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

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Mini-dissertation submitted in partial fulfillment of the requirements for the degree Magister Legum in Comparative Child Law at the Potchefstroom Campus of the North-West University

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May, 2014
Acknowledgements

I would like to thank Prof Robbie Robinson for his impeccable study guidance throughout this dissertation. Had it not been for his guidance, care, patience and extraordinary kindness this work would not have been possible in its present merit and shape. Thank you indeed Professor!

I would like also to extend my gratitude to both the academic and administrative staff of NWU who stood by me in times of difficulty and health problems. In particular, Mrs A. Stapelberg, Prof N. Smit, Prof GJ Pienaar, and others!

My heartfelt gratitude also goes to my brother Daniel Behailu for his irreplaceable and unparalleled devotion to my success all the way. I also am grateful to my enthusiastic friend Mesfin Debebe who was always behind me at challenging times. Thank you all!

‘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 Ethiopiense reg. Ethiopië het internasionale instrumente atstukke van kinderregte bekräftig, 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-handvess oor die Regte en Welsyn van die Kind, en hierdie instrumente vorm deel van die Ethiopiense 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 Ethiopiense 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 bekräftiging 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 bekräftiging van internasionale instrumente, sonder implementering, kan nie die ewenslange ontberinge van Ethiopiense 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 Ethiopiense regstelsel wat kinderregte uiteensit, om sodoende vas te stel hoekom huidige kinderregte in Ethiopië nie die lyding van Ethiopiense 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 Ethiopiense 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 geratificeerde 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
<table>
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<tr>
<th>Abbreviation</th>
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<tr>
<td>ACRWC</td>
<td>African Charter on the Rights and Welfare of the Child</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>FDRE</td>
<td>Federal Democratic Republic of Ethiopia</td>
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<tr>
<td>ICCPR</td>
<td>International Convention on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>International Convention on Economic, Social and Cultural Rights</td>
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<tr>
<td>NGOs</td>
<td>Non-governmental Organisations</td>
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<tr>
<td>NPA</td>
<td>National Plan of Action</td>
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<tr>
<td>OAU</td>
<td>Organisation of African Unity</td>
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<tr>
<td>SERAC</td>
<td>Social and Economic Rights Action Centre</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UNGA</td>
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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


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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 circumstances\(^3\) 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 Child\(^5\) (hereafter CRC), the International Convention on Economic, Social and Cultural Rights\(^6\) (hereafter ICESCR), and the African Charter on the Rights and Welfare of the Child\(^7\) (hereafter ACRWC).

Ethiopia has ratified and incorporated the ICESCR,\(^8\) the CRC\(^9\) and the ACRWC\(^10\) 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

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2. Brand and Heyns Socio-Economic Rights 3.
4. Refer to Section 1.1 below.
the legislature.\textsuperscript{12} Section 13(2)\textsuperscript{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.

\textbf{1.1 Problem Statement}

In Ethiopia socio-economic rights that pertain to all human beings (inadequate as they are)\textsuperscript{14} are included in the bill of rights\textsuperscript{15} enshrined in the FDRE Constitution and the directory of state policy principles.\textsuperscript{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 Africa\textsuperscript{17} 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.\textsuperscript{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.\textsuperscript{19} Courts are required by law to take into account laws that

\textsuperscript{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".

\textsuperscript{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".

\textsuperscript{14} Mayessa \emph{The Integrated Approach} 91.

\textsuperscript{15} Section 41 of the FDRE constitution.

\textsuperscript{16} Section 90 and 89 of FDRE constitution.

\textsuperscript{17} Refer to Section 28 of the Constitution of the Republic of South Africa Act 108 of 1996.

\textsuperscript{18} Abebe and Tefera Earning rights Discourses on children’s rights and proper childhood in Ethiopia in Imoh and Ansell \emph{Children’s Lives in an Era of Children’s Rights} 59.

\textsuperscript{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. 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. In addition to the legislative failure, unjust and backward societal tradition, 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.

