In its responsibility to install a well-coordinated system of implementation for purposes of the CRC a state party is bound to accomplish a number of other actions. The major ones are:³⁵³

- Preparing an inclusive and rights-focused national plan of action rooted in the Convention which must have unfeigned, practicable and quantifiable objective;
- Establishing systematic structures within the state administration at the highest possible level with a mission of organising different child-sensitive branches and levels of state administration and evaluation of any legislative proposal for its impact on children before it is put into effect, and assessing its post-implementation effect on them so as to oversee and control the execution/realisation of the CRC;
- Taking essential measures to ascertain the collection of adequate and dependable data about children and, putting an effective system in place for scrutiny and appraisal of those data *vis-a-vis* domestically pertinent standards. The budget allocated for direct or indirect promotion of child welfare should also be distinguished, and steps need to be taken to ensure that children are able to be seen in it; and
- Educating and building the capacity of individuals who are in charge of enforcing the CRC, and permitting keen contribution of stakeholders, like qualified educators and lawyers as well as academic institutions, NGOs, families, local communities, community leaders and faith groups.

The condition of children in Ethiopia also requires dedicated and independent advocacy.³⁵⁴ Independent national human rights institutions in Ethiopia need to focus on children's rights and effectively harness their powers to advocate children's human rights. Ethiopia needs to have a children's unit or children's ombudsman within national institutions.³⁵⁵ This would promote the recognition and realisation of standards and principles accepted by international children's rights documents for all

353 General Comment No.10, Committee on the Rights of the Child, CRC/GC/2003/5 paragraphs 39, 45, 48, 51, 52, 53 and 56

354 Hossain *Human Rights Commissions and Ombudsman* 141.

355 Hossain *Human Rights Commissions and Ombudsman* 137.

children in Ethiopia; advocate prioritisation of children's rights by the state and improvement of public attitudes towards children; independent national human rights institutions will influence rules, strategies and practices that affect the rights of children, lobby for cooperation of different government branches, and advocate for the effective use of scarce resources for the realisation of children's rights. They can create awareness of children's human rights gather and disseminate data on the recognition and implementation of children's human rights.³⁵⁶

As Ethiopia is a federal state, there is a power dichotomy between the federal and state governments. Yet, as per the federal Constitution, states are bound to respect the powers of the federal government, and the latter is bestowed with the power of negotiating and ratifying international agreements.³⁵⁷ Besides, article 13(2) of the constitutions of the regional states of Ethiopia – which has a similar wording to that of the federal Constitution – provides that international covenants are benchmark guidelines for the interpretation of fundamental rights and freedoms enshrined in the respective Constitutions.³⁵⁸ Hence, it can be deduced that regional states are bound by the international covenants ratified by the federal government as well as by the interpretative guidelines provided by these covenants.³⁵⁹ Any regional state law that contravenes the provisions of international covenants that detail socio-economic rights of children is therefore deemed to be in violation of both the federal constitution and the respective regional constitutions.³⁶⁰

356 Hossain *Human Rights Commissions and Ombudsman* 137-138.

357 Section 50(8) cum 51(8) of the FDRE Constitution.

358 See for example Art. 13(2) of The Revised Constitution of the Amhara National Regional State Proclamation No. 59 of 2001; The Revised Constitution of the Southern Nations, Nationalities and Peoples' Regional State Proclamation No. 39 of 2001; The Revised Constitution of the Oromia National Regional State Proclamation No. 46 of 2001.

359 Yohannes and Assefa 2012 www.africanchildforum.org 12.

360 Yohannes and Assefa 2012 www.africanchildforum.org 12.

5 Conclusions and Recommendations

In this study the inadequacy of measures taken by Ethiopia with regard to the recognition and implementation of children's socio-economic rights and the consequent suffering and neglect of children was portrayed and illustrated. The FDRE government has failed to adequately integrate international children's socio-economic rights into domestic laws. The failure of Ethiopia to sufficiently recognise the socio-economic rights of children was depicted in light of a lack of a constitutional provision that recognises these rights, the non-existence of a separate act on children's rights, or at the least, to translate and publish international children's rights instruments as required by the domestic law and reality.

