

THE RIGHT TO DEVELOPMENT UNDER THE CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA: SOME REFLECTIONS”

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Abstract:

At the world conference on human rights held in Vienna in 1993, members of the UN General Assembly unanimously agreed that the Right to Development (RTD) is an inalienable human right. Nonetheless, this consensus has not culminated in translating the nature of the right in to a binding human right entitlement. In Ethiopia, the RTD is a constitutionally guaranteed right. Under Art.43 of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution), it is provided that Peoples of Ethiopia as a whole, and each National, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development. However, the constitution is far from clarity in terms of setting out the content and scope of the right. The manner in which the right is enshrined also raises issues as to the modalities of its enforcement.

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I. INTRODUCTION

The RTD is a controversial and a relatively new concept. The controversy is mainly caused by the absence of consensus on its status, content and nature.² The United States and western countries contest the very existence of the RTD. The grounds for such nullification of the concept are based on reasons such as: its relation to the questionable economic social and cultural rights, its conceptual confusion and the conflict of jurisdiction which it may bring with trade and other international issues.³ Some commentators also characterized the concept as absurd. Jack Donnelly, for example, considered the RTD as a ‘search for the unicorn’ and maintained that no solid ground for claiming legal or moral right to development exists.⁴ On the contrary, a group comprising developing countries that favor RTD was created by the *Non-Aligned Movement*.⁵ The group campaigned for the creation of a *New International Economic Order* and declared development to be a human right.⁶

It is against this backdrop that the UN General Assembly adopted the Declaration on the Right to Development (DRD) in 1986.⁷ The DRD recognizes the RTD as an inalienable human right and declares that the human person is the central subject of the development process.⁸ Although the adoption of the instrument represents milestone in the recognition of the RTD as human right, initially, it did not receive full acceptance by the international community.⁹ It was during the world

² Laure-Helene-Piron, *The Right to Development A Review of the Current State of the Debate for the Department for International Development* 5 (2002)

³ Arjun Segupta, *On the Theory and Practice of the Right to Development* 35(Arjun Sengupta etal. eds., 2005)

⁴ Jack Donnelly, *In search of the Unicorn: The Jurisprudence and Politics of the Right to Development* 15 *Cal. W. Int'l L.J.* 473,477-479 (1985)

⁵ Arjun Segupta, *supra note 2*, at.35

⁶ Laure-Helene-Piron, *supra note 1*, at 9

⁷ UN Doc. A/RES/41/128 (1986) 186

⁸ DRD, Art.1 and Preamble Para 11

⁹ This is because, there was an objection by the US and eight abstentions while it was adopted.(Look at Koen De Feyter, *Towards a Framework Convention on the Right to Development* <http://library.fes.de/pdf-files/bueros/genf/09892.pdf>

conference on human rights which was held in Vienna in 1993 that the international community unanimously agreed to consider RTD as human rights.¹⁰

It should be underscored that albeit the RTD has garnered wide recognition as to its human right status, States are not legally bound to realize it for the DRD is not a legally binding international human rights treaty. However, in the African human rights system, the African Charter on Human and Peoples' Rights (ACHPR) which is a legally binding regional human rights treaty recognizes the RTD an enforceable human rights entitlement.¹¹ As set out under Article 1 of the Charter, State parties are bound to take legislative or other measures to give effect to the RTD.

Ethiopia has been party to the ACHPR since June 1998.¹² The RTD is given constitutional recognition.¹³ Under Art.43 of the FDRE Constitution, it is provided that Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development'. However, the constitution fails to clearly provide the content and scope of the entitlement. The manner in which the right is articulated also raises issues as to the modalities of its enforcement.

