

# The Right to Adequate Food and Its Implementation in Ethiopia

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## Abstract

International law recognizes the right of everyone to adequate food and the fundamental freedom from hunger and malnutrition. The article is to determine whether the right to adequate food was realized in Ethiopia in reference to the normative content of the human right to adequate food and to identify and discuss existing constraints in attaining food adequacy, availability and accessibility. According to this Article, the right to adequate food in Ethiopia can be inferred from both substantive provision like article 15, 40-43 and social policy objectives under article 90. This right could further be unequivocal when we see those articles of the same Constitution with ratified regional and international instruments more specifically article 11 of ICSECR and its GC-12. Regardless of legal recognition, ensuring the enjoyment of this right by vulnerable poor individuals remains a complex matter, particularly economic access at all times to adequate food and means for its procurement hardly possible for street children in study area. Its realization was hindered by lack of adequate national legislation and policy frameworks, lack of awareness about recourse mechanism and content of right to adequate food, lack of direct government provision of food and inadequate incorporation of human right based approach to efforts of food security for vulnerable and this article provided possible recommendation for future.

**Keywords:** Food, human rights, implementation and Ethiopia

**DOI:** 10.7176/JLPG/136-02

**Publication date:** September 30<sup>th</sup> 2023

## 1. Introduction

Currently, as an answer to the global food crisis, with more than 1 billion undernourished people worldwide, the right to food remains topical.<sup>1</sup> Ethiopia is the second most populous country in sub-Saharan Africa, with more than 90 million people, and has one of the fastest-growing economies in the world<sup>2</sup>. The foundation of its economic growth is agriculture, which employs 80 percent of the population and Ethiopia could potentially reach middle-income status by 2025 with an emphasis on boosting domestic savings rates, private sector development and improving the trade logistics, according to the World Bank.<sup>3</sup> However, Ethiopia is one of the poorest countries in the world, with an annual per capita income of USD 170.<sup>4</sup> About a third of rural households farm less than 0.5 hectares which, under rain fed agriculture at current yield levels, cannot produce enough food to meet their requirements.<sup>5</sup> Currently, 195 million under-five children are affected by malnutrition; 90% of them live in sub-Saharan Africa and South Asia<sup>6</sup>. Ethiopia is among the nations with the highest under-five mortality rates in the world and at least 53% of mortality can be attributed directly or indirectly to malnutrition.<sup>7</sup> To this end, the Ethiopian Demographic Health Survey report shows that nearly one in two (44%) of Ethiopian under five children are being stunted, 10% wasted, and 29% underweight.<sup>8</sup> Accordingly, one in every 17 Ethiopian children dies before the first birthday, and one in every 11 children dies before the fifth birthday.<sup>9</sup> Ethiopia is one of the world's poorest countries with indicators suggesting low levels of development and many Ethiopians live in conditions of chronic hunger with both a low average daily energy supply and a very high (44%) prevalence of under-nourishment<sup>10</sup>.

In connection to this, the human tragedy of hunger continues to cast a long shadow across the world.<sup>11</sup> Food is not only something necessary for human survival but also it is a matter of the right that imposes the obligation on the part of the government. Thus it is provided under international human rights instrument as one of human rights entitled to every human being. In the area of international law dealing with human rights the right to food is equally firmly entrenched as a basic norm. Thus, it has been said that the right to an adequate

<sup>1</sup> George Kent, freedom from want, *The Human Right to Adequate Food*, Georgetown University Press, Washington, D.C, 2005

<sup>2</sup> Web [www.care.org/learningtoure](http://www.care.org/learningtoure)

<sup>3</sup> *ibid*

<sup>4</sup> federal democratic republic of ethiopia ministry of agriculture and rural development, ethiopia's agricultural sector policy and investment framework (pif) 2010-2020, draft final report 15 september 2010, p.3

<sup>5</sup> *ibid*

<sup>6</sup> Dereje Danbe Debeke, Ayele Taye Goshu. *Nutritional Status of under- five Children in Hawassa Zuria District, Southern Ethiopia. American Journal of Health Research, Vol. 3, No. 5, 2015, P.287*

<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> *ibid*

<sup>10</sup> [www.fao.org/es/esa/eJADE](http://www.fao.org/es/esa/eJADE)

<sup>11</sup> Oxfam, *A Billion Hungry People*, Oxfam Briefing Paper, January 2009

standard of living is the most central right in ICESCR, in the way that the rights to life, privacy and freedom of expression are central rights in the International Covenant on Civil and Political Rights. In other words, without some realization of the right to an adequate standard of living, other economic and social, as well as civil and political, rights would have little meaning.