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).
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. Regrettably, children in Africa are the main victims of conflicts, natural calamities, pandemics, starvation, harmful traditional practices and superstitions. 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.

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

27 Hossain Human Rights Commissions and Ombudsman 133.
Children in Ethiopia. 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. 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.

Poverty and malnutrition are the main causes of children’s death. Children enrolled in secondary school number only about 13%. 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. Of those who escape death, millions do not have an adequate standard of living, social security, education and basic health services. Children in Ethiopia are burdened with adult like onuses and responsibilities. Poluha 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’s

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28 Hossain Human Rights Commissions and Ombudsman 134.
30 Hossain Human Rights Commissions and Ombudsman 134.
33 Hossain Human Rights Commissions and Ombudsman 135.
34 Hossain Human Rights Commissions and Ombudsman 135.
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 UNICEF\(^{42}\) 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

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\(^{38}\) Nieuwenhuys 2001 *Journal of the International African Institute* 539-540.


\(^{43}\) 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.\textsuperscript{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.\textsuperscript{45} Lack of social services, family disintegration, neglect and abuse by parents are also causes that force children into begging.\textsuperscript{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.\textsuperscript{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.\textsuperscript{48} Abebe\textsuperscript{49} rightly states "[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.\textsuperscript{50} The effect of early-years deprivation resounds throughout life with continuing consequences for health and capacity in adulthood.

According to a UNICEF\textsuperscript{51} 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.\textsuperscript{52} Half of nearly

\begin{thebibliography}{9}
\bibitem{44} Nieuwenhuys 2001 \textit{Journal of the International African Institute} 547.
\bibitem{45} Abebe 2008 \textit{Geografiska Annaler} 274.
\bibitem{46} Abebe 2008 \textit{Geografiska Annaler} 274.
\bibitem{47} Abebe 2008 \textit{Geografiska Annaler} 273.
\bibitem{48} Abebe 2008 \textit{Geografiska Annaler} 282.
\bibitem{49} Abebe 2008 \textit{Geografiska Annaler} 282.
\bibitem{50} Abebe 2008 \textit{Geografiska Annaler} 282.
\end{thebibliography}
four million orphans cannot attend school and lack adequate food.\textsuperscript{53} Famine and war are also major causes of deteriorating conditions for children in Ethiopia.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 love\textsuperscript{57} and repressive family traditions add an even greater burden to already hard-hit Ethiopian children.

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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.\(^5\) Although this concept ceased to exist later in the 19th century, children historically were obliged to be subservient to their father.\(^6\) Children can neither create their subsistence from their environment nor do they have a capacity to address their socio-economic needs.\(^7\) They can be considered just as "[s]ources of potential in need of being developed".\(^8\) 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.\(^9\)

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.\(^10\) 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.\(^11\) 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.\(^12\)

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.
63 Nolan *A Role for the Courts in* Alen et al *The UN Children’s Rights Convention* 338.
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.\(^6^9\) 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.\(^7^0\)

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.\(^7^1\) 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.\(^7^2\) 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 deprival 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.\(^7^3\) 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

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\(^6^9\) Achilihu *Do African Children Have Rights?* 22.

\(^7^0\) Achilihu *Do African Children Have Rights?* 22-24.


\(^7^3\) 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

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. Signatories are required to submit regular reports to the Committee on how the rights are being realised.

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. 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. 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”.