Ethiopia does not have separate legislation on children's rights. Even though the Committee recommends the adoption of a children's act, and the translation as well as the publication of international children's rights instruments, Ethiopia does not comply with those recommendations. The researcher proposes that a separate act is indispensable. The translation and publication of international children's rights instruments is also equally relevant for the realisation of these rights.³⁶¹ Ethiopia must take the necessary measures to translate international children's rights instruments and publicise them to facilitate the enforceability of the rights in courts of law.

Socio-economic rights pertaining to every person are also formulated in vague and equivocal terminology and fall short of giving meaningful protection to children's socio-economic entitlements.³⁶² The failure of the FDRE Constitution to treat children as bearers of socio-economic rights and to embrace those entitlements reduces the possibility of claiming socio-economic privileges before the courts.³⁶³ The unqualified constitutional recognition of children's socio-economic rights is of paramount importance as the experience of South Africa demonstrates. It is relevant for the viable and practicable interpretation of the rights domestically.³⁶⁴ The study proposes that a well-defined body of law that provides for children's socio-economic rights would be a stepping stone for genuine realisation of those rights. Constitutional

361 Refer to sub-section 3.4 above.

362 Refer to sub-section 3.2.2 above.

363 Refer to sub-section 3.2.2 above.

364 Refer to sub-section 3.2.4 above.

recognition would provide a solid background for fortification of the rights of children. The scrutiny and pressure of the Committee also shows that constitutional recognition of children's rights is one means by which signatories satisfy their obligations under the CRC. Ethiopia should not wait for pressure to boost its concern for children especially regarding their socio-economic rights. The real needs of children demand reconsideration of the constitutional text to enshrine their socio-economic rights in particular.

Owing to the lengthy process of amending a Constitution the study suggests that the easy and prompt measures needed to be taken by Ethiopia are the translation and official publication of the international children's rights conventions as well as enacting separate legislation that guarantees children's rights in detail by taking the special situation of Ethiopian children into account.

The contemporary treaty internalisation approach of Ethiopia is also stained with controversy. On the one hand ratification suffices for domesticating an international treaty, while it needs to be published and translated for its implementation on the other. Failure of government to translate and publish international children's rights instruments undermines their implementation.³⁶⁵ Measures adopted by the Ethiopian government toward the implementation of children's socio-economic rights are therefore insignificant.³⁶⁶ In light of the lack of constitutional provision or a separate act on children's socio-economic rights and unsettled argument that taints the status and validity of ratified international human rights' treaties, it can be concluded that the recognition of children's socio-economic rights in Ethiopia is inadequate for realisation of the rights.

The Ethiopian legislature has enacted a law that limits the activities of NGOs that desperately try to help children in Ethiopia. There is no permanent organ that deals with children's rights under the executive branch of the government. The activities of the executive are insignificant and the judiciary has yet to be seen to tackle the confusion on the implementation of international human rights instruments. The legislative, institutional and practical complications are obstacles that hinder the implementation of socio-economic rights of children in Ethiopia. The government officials and the community lack awareness of the existence and relevance of those

365 Refer to sub-section 3.3.3 above.

366 Refer to sub-section 4.2 above.

rights.³⁶⁷ The study proposes that legal and institutional measures should be taken for the realisation of children's socio-economic rights.³⁶⁸

The study suggests that the legislature should enact a separate act that guarantees children's socio-economic rights. The separate act should consider the unique reality of Ethiopian children and the traditions of the society. The judiciary should apply the law that gives the best legal protection to children and courts should interpret the domesticated international instruments. As ratification is the only requirement provided by the FDRE Constitution, the judiciary should be bound by that. It should step up and fill the gap created by the absence of translation and publication of international instruments. The study proposes that the provisions of the FDRE Constitution should prevail in any argument regarding domestication of international instruments. The only requirement provided by the FDRE Constitution is the ratification of international convention. Courts can therefore interpret ratified international children's rights instruments and the beneficiaries of the rights can claim privileges guaranteed in the instruments.

The executive should discharge its responsibility of realising the socio-economic rights of children and especially with regard to street children government must act unconditionally. It is also required to create awareness of officials in charge of the implementation and to the community at large. Government should pursue the goal of developing institutions, administrative structures and policies which give real recognition to the socio-economic rights of children. Government is also required to reduce poverty in order to try and rectify the exploitation of children as well as provide support to victims of child abuse and neglect as far as the State's resources allow. The state should give appropriate independence, powers, duties and adequate resources to human rights institutions so that they are able to bring the reality of children's lives to the fore and force people and politicians to accept that reality.