As Ethiopia is ratified, the above aforementioned conventions, it has recognized the right to food under its constitution, though not expressly provided compared to other foreign jurisdictions whose constitutions put white and black manner as the same as the ICESCR. The realization of the right to food in Ethiopia needs comprehensive understanding the scope and parameters of this right. As Ethiopia is party to many international instruments, its existing national legislation and policy measures do not adequately ensure access to adequate food. While there is a policy on food security scattered laws addressing on concerning the adequacy of, accessibility, and sustainability food as well as effective exercise and enjoyment to the right to food. Moreover, as many socio-economic and cultural right the right to food yet not practiced as justifiable matter, before national human right system. Thus, the problem with the right to adequate food is not only recognition under the FDRE constitution but also lack of fostering in promotion and fulfillment of this right. In the Ethiopian Constitution, the Right to adequate food is not protected directly.

## 2. Literature Review

### 2.1. Definition of food and food security

Ohio tax department, defines “food” as follows: “Food” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value and it does not include alcoholic beverages, dietary supplements, soft drinks, or tobacco.<sup>1</sup> Generally, if a substance, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form is consumed by humans for nutritional value or taste; it is “food.”<sup>2</sup> Other hand, According to the (1996, 2009), World Food Summit, Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for active and healthy life.<sup>3</sup> Food security is generally measured at three levels: national, local, and household<sup>4</sup>. Food security at the national level is determined by the availability of enough resources for the whole population, On the other hand, at the local level, food security can be measured by comparing regional nutritional requirements with availability of dietary calories per head<sup>5</sup>. Moreover, at the household level, food security is measured by actual dietary intake of all household members using household income and expenditure surveys<sup>6</sup>. Thus, the household level, food security is closely linked with the issue of poverty, access, sufficiency, vulnerability and sustainability<sup>7</sup>. In general, according to FAO,

“Nearly 30 percent of the world’s population suffers from some form of malnutrition. Those who do not get enough energy or key nutrients cannot sustain healthy, active lives. The result is devastating illness and death, as well as incalculable loss of human potential and social development. At the same time; hundreds of millions suffer from diseases caused by excessive or unbalanced diets. More than half the world’s disease burden can be attributed to hunger, unbalanced energy intake or vitamin and mineral deficiencies – and developing nations are quickly joining the ranks of countries dealing with severe health issues at both ends of the nutritional spectrum.”<sup>8</sup>

On the other hand, according the special Rapporteur on the right to food, the Right to food is defined as the right to have a regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>9</sup>

Thus, today, the double burden of diseases in the developing world Hunger and malnutrition remain among the most devastating problems facing the majority of the world’s poor and needy people, and continue to dominate the health of the world’s poorest nations.<sup>10</sup>

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<sup>1</sup> [www.tax.ohio.gov](http://www.tax.ohio.gov)

<sup>2</sup> *ibid*

<sup>3</sup> Dr. Abdullah Al Faruque, From Basic Need to Basic Right: Right to Food in Context, Faculty of Law, University of Chittagong .June 2014,p.6

<sup>4</sup> *Ibid*

<sup>5</sup> *ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid* p.7

<sup>8</sup> [www.fao.org](http://www.fao.org)

<sup>9</sup> UN HR Commission, The right to food. Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, (7 February 2001), Doc .U.N. E/CN.4/2001/53, paragraph 14.