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

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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.
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).
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,\textsuperscript{95} appropriate assistance to parents in the performance of their child nurturing duties,\textsuperscript{96} highest attainable standard of health and facilities for treatment and rehabilitation of health,\textsuperscript{97} social security,\textsuperscript{98} adequate standard of living for overall development of a child\textsuperscript{99} and the right to education, including free and basic education.\textsuperscript{100}

The Committee on the Rights of the Child introduced the concept of progressive realisation of socio-economic rights.\textsuperscript{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

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\textsuperscript{92} Beiter The Protection of the Right to Education 221.
\textsuperscript{93} Refer to Article 20 (1)(a) (b) (c) of ACRWC.
\textsuperscript{94} Refer to Article 4 of CRC.
\textsuperscript{95} Refer to Article 6 of CRC.
\textsuperscript{96} Refer to Article 18 of CRC.
\textsuperscript{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.
\textsuperscript{98} Refer to Article 26 of CRC. Yet, there is no specific indication of funding by the state.
\textsuperscript{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.
\textsuperscript{100} Refer to Article 28 of CRC.
\textsuperscript{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, Lloyd argue 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. 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. 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. 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.

105 Refer to Article 2(1) of CRC.
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. 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. 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, to rest and leisure and to enjoy his or her own culture, religion, and language. 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. 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

109 Refer to Article 28 of CRC.
110 Refer to Article 31 of CRC.
111 Refer to Article 30 of CRC.
compliance of State parties with the requirements of the Convention should be measured. 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.

2.2.2 The ICESCR

Human rights are *mutatis mutandis* children’s rights. The ICESCR applies to all men and women and implicitly to children. 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.

According to Van Bueren 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.

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

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113 Achilihu *Do African Children Have Rights?* 32.
115 Boezart (ed) *Child Law* 333.
116 Van Bueren *The International Law* 203.
117 Refer to Article 10(3) of ICESCR.
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{123} Courts are therefore empowered to scrutinise whether states properly prioritise in their allocation of resources in order to achieve their minimum core obligation.\textsuperscript{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.\textsuperscript{125}

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

\textsuperscript{120} General Comment 3 (1990) UN Doc E/1991/of UN Committee on Economic, Social and Cultural Rights 5.
\textsuperscript{121} General Comment 3 (1990) UN Doc E/1991/of UN Committee on Economic, Social and Cultural Rights 9.
\textsuperscript{125} Heyns and Brand \textit{Law Democracy and Development} 153-167,160.
\textsuperscript{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.


\(^{131}\) Van Bueren The International Law 402.


\(^{134}\) Chirwa International Journal of Children’s Rights 158.

\(^{135}\) Refer to Article 18(1) of the ACRWC.
The right to parental care. 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. 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.

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. 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. 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 provision 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. Basic education is stipulated without qualification. The ACRWC states that children should have the right to education inclusive of free and compulsory basic education. 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

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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

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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.
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. Hongju 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

an advanced level of protection. 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. Hence, incorporating children’s rights specifically in the text of a constitution provides a persuasive claim for justice that cannot be neglected easily. 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.

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. Children’s socio-economic rights can be specifically integrated in the wording of a constitution as is the case of the South African Constitution. The Committee prefers recognition of children’s rights in domestic Constitutions. It advocates insertion of a section on children’s

152 Allan Constitutional Justice 121.
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.
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. 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. 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.

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. It provides other socio-economic rights as direct principles of state policy. 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

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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. 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. 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 section 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. 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. 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 Rights 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.
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.\(^\text{171}\)

### 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.\(^\text{172}\) Concerning the necessity of incorporating norms of ratified human rights instruments in domestic Constitutions, Alston and Darrow\(^\text{173}\) point out that:

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171 Refer to Section 36 of constitution of FDRE Proclamation No. 1 of 1995.
173 Darrow M and Alston P 'Bills of Rights in Comparative Perspective' in Alston Promoting Human Rights 469.
It 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.\textsuperscript{174} Tobin\textsuperscript{175} however, logically concludes that:

\begin{quote}
[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.
\end{quote}

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.\textsuperscript{176} Moreover, the Committee\textsuperscript{177} in its recommendation to Jamaica stated that:

\begin{quote}
[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.
\end{quote}