This article will put forward some reflections on the RTD guaranteed under the FDRE Constitution of Ethiopia. It will, in particular, attempt to respond to questions: what is the content of the RTD under the FDRE Constitution? Who are the right holders? Who are the duty bearers of the right? Is the RTD justiciable? The discussions will be presented in the following chronological order: the next section will briefly consider the current understanding on the nature of the RTD and discuss the content of the right as stipulated under the DRD and the ACHPR. The following part will, then, focus on the Ethiopian perspective and examine the content of the RTD under the FDRE Constitution. Afterwards, the right holders and duty bearers of the RTD will be identified. The

¹⁰ The Vienna Declaration and Programme of Action was adopted by 171 countries of the General Assembly including the US and every Western State (look at Obiora Chinedu, Okafor, *A regional Perspective: Article 22 of the African Charter on Human and Peoples' Rights* (Dec.10,2015), <http://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIVChapter27.pdf>

¹¹ *See id.*

¹² *See id.*

¹³ Art.43 of the FDRE Constitution

next part will then consider whether the RTD is justiciable in Ethiopia. The Article will finally conclude through identifying the main challenges surrounding the RTD enshrined under the FDRE Constitution and outlining ways that help to address them. In presenting discussions, an attempt will be made to substantiate the arguments with the decisions of the African Commission, state Courts, explanations made by UN organs and relevant literature.

II. THE RIGHT TO DEVELOPMENT: CONCEPTUAL UNDERPINNING

The traditional legal positivism assumes that an entitlement will not be given the status of human rights unless it gets recognition by a given community.¹⁴ Flowing from its own conception of human dignity, the community recognizes human rights through its norm creating authority.¹⁵ Once they are accepted by the community and recognized as human rights, they become binding on the community.¹⁶ As enunciated at the inception, the RTD is not yet a legally binding entitlement. At the world conference on human rights held in Vienna in 1993, as mentioned above, member states of the UN adopted the Vienna Declaration which considers the RTD as an inalienable human right. This mere recognition of the RTD as a human right without granting it legally binding status clearly contradicts the above stated positivist view of human rights since right without a correlated duty according to this view is worthless.¹⁷

As *Sengupta* elaborated, however, the rigid and inflexible view of rights has shifted to a broader understanding of rights-duty relationship.¹⁸ Unlike the traditional legal positivist view, no perfect linking of rights to exact duties of the duty bearers may be established. Holding this view, *Sen* propounded: “While it is not the specific duty of any given individual to make sure that the person has her rights fulfilled, the claims can be generally addressed to all those who are in a position to help”.¹⁹

¹⁴ Arjun Segupta, *supra note 2*, at.64

¹⁵ Joseph M.Isanga, *Foundations of the Human Rights and Development*,11 *Ave Maria L. Rev.* 123,129-132(2013)

¹⁶ Arjun Segupta, *supra note 2*,at 64

¹⁷ *See id.*

¹⁸ *Id.*, at 66

¹⁹ Amartya Sen., *Development As Freedom* 230 (2000)

Other scholars, such as *W. Tieya*, and *Michael Akerhurst* maintain that the wide acceptance of the DRD by the UN General Assembly will lay a strong foundation for the establishment of customary international law in respect of the RTD.²⁰ According to their view, though Declarations of the UN General Assembly including the DRD are not legally binding, they reflect the existence of *opinion juris* which may in turn sufficiently generate customary international law.²¹ Moving further, *Roland Rich* strongly argued that there is *custom* in relation to the DRD since the *opinion juris* generated has been accompanied by wide spread state practice.²² The phenomenon of overseas development assistance being given as if it was an entitlement, the recognition of South countries by world financial institutions as a special aid deserving category, the preferential treatment of developing States under the auspices of the General Agreement on Tariffs and Trade, and similar treatment under the Law of the Sea Convention are the main facts adduced by *Rich* to demonstrate the existence of wide spread state practice in respect of the DRD.²³

The content of the RTD as stipulated under the DRD. Article 1 of the DRD provides:

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized
2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

The above Article makes evident that the RTD is an inalienable human right. It also clarifies that there is a particular process of economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. Furthermore, it informs us that the RTD is a human right by virtue of which every human person and all peoples are entitled

²⁰ Obiora Chinedu Okafor, *The Status And Effect Of The Right To Development In Contemporary International Law: Towards A South-North "Entente"* 7 *Afr. J. Int'l & Comp. L.*, 874, 865-885 (1995)

²¹ *See id.*

²² *Id.*, at 876

²³ *See id.*

to participate in, contribute to and enjoy that particular process of development.²⁴ The Declaration defines Development under Paragraph 2 of the Preamble as: “A comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from”.