<sup>10</sup> Joint WHO/FAO Expert Consultation on Diet, Nutrition and the Prevention of Chronic Diseases, DIET, NUTRITION AND THE PREVENTION OF CHRONIC DISEASES .Geneva, 28 January -- 1 February 2002, p.1

## 2.2 The General overview of the right to adequate standard of life

The right to an adequate standard of living is about the human person's rights to certain fundamental freedoms, including freedoms to avoid hunger, disease and illiteracy<sup>1</sup>. *In other words*, the right to adequate standard of living is concerned as fundamental human right which is mainly concerned with right to food, pure drinking water, shelter and health. The right to adequate standard of living is recognized under various international human rights instruments such as Article 25 of the Universal Declaration of Human Rights, Article 113 of the International Covenant on Economic, Social and Cultural Rights, Article 27 of the Convention on the Rights of the Child 1989, Article 5 of the International Convention on the Elimination of All forms of Racial Discrimination, 1966 and Article 28 of the Convention on the Rights of Persons with Disabilities. These International instruments are imposed obligation upon state parties provide adequate standard of living to its subjects. In general, the right to adequate standard of life includes specific rights to adequate food, clothing and housing, and to social security and work and it is essential in order to achieve other economic, social and cultural rights, such as the rights to health and education<sup>2</sup>

## 2.3. The right to adequate food under international human rights laws

In legal terms, the concept of food as a human right emerged along with the rest of contemporary international law in the aftermath of World War II<sup>3</sup>. Now, the full scope of the right to food has evolved under international law not only in response to global efforts to combat hunger and malnutrition but also as a function of growth in our understanding of the factors that contribute to hunger and malnutrition.<sup>4</sup>

To this end, the right to food is a human right indispensable for survival and international law recognized the right of everyone to adequate food and the fundamental right to be free from hunger, which is of crucial importance for the enjoyment of all human rights.<sup>5</sup>

However, the right to adequate food and freedom from hunger is far from reality for many people around the world.<sup>6</sup> The right to adequate food is the right of every woman, man and child to have sustainable access to food which is sufficient in quantity and in quality; it is also a right denied to many as well.<sup>7</sup>

Currently, hundreds of millions of people around the world do not get enough to eat, and for many more millions, the quality of their food is not adequate to maintain basic health.<sup>8</sup>

One cannot escape the finding of the United Nations' special rapporteur on the right to food:

In the world today, it is an affront to human dignity to see how many people starve to death, or live a life not worthy of the name, in conditions of squalor and unable to escape, with minds and bodies that are not whole"<sup>9</sup>

Similarly, Kofi Annan, the former, UN Secretary-General said that:

"The last 25 years have seen the most dramatic reduction in extreme poverty the world has ever experienced. Yet dozens of countries have become poorer. More than a billion people still live on less than a dollar a day. Each year, 3 million people die from HIV/AIDS and 11 million children die before reaching their fifth birthday."<sup>10</sup>

In order to give due consideration, the contemporary normative system of internationally recognized human rights was initially framed by the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948, where the subsequently adopted conventions, declarations and other documents spell out the corresponding obligations of duty-holders, the institutions and procedures for their monitoring, and requirements or recommendations concerning their implementation.<sup>11</sup>

Thus, the right to food is, for the first time, recognized in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of living, and is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights and also it is protected by regional treaties and national constitutions.<sup>12</sup> As a result, Art. 11 ICESCR reads as:

<sup>1</sup> United Nations Economic and Social Council (2003), *Economic, social and cultural rights: Implementation of existing human rights norms and standards in the context of the fight against extreme poverty* (Geneva: United Nations), p 7

<sup>2</sup> United Nations Economic and Social Council (2003), *Economic, social and cultural rights: Implementation of existing human rights norms and standards in the context of the fight against extreme poverty* (Geneva: United Nations), p 7

<sup>3</sup> UNs Office of High Commissioner for human rights, *The Right to Food and Water: Dependencies and Dilemmas, Institute for Human Rights and Business, Geneva in July 2010*, p.2

<sup>4</sup> Ibid, p.3

<sup>5</sup> [http://www.ukabc.org/foodsovereignty\\_itdg\\_fian\\_print.pdf](http://www.ukabc.org/foodsovereignty_itdg_fian_print.pdf)

<sup>6</sup> Ibid

<sup>7</sup> [www.amnesty.nl/spa](http://www.amnesty.nl/spa)

<sup>8</sup> George kent, freedom from want, *The Human Right to Adequate Food*, Georgetown University Press, Washington, D.C, 2005, p.7

<sup>9</sup> Ibid

<sup>10</sup> (Annan, K., In Larger Freedom: towards development, security and human rights for all, UN Doc. A/59/2005, 2005.)