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

\begin{flushleft}
\textsuperscript{174} Tobin 2005 \textit{South African Journal on Human Rights} 104-105. \\
\textsuperscript{175} Tobin 2005 \textit{South African Journal on Human Rights} 105. \\
\textsuperscript{176} Committee on the Rights of the Child, Concluding Observations for the Solomon Islands CRC/C/15/Add208 (2 July 2003) Para 6(a). \\
\textsuperscript{177} Committee on the Rights of the Child, Concluding Observations for Jamaica CRC/C/15/Add32 (15 February 1995) Para 18. \\
\end{flushleft}
principles of the CRC. For instance the Committee 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 Levit 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. The practice in Argentina highlights that mere constitutionalisation will not automatically enhance compliance with international instruments. 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. 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". 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, even though Argentina domesticated international instruments on paper it does not yet obey, let alone comply with, international human rights instruments.

According to Tobin, 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

guarantee respect for those rights. Full implementation of children’s rights may
require further legislative and other measures.\footnote{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.\footnote{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.\footnote{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 27\footnote{190} – 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.\footnote{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.\footnote{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.\footnote{193}

\footnote{188} Constitution of the Republic of South Africa Act 108 of 1996.
\footnote{189} Bekink & Brand ‘Constitutional Protection of Children’ in Davel Introduction to Child Law in
South Africa 188.
\footnote{190} Robinson 2003 Potchefstroom Electronic Law Journal 63.
\footnote{191} Bekink & Brand ‘Constitutional Protection of Children’ in Davel Introduction to Child Law in
South Africa 187.
\footnote{192} Bekink & Brand ‘Constitutional Protection of Children’ in Davel Introduction to Child Law in
\footnote{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...

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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.\textsuperscript{201}

The court concluded that parents are the primary caregivers\textsuperscript{202} 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 with\textsuperscript{203} access 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”.\textsuperscript{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

\textsuperscript{201} Grootboom v Oostenberg Municipality 2000 3 BCLR 277 (C) para 79.
\textsuperscript{202} Grootboom v Oostenberg Municipality 2000 3 BCLR 277 (C) para 77.
\textsuperscript{203} Grootboom v Oostenberg Municipality 2000 3 BCLR 277 (C) para 78.
\textsuperscript{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 Proclamation\(^{206}\) 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.

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\(^{205}\) 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)\textsuperscript{208} and section 13(2)\textsuperscript{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.\textsuperscript{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".\textsuperscript{211} Ratified human rights instruments are an integral part of the law of the land. However, Soboka\textsuperscript{212} 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.\textsuperscript{213} As opposed to rewriting the whole text of a convention, a single act of ratification suffices to domesticate an international human rights instrument.\textsuperscript{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

\begin{itemize}
\item \textsuperscript{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".
\item \textsuperscript{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".
\item \textsuperscript{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".
\item \textsuperscript{211} Abebe The Potential Role of Constitutional Review 164.
\item \textsuperscript{212} Soboka 2009 Journal of Ethiopian Law 50.
\item \textsuperscript{213} For competing arguments on the domestication approach of Ethiopia refer to Section 3.3.1.
\item \textsuperscript{214} Section 9(4) of Constitution of the FDRE Proclamation No. 1 of 1995.
\end{itemize}
legal order, too.\textsuperscript{215} In Ethiopia after a convention is ratified by the legislature, only the statement of ratification is published in the Negarit \textit{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.\textsuperscript{216} Soboka\textsuperscript{217} 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.\textsuperscript{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.\textsuperscript{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 \textit{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 Idris\textsuperscript{220} 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.\textsuperscript{221} Idris\textsuperscript{222} further argues that it is only if the full body of the international instruments is published in the