In *Grootboom v Oostenberg Municipality* the Constitutional Court of South Africa ruled that the government has a duty to provide socio-economic provisions to children as well as to their parents, depending on the circumstances.³⁶⁹ The study

367 Refer to sub-section 4.3 above.

368 Refer to sub-section 4.3 above.

369 Refer to section 3.2.4 above.

suggests that the Ethiopian courts should follow the example of the Constitutional Court in interpreting the international conventions ratified by Ethiopia.³⁷⁰

The consequences and costs of failing children are very high; they could either make or break a country. The life of children in Ethiopia, especially homeless children, is full of misery. Every single day is an ordeal. Despite the plight of children, the Ethiopian government has failed to take important measures towards realising their socio-economic privileges and thus children are the most neglected part of the society. Therefore, Ethiopia has not lived up to its commitment under international children's rights conventions.

As a result of poverty and their inherent vulnerability, the very survival of Ethiopian children may not stand the test of time if the Ethiopian legislature, executive, and judiciary stand still with regard to their respective duty of enacting, implementing, and interpreting the socio-economic rights of children.

Hence, the following is recommended as a policy line:

- Ethiopia must provide for socio-economic rights of children under its Constitution.
- International instruments, especially dealing with the socio-economic rights of children, need to be fully domesticated via publication and translation to domestic working languages of the judiciary.
- The court must be in a position to access the international instruments in its working language.
- Ethiopia also needs to work towards sensitising the socio-economic rights of children among society and different functionaries of the government.
- Institutions of rule of law must be seen to work towards the principle of the best interest of the child.
- The nation needs also urgently to tackle abject poverty conditions of the people in general, and children in particular, since poverty is the greatest human right violation.

370 The judiciary should reclaim its rightful place of interpreting the domesticated international instruments despite the inherent controversy and doubt that surrounds them. It is for the courts to settle the interpretation of ratified international conventions although they are not translated to local vernaculars and published as required by subsidiary domestic law.

- In general, the executive, the judiciary, and the legislator must work in tandem to realise the socio-economic rights of children in general, and street children in particular.

Bibliography

Literature

A

Abebe *The Potential Role of Constitutional Review*

Abebe AK *The Potential Role of Constitutional Review in the Realisation of Human Rights in Ethiopia* (LLD-dissertation University of Pretoria 2012)

Abebe *Geografiska Annaler*

Abebe T 2008 "Earning a Living on the Margins: Begging, Street Work and the Socio-Spatial Experiences of Children in Addis Ababa" *Geografiska Annaler* 271-284

Abebe and Tefera Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh and Ansell (eds.) *Children's Lives in an Era of Children's Rights*

Abebe T and Tefera T Earning rights Discourses on children's rights and proper childhood in Ethiopia in Imoh AT and Ansell N (eds.) *Children's Lives in an Era of Children's Rights The Progress of the Convention on the Rights of the Child in Africa* (Routledge 2014 Abingdon)

Alemayehu 2008 *Journal of Ethiopian Law*

Alemayehu S "The Constitutional Protection of Economic and Social Rights in the Federal Democratic Republic of Ethiopia" 2008 *Journal of Ethiopian Law* 147-148

Achilihu *Do African Children Have Rights?*

Achilihu SN *Do African Children Have Rights?* (Universal Publishers Boca Raton 2010)

Alemayehu 2008 *Journal of Ethiopian Law*

Alemayehu S "The Constitutional Protection of Economic and Social Rights in the Federal Democratic Republic of Ethiopia" 2008 *Journal of Ethiopian Law* 147-148

Allan *Constitutional Justice*

Allan TRS *Constitutional Justice: A Liberal Theory of the Rule of Law* (Oxford University Press Oxford 2001)

Assefa *The Making and Status of Treaties in Ethiopia*

Assefa G *The Making and Status of Treaties in Ethiopia as Envisaged by the 1994 Constitution of the FDRE: A comparative Approach* (Unpublished 1996 Faculty of Law Addis Ababa University)

Assefa 2014 *Mekelle University Law Journal*

Assefa AG 2014 "Advancing Children's Rights in Africa: The Role of the African Children's Charter and its Monitoring Body" *Mekelle University Law Journal* 66-101

B

Bartlett et al *Cities for Children*

Bartlett S et al *Cities for Children: Children Rights, Poverty Urban Management* (Earthscan London 1999)