Through the Cumulative reading of Article 1(paragraphs 1 and 2) and the definition given to development, one can draw three components of the RTD. i. The RTD is the human right of every human person and all peoples to participate in the process of economic, social, cultural and political development which aims at the constant improvement of the well being of the entire population and of all individuals. As Sengupta elaborated, the process of development that is recognized as a human right is one ‘in which all human rights and fundamental freedoms can be fully realized.’²⁵ ii. The RTD also entitles all human persons and peoples to participate in the fair distribution of the results of development. In both of the above cases, participation is expected to be active, free and meaningful. iii. The third element of the RTD as can be gathered from the 2nd paragraph of Article.1 concerns the full realization of the right to self determination of peoples. The right guaranteed to peoples includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. This realization however is required to comply with the provisions of international covenants on human rights.²⁶ The rest of the provisions of the DRD reinforce and elaborate the contents of the RTD noted above.

It is also worthy to trace that the creation of *New International Economic Order* initiated by the *Non-Aligned Movement* has been reflected in the DRD.²⁷ Basically, the movement towards *New International Economic Order* comprises two objectives: The first objective emphasizes on

²⁴ Arjun K. Sengupta, *Conceptualizing the Right to Development for the Twenty-first Century* 68(2013)

²⁵ *See id.*

²⁶ The right to self determination is recognized under Articles of both the International Covenant on Economic Social and Cultural Rights as well as International Covenant on Civil and Political Rights. The content of the right to self determination under the DRD is therefore, required to be interpreted in line with the content of the right as enshrined under the two international covenants.

²⁷ DRD,Preamble,Para.14,Art.3

the need to have control over natural resources.²⁸ Large numbers of new independent states shift their priority from political independence to economic issues. There appears to be understanding by these states that political independence alone is not sufficient for development. Accordingly, the first objective of the movement has been ensuring control over natural resources of states as an objective.²⁹ The second objective aspires for the creation of an environment in which developed States can help less developed States to improve their economies.³⁰ To this end, the importance of undertaking a comprehensive reform of the existing international trade relation was stressed.³¹ It is possible to discern from the preamble that creating *New International Economic Order* was one of the driving factors for the adoption of the DRD.³² The declaration goes on to state that the realization of rights and fulfillment of duties by States should help the creation of *New International Economic Order*.³³

The RTD, as highlighted before, is recognized under the binding human rights treaty in the African human rights system. The ACHPR under Article 22 guarantees that: ‘all peoples shall have the right to their ‘economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind’. It is explicitly provided under the second paragraph of this very article that States have the duty, individually or collectively, to ensure the exercise of the right to development.

III. THE RIGHT TO DEVELOPMENT IN ETHIOPIA: THE LEGAL FRAMEWORK

The RTD is guaranteed under Article 43 of the FDRE Constitution. It reads:

The Right to Development

1. The Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development.

²⁸ Rose D'sa, *The right to Development' and the New International Economic Order with Special Reference to Africa*, 141(1984) <http://scholar.valpo.edu/twls/vol3/iss1/10>

²⁹ *See id.*

³⁰ Mutoy Mubiala, *The Contribution of African Human Rights Traditions and Norms to United Nations Human Rights Law, 4 Hum. Rights. And Int'l Legal Discourse* 210,225-227(2010)

³¹ *See id.*

³² Look at Para.14 of the DRD

³³ DRD,Art.3

2. Nationals have the right to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community.
3. All international agreements and relations concluded, established or conducted by the State shall protect and ensure Ethiopia's right to sustainable development.
4. The basic aim of development activities shall be to enhance the capacity of citizens for development and to meet their basic needs.