\begin{thebibliography}{99}
\bibitem{215} Brownlie \textit{Principles of Public International Law} 31-32.
\bibitem{216} Yohannes and Assefa 2012 www.africanchildforum.org 8.
\bibitem{217} Soboka 2009 \textit{Journal of Ethiopian Law} 152.
\bibitem{218} Soboka 2009 \textit{Journal of Ethiopian Law} 152.
\bibitem{219} Gebregiorgis 2009 \textit{Ethiopian Human Rights Law Series} 44.
\bibitem{220} Idris 2000 \textit{Journal of Ethiopian Law} 113.
\bibitem{221} Refer to Section 3.3.1 above.
\bibitem{222} Idris 2000 \textit{Journal of Ethiopian Law} 113.
\end{thebibliography}
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.\textsuperscript{223} Besides, in terms of Establishment Proclamation of Federal Negarit Gazeta\textsuperscript{224} 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, Gebreamlak\textsuperscript{225} 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.\textsuperscript{226}

According to Abebe\textsuperscript{227} 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.

Yeshanewu\textsuperscript{228} 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

\textsuperscript{223} Section 71(2) of FDRE Constitution.
\textsuperscript{224} Proclamation to provide for the Establishment of Federal Negarit Gazette No 3 of 1995.
\textsuperscript{225} Gebregiorgis 2009 Ethiopian Human Rights Law Series 44.
\textsuperscript{227} Abebe The Potential Role of Constitutional Review 165.
international instruments. The requirement of publication therefore adds no validity to international instruments which are already valid through ratification.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,\textsuperscript{232} not necessarily its publication. Nevertheless Tobin\textsuperscript{233} 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 Levit\textsuperscript{234} 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.\textsuperscript{235} Consequently she\textsuperscript{236} concludes that:

\begin{quote}
    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.
\end{quote}

\begin{flushleft}
\textsuperscript{229} Abebe The Potential Role of Constitutional Review 165.
\textsuperscript{231} Abebe The Potential Role of Constitutional Review 166.
\textsuperscript{232} Gebregiorgis 2009 Ethiopian Human Rights Law Series 45. See also Alemayehu 2008 Journal of Ethiopian Law 147.
\textsuperscript{234} Pupavac 1998 Human Rights Law Review 313.
\textsuperscript{236} Pupavac 1998 Human Rights Law Review 342.
\end{flushleft}
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 instruments.\textsuperscript{237}

Publication is not necessarily a precondition that precludes courts from taking judicial notice of ratified international instruments. Judicial practice in Ethiopia supports this conclusion.\textsuperscript{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.\textsuperscript{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.\textsuperscript{240} Regardless of publication in the Negarit Gazeta courts can apply ratified international instruments.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{244} The Cassation bench decision can be considered as

\textsuperscript{237} Mayessa The Integrated Approach 120.
\textsuperscript{238} Abebe The Potential Role of Constitutional Review 166.
\textsuperscript{239} Tsedale Demise v Kifle Demise Federal Supreme Court Cassation Division File No. 23632 2000.
\textsuperscript{240} Negaso Gidada v The House of Peoples Representatives and the House of Federation Federal High Court Appeal File No. 41183 2004.
\textsuperscript{241} Ethiopian Human Rights Commission 2011 http://ehrc.org.et/LinkClick.aspx?fileticket=7nDDzAMpwzM%3d&tabid=106.
\textsuperscript{242} Abebe The Potential Role of Constitutional Review 167.
\textsuperscript{243} Abebe The Potential Role of Constitutional Review 167.
\textsuperscript{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), Soboka\textsuperscript{245} correctly asserts that:

\begin{quote}
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.
\end{quote}

3.4 \textit{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

\textsuperscript{245} Soboka 2009 \textit{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. 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.

At present there is no comprehensive specific law that recognises children’s rights in Ethiopia. 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.

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, Soboka rightly concludes that "ratified 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.
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. In Ethiopia an independent judiciary with exclusive judicial power was established by the FDRE Constitution. 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 mindset 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. 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 case 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.

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

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.
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:

\[\text{[i]internationally accepted ideas of the various obligations endangered by human rights indicate that all rights – both civil and political rights and social and economic – generate at least four levels of duties for a state that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties. ... Each layer of obligation is equally relevant to the rights in question.}\]

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.