Beiter *The Protection of the Right to Education*

Beiter KT *The Protection of the Right to Education by International Law* (Martinus Nijhoff Leiden 2006)

Bekink & Brand 'Constitutional Protection of Children' in Davel *Introduction to Child Law in South Africa*

Bekink & Brand 'Constitutional Protection of Children' in Davel CJ *Introduction to Child Law in South Africa* (Juta Lansdowne 2000)

Brand and Heyns *Socio-Economic Rights*

Brand D and Heyns C *Socio-Economic Rights in South Africa* (PULP Pretoria 2005)

Brownlie *Principles of Public International Law*

Brownlie I *Principles of Public International Law* (Oxford University Press Oxford 2008)

C

Chirwa DM Combating Child Poverty: The Role of Economic, Social and Cultural Rights in Sloth-Nielsen *Children's Rights in Africa* in Sloth-Nielsen *Children's Rights in Africa*

Chirwa DM Combating Child Poverty: The Role of Economic, Social and Cultural Rights in Sloth-Nielsen *Children's Rights in Africa* in Sloth-Nielsen J *Children's Rights in Africa: A Legal Perspective* (Ashgate Hampshire 2008)

Chirwa 2002 *International Journal of Children's Rights* 158

Chirwa DM "The merits and demerits of the African Charter on the Rights and Welfare of the Child" 2002 *International Journal of Children's Rights* 158

D

Darrow M and Alston P 'Bills of Rights in Comparative Perspective' in Alston *Promoting Human Rights*

Darrow M and Alston P 'Bills of Rights in Comparative Perspective' in Alston P *Promoting Human Rights through Bills of Rights: A Comparative Perspective* (Oxford University Press Oxford 1999)

F

Franklin B (ed) Children's Rights x-xi and Jansen Van Rensburg L and Oliver MP International and Supra-national Law 626-627 in Murray *The utilisation of socio-economic rights of children*

Franklin B (ed) Children's Rights x-xi and Jansen Van Rensburg L and Oliver MP International and Supra-national Law 626-627 as referred to in Murray IM *The utilisation of socio-economic rights of children to alleviate poverty in South Africa* (LLM-thesis NWU 2003)

G

Gebregiorgis 2009 *Ethiopian Human Rights Law*

Gebregiorgis G "The Incorporation and Status of International Human Rights under the Federal Democratic Republic of Ethiopia Constitution" 2009 *Ethiopian Human Rights Law Series* 44

Goel 2009 *African Journal of Political Science and International Relations*

Goel V "Children's human rights in underdeveloped country: A study in Ethiopian perspective" 2009 *African Journal of Political Science and International Relations* 151

H

Henkin Louis The Rights of Man Today (1979) 95 in Soboka 2009 *Journal of Ethiopian Law*

Henkin Louis The Rights of Man Today (1979) 95 in Soboka T "The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia" 2009 *Journal of Ethiopian Law* 140

Heyns and Brand 1998 *Law Democracy and Development* 153-167,160

Heyns CH and Brand D "Introduction to socio-economic rights in the South African Constitution" *Law Democracy and Development* 160

Hodgkin and Newell 'The Child's Right to life and Maximum Survival and Development' in Hodgkin *et al* (eds) *An Implementation Handbook*

Hodgkin R and Newell P 'The Child's Right to life and Maximum Survival and Development' in Hodgkin *et al* (eds) *An Implementation Handbook for the Convention on the Rights of the Child* (UNICEF Newyork 2007)

Hongju 1999 *Indiana Law Journal* 1397-1417

Hongju H "How Is International Human Rights Law Enforced?" 1999 *Indiana Law Journal* 1397-1417

Hossain *Human Rights Commissions and Ombudsman*

Hossain K et al *Human Rights Commissions and Ombudsman Offices National Experiences throughout the World* (Kluwer Law International The Hague 2000)

Howe and Covell 2003 *Human Rights Quarterly* 1072

Howe RB and Covell K "Child Poverty in Canada and the Rights of the Child" *Human Rights Quarterly* 1072

I

Idris 2000 *Journal of Ethiopian Law* 113.