Undoubtedly, making reference to the provisions of the DRD and ACHPR in interpreting Article 43 of the FDRE Constitution will be a right approach. Article.13 (2) of the FDRE Constitution explicitly outlines that interpretations of the rights under chapter 3 (a chapter dealing with Fundamental Rights and Freedoms, including the RTD) should be in a manner conforming with the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia. This in effect means that interpretation of Article 43 of the Constitution should be made in light of the authoritative interpretations of the DRD and the ACHPR among others. Perhaps, the African Commission has, when interpreting the RTD guaranteed under the ACHPR, referred the DRD in *Endorois Case*.³⁴ It seems to be that the Commission followed this approach based on the instruction given to it by the Charter.³⁵ This modality will potentially facilitate the proper interpretation of Article 43 of the Constitution.

A. THE CONTENT OF THE RIGHT TO DEVELOPMENT UNDER THE FDRE CONSTITUTION

Analyzing the RTD to comprise the ‘the right to improved living standard’ and ‘the right to sustainable development’, by reading the first paragraph of Article 43 produced above, one may be confused. In particular, seen in light of the DRD and the comprehensive nature of the right in

³⁴ *Centre for Minority Rights Development (CEMIRIDE) on behalf of the Endorois Community v. Kenya*, Comm. No. 276/2003 (Endorois case) Para.283, https://www.hrw.org/sites/default/files/related_material/2010_africa_commission_ruling_0.pdf accessed on 11/12/2015

³⁵ Art.60 of the ACHPR enjoins the African Commission to draw inspiration from International law on human and peoples' rights including the UN Charter and other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights. Art.61 also empowers the Commission to draw inspiration from other general or special international conventions, laying down rules expressly recognized by member States of the Organization of African Unity (Now AU),

terms of accommodating civil, political, economic social and cultural rights,³⁶ the underlying reason behind singling out ‘the right to improved living standard’ appears to create hierarchy among rights and undermine the indivisibility, interdependent and interrelatedness of human rights anchored under the DRD and the ACHPR.³⁷ This approach is not taken either in the DRD or the ACHPR. In my opinion, , this modality may create difficulty in understanding the content of the RTD. This may in turn culminate in posing challenge in the sphere of implementation and enforcement.

The terminology ‘improved living standard’ is also unique to the FDRE Constitution. It is not used in any international or regional human rights treaties.³⁸ What is more, the content of the ‘right to an improved standard of living’ is elaborated neither in the Constitution nor under other subsidiary laws of the State. For the sake of understanding its real nature, it is reasonable to refer to the content of the right as spelled out under the International Covenant on Economic Social and Cultural Rights. This human rights treaty, to which Ethiopia is a party³⁹, provides that the realization of adequate standard of living requires fulfillment of elements including adequate food, clothing and housing, and the continuous improvement of living conditions. As the logic of interpretation warrants, the word ‘including’ used in the Article opens the door for adding other rights that are essential for adequate standard of living since it is an illustrative listing. The Committee on the ICESCR reasoned that the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living since it is one of the most fundamental conditions for survival.⁴⁰

³⁶ Look at Para.9 Art.6 and Art.9 of the DRD and Para.8 of the ACHPR

³⁷ *See id.*

³⁸ The International Covenant on Economic Social and Cultural Rights (ICESCR) uses the term ‘adequate standard of living’ (ICESCR) Art.11 The Universal Declaration on Human Rights(UDHR) under Article 25 uses the phrase: “...standard of living adequate for the health and well-being of himself and of his family...” The Convention on the Rights of the Child(CRC) under Article 27 uses the phrase:“...standard of living adequate for the child's physical, mental, spiritual, moral and social development.”

³⁹ Ethiopia ratified the ICESCR on 11 June, 1993 visit [http:// tbinternet .ohchr. org/_ layouts /Treaty Body External /Treaty.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx)

⁴⁰ ICESCR General Comment 15 (Twenty-ninth session, 2002): The Right to Water (arts. 11 and 12 of the Covenant), E/2003/22 (2002) 120 at para. 3.