<sup>11</sup> Asbjørn Eide, Freedom from Need: The Universal Right to an Adequate Standard of Living –Origins, Obstacles and Prospects, *Scandinavian Studies In Law* © 1999-2015, p. 158

<sup>12</sup> UNS office of high commissioner for human rights, *The Right to Adequate Food*, Fact Sheet No.34, Geneva, Switzerland,, p.3

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food...The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
  - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
  - (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

As human rights are indivisible, interdependent and interrelated and this implies that each individual is entitled to all human rights as well as there is no hierarchy between different rights, and that the violation of one right is likely to impede fulfillment of other rights, the right to adequate food is interconnected with other human rights<sup>1</sup>.

Thus, these rights are mutually reinforcing, and fulfillment of one right is likely to strengthen fulfillment of other, interconnected rights.<sup>2</sup>

According to the CESCR General Comment No. 12: The Right to Adequate Food (Art. 11) also has given due attention and the committee stated as follows;

“The human right to adequate food is recognized in several instruments under international law. The International Covenant on Economic, Social and Cultural Rights deals more comprehensively than any other instrument with this right. Pursuant to article 11.1 of the Covenant, States parties recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”, while pursuant to article 11.2 they recognize that more immediate and urgent steps may be needed to ensure “the fundamental right to freedom from hunger and malnutrition”. The human right to adequate food is of crucial importance for the enjoyment of all rights. It applies to everyone; thus the reference in article 11.1 to “himself and his family” does not imply any limitation upon the applicability of this right to individuals or to female-headed households.”<sup>3</sup>

Hence, the State has an urgent and immediate obligation to ensure freedom from hunger regardless of its level of development and the Committee on Economic, Social and Cultural Rights says that a State “in which any significant number of individuals is deprived of essential foodstuffs is, *prima facie*, failing to discharge its obligations under the Covenant.”<sup>4</sup> Hence, the right to food, like any other human right, imposes three types or levels of obligations on States: the obligations to respect, to protect and to fulfill.<sup>5</sup>

## 2.4 Rights - Based Approach for Food

The rights - based approach emphasizes the realization of internationally recognized human rights that impose obligations on states and empowers rights-holders to assert their claims vis-à-vis state authorities<sup>6</sup>. To this end, the 1948 Universal Declaration of Human Rights provides both for a right to food and the enforceability of this right through judicial means.<sup>7</sup> In addition to this, the right to adequate food is much more than having access to food assistance; it is the right to have access to the productive resources or the income needed to feed oneself and one's family adequately, or, at a minimum, to have access to social security mechanisms<sup>8</sup>. For that matter, adequate food as a human right is to be recognized the state has legal obligations toward each and every person, and that it should promote equity when making policy decisions by giving priority to disadvantaged and

<sup>1</sup> UNs Office of High Commissioner for human rights, The Right to Food and Water: Dependencies and Dilemmas, *Institute for Human Rights and Business*, Geneva in July 2010 p.11

<sup>2</sup> *ibid*

<sup>3</sup> UN office for High Commissioner for Human Rights, CESCR General Comment No. 12: The Right to Adequate Food (Art. 11) , *Adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999 (Contained in Document E/C.12/1999/5)*

<sup>4</sup> UNs Office of High Commissioner for human rights, The Right to Food and Water: Dependencies and Dilemmas, *Institute for Human Rights and Business*, Geneva in July 2010./ p. 11

<sup>5</sup> UNs Office of High Commissioner for human rights, The Right to Food and Water: Dependencies and Dilemmas, *Institute for Human Rights and Business*, Geneva in July 2010./ p. 11