Idris I "The place of International Human Rights Conventions in the 1994 Federal Democratic Republic of Ethiopia Constitution" 2000 *Journal of Ethiopian Law* 113

K

Kibret *Competence and Legitimacy of Ethiopian Courts*

Kibret SB *Competence and Legitimacy of Ethiopian Courts in the Adjudication of Socio-economic rights: An Appraisal of the Challenges and Prospects* (LLM-dissertation Addis Ababa University 2010)

L

Ledogar R 'Realizing rights through national programmes of action for children' in Himes *Implementing the Convention on the Rights of the Child*

Ledogar R 'Realizing rights through national programmes of action for children' in Himes JR (ed.) *Implementing the Convention on the Rights of the Child* (Martunus Nijhoff Florence 1995)

Levit 1998 - 1999 *Columbia Journal Transnational Law* 280-355

Levit JK "The Constitutionalization of Human Rights in Argentina: Problem or Promise?" 1998 -1999 *Columbia Journal Transnational Law* 280-355

Liebenberg *Socio-Economic Rights*

Liebenberg S *Socio-Economic Rights adjudication under transformative constitution* (Juta Claremont 2010)

Llyod 2002 *African Human Rights Law Journal* 11-32

Llyod A "A theoretical analysis of the reality of children's rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child" 2002 *African Human Rights Law Journal* 14

M

Mahoney *The Challenge of Human Rights*

Mahoney J *The Challenge of Human Rights: Origin, Development and Significance* (Blackwell Pub London 1993)

Majka and Ensalaco *Children's Human Rights*

Majka LC and Ensalaco M *Children's Human Rights: Progress and Challenges for Children World Wide* (Rowman and Littlefield Maryland 2005)

Martin Schenin International Human rights in National Law in Raija Hanki and Markku Suksi (ed) *An Introduction to the International Protection of Human Rights* (2002) 421 in Soboka 2009 *Journal of Ethiopian Law*

Martin Schenin International Human rights in National Law in Raija Hanki and Markku Suksi (ed) *An Introduction to the International Protection of Human Rights* (2002) 421 in Soboka T "The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia" 2009 *Journal of Ethiopian Law* 140

Mayessa *The Integrated Approach*

Mayessa AD *The Integrated Approach A quest for Enhancing Justiciability of Socio-economic rights Under the Ethiopian constitution* (LLM-dissertation Addis Ababa University 2010)

Messele *Enforcement of Human Rights in Ethiopia*

Messele R *Enforcement of Human Rights in Ethiopia* Research Subcontracted by Action Professionals' Association for the People (APAP)

Mgbako et al 2008 *Fordham International Law Journal*

Mgbako C et al "Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights" 2008 *Fordham International Law Journal* 5

N

Nieuwenhuys 2001 *Journal of the International African Institute*

Nieuwenhuys O "By the Sweat of Their Brow? 'Street Children', NGOs and Children's Rights in Addis Ababa" 2001 *Journal of the International African Institute* 539-557

Nolan A 'Role for the Courts' in Alen et al *The UN Children's Rights Convention*

Nolan A *Role for the Courts* in Alen et al *The UN Children's Rights Convention: theory meets practice* (Intersentia Oxford 2007)

O

Oppenheim *International Law of Treaties*

Oppenheim L *International Law of Treaties* 8th ed. (Longmans London 1986)

P

Parker 'Resources and Child Rights: an Economic Perspective' in Himes *Implementing the Convention on the Rights of the Child*

Parker 'Resources and Child Rights: an Economic Perspective' in Himes JR *Implementing the Convention on the Rights of the Child: Resource Mobilization in Low-Income Countries* (Martinus Nijhoff The Hague 1995)

Proudlock *Children's Socio-economic Rights* in Boezaart *Child Law*

Proudlock P *Children's Socio-economic Rights* in Boezaart T *Child Law in South Africa* (Juta Claremont 2009)

Pupavac 1998 *Human Rights Law Review*

Pupavac V "The Infantilisation of the South and the UN Convention on the Rights of the Child" 1998 *Human Rights Law Review* 342

R

Rakeb Messele Enforcement of Human Rights in Ethiopia 15 (2002) in Mgbako et al 2008 *Fordham International Law Journal*

Rakeb Messele Enforcement of Human Rights in Ethiopia 15 (2002) in Mgbako C et al "Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights" 2008 *Fordham International Law Journal* 5

Regassa 2009 *Mizan Law Review*

Regassa T "Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia" 2009 *Mizan Law Review* 289

Robinson 2003 *Potchefstroom Electronic Law Journal*

Robinson JA "Children's Rights in the South-African Constitution" 2003 *Potchefstroom Electronic Law Journal* 63