\(^{260}\) Refer to Section 2.3 above.

standards. 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. 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. 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. 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." In Ethiopia the

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


264 Refer also to section 3.1 above.


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

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. Ratification of international children’s rights instruments that protect the rights of children means little unless their standards are incorporated into domestic law. 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.

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270 Permanent Court of International Justice Advisory Opinion The Exchange of Greek and Turkish Populations (1925) PCIJ Reports series B No. 10.
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.\textsuperscript{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.\textsuperscript{274} The duty to promote entails the obligation to facilitate the enjoyment of rights that are legally protected.\textsuperscript{275}

The legislature has the primary role and direct accountability for providing detailed statutes including [children’s] socio-economic rights.\textsuperscript{276} Separate legislation is crucial as it would be more detailed and precise in its formulation than mere constitutional principles and international norms.\textsuperscript{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.\textsuperscript{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,

\begin{itemize}
\item \textsuperscript{273} Soboka 2009 Journal of Ethiopian Law 140.
\item \textsuperscript{274} Soboka 2009 Journal of Ethiopian Law 140.
\item \textsuperscript{275} Refer to Chapter 2.
\item \textsuperscript{276} Kibret Competence and Legitimacy of Ethiopian Court 77.
\item \textsuperscript{277} In this regard an instance can be South African Children’s Act 38 of 2005.
\item \textsuperscript{278} Brownlie Principles of Public International Law 34.
\end{itemize}
yet states can keenly look for international cooperation in order to ensure their adherence to international standards\textsuperscript{279} – 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.\textsuperscript{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 Act\textsuperscript{281} 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.\textsuperscript{282} Even though international children’s rights instruments are ratified by Ethiopia\textsuperscript{283} (despite the equivocality of their status and validity)\textsuperscript{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 Henkin\textsuperscript{285} rightly states that:

\begin{quote}
[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.
\end{quote}

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

\begin{footnotes}
\footnotetext{279}{Icelandic Human Rights Centre Implementation Unknown http://www.humanrights.is/the-human-rightssproject/humanrightscasesandmaterials/humanrightscconceptsideasandfora/theconceptsofhumanrightsanintroduction/implementation/}.
\footnotetext{280}{Proclamation to Provide for the Registration and Regulation of Charities and Societies No. 621 of 2009.}
\footnotetext{281}{Proclamation to Provide for the Registration and Regulation of Charities and Societies No. 621 of 2009.}
\footnotetext{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.}
\footnotetext{283}{Refer to Chapter 1 above.}
\footnotetext{284}{Refer to section 3.3 above.}
\footnotetext{285}{Henkin Louis The Rights of Man Today (1979) 95 in Soboka 2009 Journal of Ethiopian Law 140.}
\end{footnotes}
The 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". 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. 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.

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. Strong legislation, if any, is meaningless without adequate financial means to implement and enforce those laws and policies. 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.

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.
288 Refer to section 3.5 above.
289 Hussain et al Human Rights Commissions and Ombudsman Offices 135.
drafted largely on the standards of the CRC. 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. 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.

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." 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. It also depends upon whether or not courts and other legal actors apply human rights standards in

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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.
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/humanrightsconceptsidesandfora/theconceptsofhumanrightsanintroduction/implementation/.
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

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\(^{297}\) Icelandic Human Rights Centre Implementation Unknown http://www.humanrights.is/the-human-rightsproject/humanrightscasesandmaterials/humanrightscopyrightsasandfora/theconceptsofhumanrightsanintroduction/implementation/.

\(^{298}\) Soboka 2009 Journal of Ethiopian Law 160.


\(^{300}\) Icelandic Human Rights Centre Implementation Unknown http://www.humanrights.is/the-human-rightsproject/humanrightscasesandmaterials/humanrightscopyrightsasandfora/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. 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.

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. 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. Thus, in such circumstances, relying upon international treaties could (and should) be more of a principle than an exception.