The nature of development guaranteed is ‘the Right to Sustainable Development’. This term, as *Tatyana P. Soubbotina* explains is widely used by politicians all over the world, even though the notion is still rather new and lacks a uniform interpretation.⁴¹ According to the frequently referenced report of the United Nations World Commission on Environment and Development (1987), development will be sustainable if it meets the needs of the present without compromising the ability of future generations to meet their own needs.⁴² In the extensive elaborations following the above report, sustainable development has been identified to comprise three dimensions: economic, social and environmental.

Economic sustainability denotes to the ability to produce goods and services on a continuing basis, to maintain manageable levels of government and external debt, and to avoid extreme sectoral imbalances which damage agricultural or industrial production.⁴³ By environmental sustainability, it is meant to refer to a system which maintain a stable resource base and avoid unwise use of resources.⁴⁴ Social sustainability, on the other hand, is characterized by achievement of distributional equity, adequate provision of social services including health and education, gender equity, and political accountability and participation.⁴⁵ Sustainable development aims to balance the above mentioned three dimensions.⁴⁶

As clearly indicated under Article 43 of the FDRE Constitution produced above, right holders are entitled to participate in national development and, in particular, to be consulted with respect to policies and projects affecting their community. The Constitution does not clarify the nature of participation. However, to be in line with the explanation made by the African Commission, the participation should be understood to be effective.⁴⁷ It seems to be that the term

⁴¹ Tatyana P. Soubbotina, *Beyond Economic Growth: An introduction to sustainable Development* 8 (2004)

⁴² *Report of the World Commission on Environment and Development: Our Common Future*(1987),Para.27 (Dec 8,2015) <http://www.un-documents.net/our-common-future.pdf>

⁴³ Jonathan M. Harris, *Basic Principles of Sustainable Development* 6 (2000)

⁴⁴ *See id.*

⁴⁵ *See id.*

⁴⁶ Lj Kotze, *The Constitutional Court's Contribution to Sustainable Development In South Africa* 6 Potchefstroom Elec. L.J. 1,7-8(2003)

⁴⁷ Endorois case, *supra note 33*, Para.228

‘effective’ is meant to convey similar meaning with the notion of ‘free and meaningful participation’ employed under Article 2 Paragraph 3 of the DRD.

Article 43 of the FDRE Constitution also lacks a provision which entitle right holders to share the benefits of development projects. Perhaps, sub-Article 4 of Article 43 depicted above opens window for interpreting the right in a way entitling beneficiaries of the right to share the proceeds of development. Nonetheless, the way the provision is articulated does not offer clear message as to whether, for example, the benefits of development should be distributed fairly.⁴⁸ The African Commission in *Endorois Case* has held that failure to guarantee a ‘reasonable share’ in the profits of development projects amounts to violation of the right to development.⁴⁹ For similar reasons presented above, hence, the FDRE constitution should be interpreted to entitle right holders to share the benefits of development fairly.⁵⁰

B. RIGHT HOLDERS AND DUTY BEARERS OF THE RIGHT TO DEVELOPMENT UNDER THE FDRE CONSTITUTION

It is emphasized in the DRD that the State is duty bearer and instrument of obtaining rights vis-à-vis the international community.⁵¹ Under the ACHPR, States owe duty, individually or collectively to ensure the exercise of the RTD.⁵² It is also clear under Article 43 of the FDRE Constitution that the State is duty bearer of the RTD. As a party to the ACHPR, the government is bound to adopt legislative or other measures to ensure the realization of the contents of the right discussed above.⁵³ Also, the FDRE Constitution under Article 43 sub-Article 3 produced above

⁴⁸ Cumulative reading of Paragraph 2 of the Preamble to the DRD and Art. 1 of same offers the meaning that the DRD entitles beneficiaries of the RTD to share the proceeds of development fairly.