S

Smith *Texts and Materials*

Smith RKM *Texts and Materials on International Human Rights* 3rd ed.
(Routledge London 2013)

Soboka 2009 *Journal of Ethiopian Law*

Soboka T "The Monist-Dualist Divide and the Supremacy Clause:
Revisiting the Status of Human Rights Treaties in Ethiopia" 2009 *Journal
of Ethiopian Law* 140

T

Tobin 2005 *South African Journal on Human Rights* 104

Tobin J "Increasingly seen and heard: The Constitutional Recognition of
Children's Rights" 2005 *South African Journal on Human Rights* 104

V

Van Bueren 1999 *Human Rights Quarterly* 680, 681

Van Bueren G "Combating Child Poverty: Human Rights Approaches"
1999 *Human Rights Quarterly* 680, 681

Van Bueren 1999 *South African Journal on Human Rights* 56

Van Bueren G "Alleviating Poverty through the Constitutional Court"
1999 *South African Journal on Human Rights* 52-74

Van Bueren *The International Law*

Van Bueren G *The International law on the Rights of the Child* (Nijhoff
Dordrecht 1995)

Vazquez 2008 *Harvard Law Review*

Vazquez CM "Treaties as the Law of the Land: The Supremacy Clause and Presumption of Self-Execution" 2008 *Harvard Law Review* 14

W

Wallace *United Nations Convention on the Rights of the Child's*

Wallace L *United Nations Convention on the Rights of the Child's Impact on Ethiopian Street Children's Access to Basic Education* (Masters of Arts Dissertation American University 2005)

Y

Yeshanewu 2008 *African Human Rights Law Journal*

Yeshanewu S "The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia" 2008 *African Human Rights Law Journal* 273-293

Cases

Grootboom v Oostenberg Municipality 2000 3 BCLR 277 (C)

Inter-American Court on Human Rights Advisory Opinion on the Juridical Status and Human Rights of the Child OC-17/02, 28 August 2002

Negaso Gidada v The House of Peoples Representatives and the House of Federation Federal High Court Appeal File No. 41183 2004

Tsedale Demise v Kifle Demise Federal Supreme Court Cassation Division File No. 23632 2000

Legislation and International and Regional Documents

A

African Charter on the Rights and Welfare of the Child 1999

C

Constitution of the Republic of South Africa Act 108 of 1996

Convention on the Rights of the Child 1989

Convention on the Rights of the Child Ratification Proclamation 10 of 1992

F

Federal Negaritt Gazeta Constitution of the Federal Democratic Republic of Ethiopia
Proclamation no. 1 of 1995

Federal Negarit Gazeta Establishment Proclamation No. 3 of 1995

Federal Negaritt Gazeta Federal Courts Proclamation no 25 of 1996

I

International Convention on Economic Social and Cultural Rights 1966

O

Optional Protocol to the Convention on the Rights of the Child on a communications
procedure 2014.

P

Proclamation to Provide for the Registration and Regulation of Charities and
Societies No. 621 of 2009

T

The Revised Constitution of the Amhara National Regional State Proclamation no 59
of 2001

The Revised Constitution of the Oromia National Regional State Proclamation no 46
of 2001

The Revised Constitution of the Southern Nations, Nationalities and Peoples' Regional State Proclamation no 35 of 2001

Internet sources

A

Adem G 2012 *Child Poverty in Ethiopia* www.africanchildforum.org [date of use 10 March 2014]

African Child Policy Forum Unknown *Harmonisation of Laws on Children in Ethiopia country brief* <http://www.acerwc.org/wp-content/uploads/2012/05/English-ACERWC-Ethiopia-Harmonisation-of-Laws-on-Children.pdf> [date of use 11 March 2014]

C

Claiming Human Rights 2012 *When Human Rights are violated in Africa* <http://www.claiminghumanrights.org/> [date of use 10 March 2014]

E

Ethiopian Human Rights Commission 2011 *Human Rights Bulletin 7 vol. 1 No 5 Issue 3* <http://ehrc.org.et/LinkClick.aspx?fileticket=7nDDzAMpwzM%3d&tabid=106> [date of use 14 February 2014]

H

Humanium Help the children 2012 *Children of Ethiopia Realizing Children's Rights in Ethiopia* <http://www.humanium.org/en/ethiopia/> [date of use 10 April 2014]