<sup>6</sup> Cohen, Marc J. and Mary Ashby Brown, "Access to Justice and the Right to Adequate Food: Implementing Millennium Development Goal One." *Sustainable Development Law & Policy*, Fall 2005, p. 54

<sup>7</sup> *bid*

<sup>8</sup> Schieck Valente, Flavio Luiz and Suárez Franco, Ana Maria (2010) "Human Rights and the Struggle Against Hunger: Laws, Institutions, and Instruments in the Fight to Realize the Right to Adequate Food," *Yale Human Rights and Development Journal*: Vol. 13: Iss. 2, Article 3,p. P.438

marginalized people<sup>1</sup>.

In general, the right to adequate food is incorporated in Article 25 of the Universal Declaration of Human Rights (UDHR), in Article 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), also incorporated in some of the special treaties, such as the Convention on the Rights of the Child 21 (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Indeed, as human rights principles mean that the right to food is universal, i.e. if you are not able to get access to what you need, and then your rights are being violated.<sup>2</sup> Moreover, the universality of human rights means that there should be no discrimination in terms of availability, access and utilization of food and nutrition resources, based on income, gender, ethnicity, religion, or other socio-economic descriptor, i.e. there should be both equity and equality.<sup>3</sup> However, rights are universal, their realization is necessarily a progressive one, particularly, in case of ESCRs and Choices are often necessary for governments, especially when resources are scarce, in order to decide which problems to tackle first<sup>4</sup>.

Regionally, Article 15 of the Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) entail a guaranty of social security and social assistance respectively the right to food security.<sup>5</sup>

#### **2.4.1 Adequacy of food**

The normative content of the human right to adequate food in General Comment 12 is inter alia developed around the notion of adequacy and adequate food must be "sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture."<sup>6</sup> Adequacy includes satisfaction of dietary needs, free from adverse substances and acceptability and it is also to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while sustainability incorporates the notion of long-term availability and accessibility.<sup>7</sup>

#### **2.4.2 Availability of food**

Under GC 12 of ECSCRs, Paragraph 12 specifies the availability of food: "Availability refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed ...". Long-term availability points to the ecological limitations of food production and distribution.<sup>8</sup>

#### **2.4.3 Accessibility of Food (Economic and Physical Accessibility of Food)**

Food is economically accessible for a person or community if the person or community has access to food as a result of its economic activities in the widest sense<sup>9</sup>. These economic activities can be direct food production based on access to natural productive resources (land, water, forest, pastures, fishing grounds) and other resources and means of production. On the other hand, physical accessibility puts the emphasis on the mere question of immediate access. "Physical accessibility implies that adequate food must be accessible to everyone."<sup>10</sup> Thus, if a person could not access or buy food (or could do so only under unacceptable hardships affecting the enjoyment of other human rights), food is not physically accessible to this person and also some groups will probably not be in a position to make use of economic access, groups "including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill".<sup>11</sup>

### **2.5 Implementation of the Right to Food in Ethiopia**

Under United Human Right System, one of the measures consistently advocated by the ICESCR is the incorporation of the provisions of the ICESCR in general and the right to food in particular, in the constitutions or national legislation of the State Parties, to ensure that the provisions can be directly applied by national courts and other agencies<sup>12</sup>. Hence, the first step in the inquiry is to gauge the commitment of individual states to the right to food by measuring the status of ratification of food-related human rights treaties<sup>13</sup>.

<sup>1</sup> Ibid P.439

<sup>2</sup> UN system standing committee on nutrition, Symposium Realizing the Right to Adequate Food to help achieve the Millennium Development Goals, 32nd Annual Session Brasilia, 14 to 18 March 2005,p.15

<sup>3</sup> ibid

<sup>4</sup> Ibid p.16

<sup>5</sup> Jennie Jonsén and Sven Söllner, The Legal Content of the Right to Adequate Food,p.6

<sup>6</sup> UN office for High Commissioner for Human Rights, CESCR General Comment No. 12: The Right to Adequate Food (Art. 11) . *Adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999 (Contained in Document E/C.12/1999/5)*