⁴⁹ *Endorois case*, *supra note 33* Para. 228

⁵⁰ Arguably, the terms ‘reasonable’ and ‘fair’ used by the African Commission and the DRD respectively should be understood to convey similar meaning. As discussed above, the African Commission draws inspiration from international instruments (including the DRD) in interpreting the provisions of the Charter. In this very case involving the *Endorois* community, the Commission under Paragraph 224 has given clue that it has drawn inspiration from international law in elaborating the content of the RTD.

⁵¹ States are referred to be duty bearers to realize domestically through their active role of obtaining rights vis-à-vis the international community (Look at DRD, Arts. 2(3), 3(1), 8)

⁵² ACHPR, Art. 22(2)

⁵³ As noted at the beginning, the ACHPR under Article 1 requires States Parties to adopt legislative or other measures to give effect to the RTD

requires all international agreements and relations concluded, established or conducted by the State to protect and ensure Ethiopia's right to sustainable development.

Unlike the DRD which makes the human person to be the center of development,⁵⁴the FDRE Constitution, like the ACHPR, entitles groups of peoples: *Peoples of Ethiopia as a whole*, and *each Nation, Nationality and People in Ethiopia* to be beneficiaries of the RTD.⁵⁵ The Constitution under Article 39(5) has defined *Nation, Nationality or People* as: “a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory”.

The African Commission in *Endorois case* has also elaborated on the elements to be considered for a certain group of people to be dubbed People. The elements identified are the existence of common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life or other bonds, identities and affinities they collectively enjoy.⁵⁶

C. IS THE RIGHT TO DEVELOPMENT JUSTICIABLE IN ETHIOPIA?

It is worthwhile to acknowledge that by adopting the sustainable development model, the FDRE Constitution has upheld the Rio Declaration, the Vienna Declaration and Program of Action as well as the Beijing Declaration and Platform for Action. This is due to the fact that in the above mentioned instruments, the importance of making development sustainable is reflected.⁵⁷ The effect of recognition of the right to sustainable development in Ethiopia is that any development endeavor will be required to pass the test of sustainability. Development projects, whether undertaken by government or private entities, should balance the above mentioned dimensions of sustainability: economic, social and environmental.

⁵⁴ DRD, Art.2(1)

⁵⁵ FDRE Constitution, Art.43(1)

⁵⁶ Endorois case, *supra note* 33, Para 151

⁵⁷ Rio Declaration, Principle 3, Vienna Declaration and Programme of Action, Vienna,(1993)(UN Doc. A/CONF.157/23), Para. 11.Beijing Declaration and Platform for Action,Para.36

However, it may be practically daunting to balance the three dimensions. As illustrated by *M. Harris*, for example, an effort to provide adequate food and water supplies to individuals in need may appear to require changes in land use which may decrease biodiversity.⁵⁸ In such occasions, deciding one over another may be puzzling. As the FDRE constitution guarantees right to sustainable development, utmost effort should be put in place to properly balance the dimensions of sustainable development. However, as a result of failure to balance the dimensions of sustainable development, a given development project may cause serious human rights violation to the concerned community. So, in such cases, can members of the concerned community bring the matter to Court for adjudication? Is the right to development, after all, justiciable in Ethiopia?

The preparatory work of the FDRE Constitution reveals that the drafters of the Constitution were inspired by the western view of RTD which conceives the right as a mere goal/objective lacking the feature of justiciability. The explanation made on Article.43, particularly the last statement, succinctly states that the rights under Article 43 are not justiciable.⁵⁹ The drafters equated the RTD with those objectives listed under chapter 10 of the Constitution dealing with ‘National Policy Principles and Objectives’ which guide the government in implementing the Constitution and other subsidiary laws of Ethiopia⁶⁰

Apparently, adopting this interpretation will bring about stark contradiction with the FDRE Constitution itself and the ACHPR. As rightly argued by *Abigeya Getachew*⁶¹ there is unambiguous indication under Article 13(1) of the FDRE Constitution that the rights dealt under Chapter 3 of the Constitution (which includes the right to development) are enforceable. The provision reads: ‘All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter’. One may infer that

⁵⁸ Jonathan M. Harris, *supra note 42*, at 7

⁵⁹ Look at the Preparatory work of the FDRE Constitution (written in Amharic)(Dec 10,2015) <http://www.abysinnialaw.com/constitutions?download=1215:the-1995-ethiopian-constitution-explanatory-note-amharic-version>

⁶⁰ *See id.*

⁶¹ Abigeya Getachew, *The Normative Understanding of the Right to Development under the African Charter on Human and Peoples’ Rights: Lesson for Ethiopia* (May 4,2014) (Unpublished LL.M Thesis, Addis Ababa University)

Courts are given the mandate to enforce the rights under chapter 3 of the Constitution which comprises the RTD.