The Cassation bench of the Ethiopian Federal Supreme Court ruled on a child rights case 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 endorse the use of international covenants in the interpretation of domestic legislation. Yet, Ethiopian courts seldom refer to international instruments in their decisions. They hardly apply international human rights documents even to underpin

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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.
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.\textsuperscript{310}

Nonetheless, the ruling of the Cassation bench\textsuperscript{311} 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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{314} Hence the best interest of the child has attained the norm of customary international law.\textsuperscript{315} Ethiopian courts therefore have sufficient grounds to invoke the rights guaranteed in the CRC.

According to Yeshanewu\textsuperscript{316} 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.

\section*{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

\begin{thebibliography}{99}
\bibitem{310} Yeshanewu 2008 \textit{African Human Rights Law Journal} 279-289.
\bibitem{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.
\bibitem{312} Smith \textit{Texts and Materials} 15.
\bibitem{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.
\bibitem{314} Smith \textit{Texts and Materials} 14-15.
\bibitem{315} Majka and Ensalaco \textit{Children’s Human Rights} 73.
\bibitem{316} Yeshanewu 2008 \textit{African Human Rights Law Journal} 287.
\end{thebibliography}
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.
\(^{320}\) 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.
\(^{322}\) 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.\textsuperscript{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.\textsuperscript{325} It should discharge its responsibility by eradicating the vicious cycle of poverty, and by changing the deteriorated living conditions of children.\textsuperscript{326} It was rightly argued by Montgomery\textsuperscript{327} 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, Goel\textsuperscript{328} 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.\textsuperscript{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.\textsuperscript{330} This is not true regarding socio-economic rights of children; they are neither available in the texts of the constitution, nor are they

\textsuperscript{324} Yohannes and Assefa 2012 www.africanchildforum.org 8.
\textsuperscript{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.
\textsuperscript{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.
\textsuperscript{328} Goel 2009 African Journal of Political Science and International Relations 153.
\textsuperscript{329} Goel 2009 African Journal of Political Science and International Relations 153.
\textsuperscript{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.

policy that details practicable and comprehensive targets.\textsuperscript{335} It is meant to keep states in check and make them accountable for their inaction.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{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.

\textsuperscript{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.


\textsuperscript{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.


HIV/AIDS and armed conflict.\footnote{UNICEF 2006}{UNICEF 2006} Poverty and population increase are two major causes of children not enjoying their basic rights.\footnote{Wallace 2005 Masters of Arts Dissertation American University 46.}{Wallace 2005 Masters of Arts Dissertation American University 46.}

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.\footnote{Nieuwenhuys 2001 Journal of the International African Institute 550.}{Nieuwenhuys 2001 Journal of the International African Institute 550.} According to community members rights of children are a fad – something that will vanish when the child rights based NGOs withdraw their activities.\footnote{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.}{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.}

In this regard, Bartlett\footnote{Bartlett \textit{et al} Cities for Children 251.}{Bartlett \textit{et al} Cities for Children 251.} 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.\footnote{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.}{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.} 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
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. 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.

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 polices 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.

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. 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. The implementation of the socio-economic rights of children as incorporated into the domestic laws of Ethiopia via the constitutional domestication provision is the responsibility of all organs of the state.

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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 \textit{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 \textit{Human Rights Commissions and Ombudsman} 141.

\(^{355}\) Hossain \textit{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{360}

\textsuperscript{356} Hossain Human Rights Commissions and Ombudsman 137-138.
\textsuperscript{357} Section 50(8) cum 51(8) of the FDRE Constitution.
\textsuperscript{359} Yohannes and Assefa 2012 www.africanchildforum.org 12.
\textsuperscript{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. 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. 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. 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. 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

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365 Refer to sub-section 3.3.3 above.
366 Refer to sub-section 4.2 above.
rights. The study proposes that legal and institutional measures should be taken for the realisation of children’s socio-economic rights.

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. The study

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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.

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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.
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