<sup>7</sup> Ibid

<sup>8</sup> ibid

<sup>9</sup> ibid

<sup>10</sup> ibid

<sup>11</sup> ibid

<sup>12</sup> Supra note 29 ,p.2

<sup>13</sup> ibid

Another, mechanism of the domestic application of human rights in constitutional framework of such right under national constitution and a subjective judgment was made as to how strong the constitutional protection of the right to food is deemed to be. For instance, the right to food is provided under Section of 27 of Republic of South African Constitution as follows: under caption of Health care, food, water and social security;

*“(1) Everyone has the right to have access to- (a) Health care services, including reproductive health care; (b) Sufficient food and water; and (c) Social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights. (3) No one may be refused emergency medical treatment.”<sup>1</sup>*

Despite of Ethiopia is an active member of the United Nations and is a state party to International Covenant on Economic, Social and Cultural Rights (ICESCR), its Constitution does not expressly recognize the fundamental right to food. Still, under the chapter three of the FDRE constitution incorporated many comparable human right provisions are found in the articles of the fundamental rights, it fails to incorporate the right to food in white and black manner. But, under Article 90 of the Constitution of the Federal Democratic Republic of Ethiopia (1994) under the under chapter seven of National policy Principles and objectives in sub- title **Social objectives-** *“To the extent the country's resources permit, policies shall aim to provide all Ethiopians with access to public health and education, clean water, housing, food and social security.”<sup>2</sup> Emphasis added.*

*Similarity, in 2003 the country has adopted Rural Development policy and Strategies;*

*Its aim is, through the rural and agriculture-centered development strategy is to increase agricultural production rapidly and on a sustainable basis and since some 85 percent of the population are engaged in agricultural production, the income of (output from) the vast majority of the population will increase<sup>3</sup> through releasing foreign food aid dependency. However, the country has not yet comprehensive policy regarding the right to food except some of the scattered policy in rural development and health and other policy of the country.*

## 2.6. Justifiability of the right to food in domestic human rights system

Domestically, in many countries including Ethiopia, there have been constitutional debates on the justiciability of socio-economic rights as the issue of inclusion of judicially enforceable socio-economic rights in constitutions has generally been considered controversial as many people have considered such rights as inherently non-justiciable and not suited for judicial enforcement<sup>4</sup>. It has also been argued that in most legal documents these rights are vaguely worded and not sufficiently defined, or in other words, that they lack determinate content.<sup>5</sup> Besides to this, it has also been argued that socio-economic rights are inherently resources demanding and that their fulfillment depends on the availability of public resources which by their very nature are always limited and that many states do not possess.<sup>6</sup> Decisions on the use of such limited resources and related prioritizations and allocations are by many seen as the prerogative of the executive and legislature and the constitutionalisation of such rights would result in an undesired transfer of political power from these two branches of government to the judiciary.<sup>7</sup>

The Economic, Social and Cultural rights have been part of the language of international human rights since at least the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, but, compared to civil and political rights, there has been considerably less attention placed on the need to develop the content of ESC rights and protection mechanisms to enforce them<sup>8</sup>. Thus, the notion of the justifiability of ESC rights has been neglected and largely ignored<sup>9</sup>. The term “justifiability” means that people who claim to be victims of violations of these rights are able to file a complaint before an independent and impartial body, to request adequate remedies if a violation has been found to have occurred or to be likely to occur, and to have any remedy enforced.<sup>10</sup> In other words, Justifiability implies access to mechanisms that guarantee recognized rights and justifiable rights grant right-holders a legal course of action to enforce them, whenever the duty-bearer does not comply with his or her duties<sup>11</sup>. Indeed, the existence of a legal remedy is understood both in the sense of

<sup>1</sup> the Constitutional Assembly, The Constitution OF THE REPUBLIC OF SOUTH AFRICA, , As adopted on 8 May 1996 and amended on 11 October 1996

<sup>2</sup> CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, A.A. 1994

<sup>3</sup> Government Of The Federal Democratic Republic Of Ethiopia, Ministry of Finance and Economic Development Economic Policy and Planning Department Addis Ababa April, 2003