I

Icelandic Human Rights Centre Implementation Unknown *Implementation* <http://www.humanrights.is/thehumanrightsproject/humanrightscasesandmaterials/humanrightskonceptsideasandfora/theconceptsofhumanrightsanintroduction/implementation/> [date of use 18 February 2014]

R

Rosa S and Dutschke M 2006 *Child Rights at the Core*

<http://ci.org.za/depts/ci/pubs/pdf/rights/workpap/CHILDRIGHTSATTHECORE.pdf>

[date of use 18 March 2014]

S

Save the Children 2014 *Ethiopia Humanitarian Aid*

http://www.savethechildren.org/site/c.8rKLIXMGIpI4E/b.6150299/k.7399/Ethiopia_Humanitarian_Aid.htm [date of use 17 March 2014]

T

The World Organisation against Torture Unknown *Rights of the Child in Ethiopia*

<http://www.omct.org/files/2001/01/2123/ethiopiacc01.01.pdf> [date of use 01 April 2014]

U

University of Minnesota Human rights Library 1997 *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*

http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html [date of use 22 February 2014]

UNICEF 2005 Convention on the Rights of the Child

http://www.unicef.org/crc/index_protecting.html [date of use February 2014]

UNICEF 2006 *The state of the world's Children excluded and invisible*

http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev%281%29.pdf [date of use 10 February 2014]

University of Minnesota Human rights Library 1997 *Concluding Observations of the Committee on the Rights of the Child, Ethiopia, U.N. Doc. CRC/C/15/Add.67*

<http://www1.umn.edu/humanrts/crc/ethiopia1997.html> [date of use 20 February 2014]

UNHCR 2006 *UNHCR Guidelines on Formal Determination of the Best Interest of the Child* [www.unicef.org/violencestudy/pdf/BIDGuidelines-](http://www.unicef.org/violencestudy/pdf/BIDGuidelines-provisionalreleaseMay06.pdf)

[provisionalreleaseMay06.pdf](http://www.unicef.org/violencestudy/pdf/BIDGuidelines-provisionalreleaseMay06.pdf) [date of use 10 April 2014]

UNICEF Unknown *The Convention on the Rights of the Child*

www.unicef.org/crc/files/guiding_Principles.pdf [date of use 10 April 2014]

United Nations Human Rights 2012 *Committee on the Rights of the Child*

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx> [date of use 10 April 2014]

United Nations Treaty Collection 2014 *ICESCR* <https://treaties.un.org/> [date of use 10 March 2014]

Y

Yohannes S and Assefa A 2012 *Harmonisation of laws relating to children: Ethiopia*

www.africanchildforum.org [date of use 10 February 2014]

International bodies' documents

C

Committee on the Rights of the Child Concluding Observations for Niger (2002)
CRC/C/15/Add179

Committee on the Rights of the Child Concluding Observations for Switzerland
(2002) CRC/C/15/Add182

Committee on the Rights of the Child Concluding Observations for Eritrea
CRC/C/15/Add204

Committee on the Rights of the Child Concluding Observations for Poland (2002)
CRC/C/15/Add194

Committee on the Rights of the Child Concluding observations for Nepal (1996)
CRC/C/15/Add57

Committee on the Rights of the Child Concluding Observations for Belgium (2002)
CRC/C/15/Add178

Committee on the Rights of the Child Concluding Observations for Cote d'Ivoire
(2001) CRC/C/15/Add155

Committee on the Rights of the Child Concluding Observations for Cambodia (2000)
CRC/C/15/Add128

P

Permanent Court of International Justice Advisory Opinion The Exchange of Greek and Turkish Populations (1925) PCIJ Reports series B No. 10

Regional bodies' documents'

A

African Commission on Human and Peoples' Rights The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria (2001) Comm. No. 155/96 15th Annual Activity Report

Ethiopian bodies' documents'

C

Children, youth and Family Affairs Department (CYFAD) of Addis Ababa Challenges in Implementing the Convention on the Rights of the Child in Ethiopia 2001

M

Ministry of Labour and Social Affairs (MOLSA) 2004 *Ethiopia's National Plan of Action for 2003 up to 2010 and beyond* Addis Ababa

Ministry of Labour and Social Affairs (MOLSA) Final Report on Ethiopia's National Plan of Action for Children 1996 - 2010 and beyond 2004 Addis Ababa