On top of this, Article 13(2) of the Constitution, as considered before, permits interpreting the rights under chapter 3 in light of international human rights standards adopted by Ethiopia including the ACHPR. The African Commission, in *Endorois case* has affirmed the justiciability of RTD guaranteed under the ACHPR. This case involved displacement of the Endorois community, an indigenous community, by the government of Kenya from their ancestral land. The project to be undertaken was the conversion into governmental game reserves of the lands around Lake Bogoria on which the pastoral Endorois community grazed livestock as well as performed religious ceremonies.⁶² According to the grievance, the people concerned were not consulted in the formulation of the project.⁶³ Moreover, they were not given the promised compensation.⁶⁴ Consequently, complaint was filed to the African Commission against the government. The African Commission, after considering the communication, found violation of Article 22(RTD) of the ACHPR among others.⁶⁵ The decision of the Commission is ground breaking in terms of clarifying the justiciability of RTD.

The justiciability of RTD is also upheld by the recent Court practices of South Africa. The *Kyalami case*⁶⁶, can serve as an important example. In this particular case, the government of South Africa, following extensive destruction and damage to the peoples living on the banks of the *Jukskei* River caused by heavy rain, arranged an informal residential settlement near the vicinity of *Kyalami* residents for the temporary accommodation of the flood victims by way of the establishment of a transit camp for this purpose.⁶⁷ Through the proceeding, it was affirmed by both the High Court (which first entertained the case) and the Constitutional Court (which considered the case through appeal) that development projects should comply with environmental and

⁶² Obiora Chinedu Okafor, *A regional perspective: article 22 of the African Charter on Human and Peoples' Rights*, (Dec 12, 2015), <http://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIVChapter27.pdf>,

⁶³ *See id.*

⁶⁴ *See id.*

⁶⁵ *Endorois case*, *supra note 33*, Para 298

⁶⁶ Korir Sing' Oei A and Jared Shepherd, 'In Land We Trust': The Endorois' Communication and the Quest for Indigenous Peoples' Rights in Africa' *16 Buff. Hum. Rts. L. Rev.* 57,57-58 (2010)

⁶⁷ *See id.*

developmental statutes, laws, by-laws and regulations.⁶⁸ This practice undoubtedly plays significant role in inspiring other domestic jurisdictions such as the Ethiopian Courts to give meaning to the RTD through upholding its justiciability.

Perhaps, a significant challenge that may arise in Ethiopia in the sphere of enforcement of the RTD concerns absence of comprehensive legislation dealing with issues of development.⁶⁹ Though the Constitution in general terms requires development activities to aim at enhancing the capacity of citizens for development,⁷⁰ no detail laws related to development, like the *Development Facilitation Act (1995)* of South Africa⁷¹ are put in place so far.

This failure to come up with detail laws explaining the particulars of the RTD is against the DRD and the ACHPR. As part of 'soft laws' with no legally binding nature, the DRD does not provide mandatory provision requiring States to implement the RTD. But, it provides a framework for States to realize the right in their domestic spheres.⁷² In order to ensure the full exercise and progressive enhancement of the RTD, the declaration provides that States should take steps including the formulation, adoption and implementation of policy, legislative and other measures.⁷³ Under the ACHPR, states parties are enjoined to ensure the exercise of the RTD in their local jurisdictions.⁷⁴ This should be done through taking legislative and other measures.⁷⁵ This duty of adopting legislative measures is further buttressed in the *Endorois case*. The African Commission,