<sup>4</sup> Robert Larsson, The Justifiability of Socio Economic Rights – Courts as Protectors of Economic and Social Rights: The Case of South Africa, Faculty Of Law Lund University,2009,p.4

<sup>5</sup> ibid

<sup>6</sup> ibid

<sup>7</sup> ibid

<sup>8</sup> International Commission of Jurists, Courts and the Legal Enforcement of Economic, Social and Cultural Rights, Comparative experiences of justifiability, Switzerland, Geneva, 2008,p.1

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Ibid,p.6

providing a procedural remedy (effective access to an appropriate court or tribunal) when a violation has occurred or is imminent, and the process of awarding adequate reparation to the victim – are a defining features of a fully fledged right.<sup>1</sup> According to Supreme Court of India through its landmark decision in the public interest litigation Petition (Civil) No. 196/2001, *People's Union for Civil Liberties v. Union of India & Others (PUCL)*, " The Supreme Court's ruling that the right to food is a justiciable, reviewable, expandable, legally enforceable, and constitutional— and thus inviolable — right opened up new avenues both for political discourse and for concrete action:"<sup>2</sup>

In Ethiopia, the FDRE (1995) Constitution has given protection to socio-economic rights through their entrenchment in its substantive part starting from Article 40 to Article 43 (1)<sup>3</sup>. However, the rights that have been included in this part are limited to the right to property (Article 40), and labour rights (Article 42) and it has omitted to explicitly provide other socio- economic rights including the right to food, social security, water, education and the like<sup>4</sup>. As far as the issue of standing is concerned, Article 37 of the FDRE Constitution provides that, 'everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power'<sup>5</sup>. The second precondition of justiciability, which is the existence of an institution having a judicial or quasi-judicial power to entertain cases of socio-economic rights, Article 13 (1) of the FDRE Constitution and the duty of the judiciary to enforce the fundamental rights and freedoms, which definitely include socio-economic rights, is an expression of their judicial enforceability.<sup>6</sup>

### 3. Conclusion and Recommendation

#### 3.1. Conclusion

The ongoing controversy, since the adoption of UDHR, the division of human rights into positive rights that are resource oriented economic, social and cultural rights and negative rights that are non-resource oriented civil, political rights resulted in creation of the two independent ICESCR and ICCPR human rights convention respectively . However, the world has come up with consensus on (in 1993 Vienna Declaration) that *all human rights are universal, indivisible and interdependent and interrelated and the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.*

*Thus, the right to food is for the first time incorporated under in 1966 ICESCR as right which imposes the duty on the national stated that hat ratified in since it is a binding human right instrument. Although the right to food has a history of more than 60 years, as it was first recognized by the Universal Declaration of Human Rights (UDHR) of 1948, the world has not given due attention owing to the ideological block between and west and east during the cold war concerning the ESCRs. Fortunately, currently a number of states has ratified the ICESCR and incorporated in many national constitutions.*

The right to an adequate standard of living is about the human person's rights to certain fundamental freedoms, including freedoms to avoid hunger, disease and illiteracy. The right to food is also inextricably linked to the realization of other human rights such as the right to health, life, water, and adequate housing .*Food is the basic necessities of life and the continuity of life is dependants up on food and water and the right to food is integrated with other human rights like the right to life. The adequate food as a human right is to be recognized the state legal obligations toward each and every person by giving priority to disadvantaged and marginalized people.*

Despite the international community's commitment to the realization of the right to food, the problem of hunger continues to grow. Thus, hundreds of millions of people around the world do not get enough to eat, and for many more millions, the quality of their food is not adequate to maintain basic health.