⁶⁸ *See id.*

⁶⁹ Perhaps, there are some legislations that help to address issues associated with land development in Ethiopia, such as Proclamation No 456/2005(Federal Democratic Republic of Ethiopia Rural Land Administration and Use Proclamation) and Proclamation No..455/2005(Expropriation of Land Holdings for Public Purposes and Payment of Compensation Proclamation) However, such laws fail to comprehensively deal with issues associated with development programs and projects in relation to land. *The Development Facilitation Act (1995) of South Africa noted above, for example, establishes tribunals bestowed with the power to make decisions and resolve conflicts in respect of land development projects. It also comprehensively provides land development procedures. In addition, the Act deals with establishment of a Development and Planning Commission for the purpose of advising the government on policy and laws concerning land development at national and provincial levels. These are some of the crucial issues which are not adequately dealt under the current laws of Ethiopia.*

⁷⁰ FDRE Constitution, Art.43(4)

⁷¹Development Facilitation Act NO. 67 of 1995

⁷² Daniel Aguirre, *The Human Right to Development in A Globalized World*, (Nov 28,2015) https://books.google.it/books?id=s7WNsJXD_F8C&pg=PA166&lpg=PA166&dq=Right+to+development+in+south

⁷³ DRD, Art.10

⁷⁴ ACHPR, Art.22(2)

⁷⁵ *Id.* Art.1.

in this particular case, found Kenya to have violated Article 1 of the ACHPR for failing to take legislative measures for the realization of the rights guaranteed under the Charter.⁷⁶

In the current practice of Courts in Ethiopia, there is poor trend of applying Constitutional provisions directly.⁷⁷ Courts generally decline to base their decisions based on constitutional provisions.⁷⁸ This trend is created by the absence of clarity in understanding the power of interpretation of the Constitution granted to the House of Federation.⁷⁹ The consequence is that there will be very rare opportunity for rights to be enforced by Courts if they are not accompanied by specific laws (such as legislation) providing their detail. The RTD will also face similar difficulty unless accompanied by comprehensive legislation explaining it.

IV. CONCLUDING REMARKS

For the effective realization of the RTD in Ethiopia, the following points should be taken in to consideration. In interpreting the RTD enshrined under the FDRE Constitution, an expansive approach like the trend followed by the African Commission should be followed. The RTD should not be understood to favor the realization of the right to improved living standard merely. This will create hierarchy among rights and nullify the indivisibility, interdependence and interrelatedness of human rights.

The preparatory work of the FDRE Constitution should not be considered as a binding document in terms of determining the justiciability of the RTD in Ethiopia. As it is succinctly expressed in the Constitution, human rights guaranteed under the Constitution including the RTD are enforceable. As enunciated under Article 13(2) of the Constitution, Ethiopian Courts are bound to give meaning to the provisions of the Constitution in a manner conforming to the principles embodied in the ratified international human rights instruments. As a party to the ACHPR,

⁷⁶ See *id.* Look at Recommendation part of the decision. Article 1 of the ACHPR as considered earlier requires States Parties to take legislative or other measures

⁷⁷ Sisay Alemahu, *The Constitutional Protection of Economic and Social Rights in the Federal Democratic Republic of Ethiopia*, 22 *Journal of Ethiopian Law*, 135, 143-145 (2008)

⁷⁸ See *id.*

⁷⁹ See *id.*, Article 62 of the FDRE Constitution grants the House of Federation the power to interpret the Constitution.

Ethiopia is expected to give effect to the interpretation offered by the African Commission on the RTD and promote its justiciability.

Finally, as it has been noted, the government of Ethiopia owes the duty to promote the realization of the RTD. The African Commission in elaborating Article 1 of the ACHPR has also affirmed the existence of this duty. However, up until now, comprehensive legislation clarifying the content and application of the RTD is not yet put in place. For an enhanced enforcement of the RTD, it is advisable that the government should come up with a comprehensive legislation that elaborate on the RTD guaranteed under the Constitution

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