To realize the right to adequate food, international committee of ICESCR under its General Comment No.12 has given due attention as adequacy, availability, physical and economic accessibility of food for the whole world, especially vulnerable groups like children, women, aged and disabled persons. Thus, under international human rights law like any other rights, the right to adequate food imposes three obligations'. First, the state's obligation to respect the right to food means the state must not implement any measure which would result in preventing the population's access to food. Second, the State has an obligation to protect the right to food and it must ensure that food should be on the market is safe and nutritious. Third, the State has obligation to fulfill the right to food. This does not obligate the State to hand out food for free to its citizens., rather, the State is required to be proactive in strengthening its people's access to and use of resources as a means of ensuring

<sup>1</sup> ibid

<sup>2</sup> *Lauren Birchfield\* and Jessica Corsi, The Right to Life Is the Right to Food: People's Union for Civil Liberties v. Union of India & Others, Harvard Law School, 2010, also available at <http://www.ifpri.org/pubs/cp/ishi08.pdf>.*

<sup>3</sup> CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, A.A. 1994

<sup>4</sup> Amare Tesfaye, JUSTICIABILITY OF SOCIO-ECONOMIC RIGHTS IN THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, A Thesis Submitted to the School of Graduate Studies of Addis Ababa University in Partial Fulfillment of the Requirements for the Masters of Law (LL.M) in Human Rights Law Stream, Addis Ababa, Ethiopia, December, 2010 .p.90

<sup>5</sup> CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, A.A. 1994

<sup>6</sup> Ibid,p.92

their livelihoods.

Domestic application of human rights is constitutional framework and the constitutional protection of the right to food is essential in realization of this right as well as justiciability and enforceability in national human rights systems. First, in Ethiopia, *unlike other jurisdictions*, the FDRE Constitution does not expressly recognize the fundamental right to food, but under Article 90 of the Constitution of the Federal Democratic Republic of Ethiopia, the under chapter seven of National policy Principles and objectives tried to provide as policy matter rather, human rights issue. In addition to this, impliedly according to Article 41 of the constitution, every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory including the right to get adequate food through his/her efforts. Secondly, the constitution is also silent as to the justiciability of the right to food though under Article 13 of the constitution, the fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia and also pursuant to Article 9 (4) of the constitution, all international agreements ratified by Ethiopia are an integral part of the law of the land. Thus, the right to food is justiciable right, as per article 37(1) of the constitution; that everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power, though the Ethiopian courts do not dare to entertain this case by arguing that interpreting the constitution is left to House of Federation. But, according to article 13(1) 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 including the right to food and the courts shall give remedy for those individuals whose rights are violated. Thirdly, *though Ethiopia has no comprehensive national food policy, in 2003, the country has adopted Rural Development policy and Strategies to reduce the foreign food aid dependency*. In other words, the country has scattered policy concerning food in connection with agriculture /rural development/, health and related national policy. Even though the country has made significant effort to realize food security and nutrition for its citizens, still many are suffering from malnutrition especially street children, aged person, women, disabled person who cannot afford adequate food. Finally, in Ethiopia as enforcing mechanisms we have no established independent institution so as to implement the right to food at grass root level who is responsible for protection, respect and fulfillment of this right. Generally, it is found that, though the government of Ethiopia has made significant efforts for the realization of the right to adequate food, there is still much left to be done including adoption of specific food legislation and policy framework for the country.

### 3.2 Recommendation

The realization of the right to adequate standard of living in general and the right to food in particular, is related to many human rights and it is considered as basic in the life of human beings. The legal frame work in relation to the right to food under the FDRE Constitution provided in very general way in one hand and this right is provided under policy principle outside the fundamental human rights provisions on the other hand. The components of the right and enforcing mechanisms are not provided in a clear and defined manner. Therefore, the first thing to recommend is that the government of Ethiopia should adopt detailed and separate legislation especially for the right to adequate food.

Secondly, in relation to the judiciary, the government should increase awareness of judges on the realization the right to adequate food, on applying the FDRE Constitution and ratified international human right instruments. Thus, the government has to reform issues of justicability and adjudication of cases of violation of the right to adequate food by applying the FDRE Constitution. Thirdly, since the country lacks the comprehensive policy the government has reform the policy frame work so as to fulfill, respect and protect the right to food in a well defined manner. Fourthly, to realize this right the Ethiopian human right institutions, such as the Human Rights Commission should work towards increasing awareness of the public. Finally, researches and studies must also be done for the clear understanding of enforcement of the right to adequate food in Ethiopia.

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