The Reality of Human Rights in Ethiopia

Andargachew Tesfahun Birara
University Of Gondar
Gondar, Ethiopia

Abstract
The list of enumerated fundamental rights and freedoms in the current Ethiopian Constitution is progressive and impressive. One-third of the Constitution is devoted to the recognition and protection of human rights. The question, however, is whether there exist strong and competent institutions to protect and enforce these rights. This paper tries to assess the real situation of human rights in Ethiopia. The author seeks to answer the question: is human right the human reality in Ethiopia? To answer this question secondary data sources are used: the author consulted books, journals, governmental and nongovernmental human right organizations reports, court cases and other electronic materials.

Introduction
Human rights are rights or entitlements that every human being has because of the reason being human, that denotes, the capacity for or possession of human dignity is seen as the ground for human rights. According to the Universal Declaration of Human Rights, to enjoy from the full benefit of human rights being human is the only requirement. Some people also technically define human rights, as those 30 principles (rights) that exist under the Universal Declaration of Human Rights. A human right is a moral, none-transactionally grounded, moderately social context –insensitive and difficult to alienate from claim-rights possessed in virtue of some aspect of the status of being human (Anthony R. Reeves, 2015: 407). A human right is not identical with any posited norm (e.g. a legal norm), nor is its existence grounded in a transaction between parties (e.g a promise or contract).

The origin of human rights as a concept is very much contested with some asserting that it goes as far back as the renaissance while others claim that the concept emerged only in the 17th Century (Dawit Brhane, 2014: 1). Even, as some electronic sources indicate that, the beginning of history of human rights goes far back to the 6th BC.

Leaving these debates aside, the modern concept of human rights is rooted in the experiences of legal lawlessness when crimes were committed with the authorization of the law, and when some human beings were denied their status as such. An answer to these experiences was the emergence of the international human rights law. The main aim of this branch of international law is to prevent broad violations of fundamental rights from returning in the future (John k. Quayson, 2012: 1).

By appreciating the worth of all human being, the international community decided to get rid of elements that could destroy the individual person, but also to create the conditions that would enable individual person to develop and flourish (Ibid). Accordingly, the Preambles of Universal Declaration of Human Rights provides that, the foundation of freedom, justice and peace in the world is the inherent dignity and of the equal and inalienable rights of all members of the human family.

Firstly, fundamental rights and freedoms are universal. This means that each and every human being has human rights because of the reason being human regardless of the place where they live. Universality is embedded in the inherent dignity of human beings and in the fact that human rights are innate. By innate, it is meant that human rights exist independently of the will of anyone (Peichowiak, 1999). They are neither obtained, nor granted through any human action. Secondly, these rights are also inalienable, in that they cannot be taken away by anyone, including the state, or that nobody can renounce them by her/himself. Pursuant to this approach, legal norms do not establish human rights but only recognize them and determine the ways of their realization. Thirdly, human rights are indivisible, in that none of the rights that is considered to be fundamental human right is more...
superior/inferior than any of the others and, more specifically, that they are inter-related and co-existed. The indivisibility of human rights was further confirmed during the World Conference on Human Rights in 1993 at Vienna (Vienna Declaration, 1993).

The recognition of human rights, which derives from the recognition of dignity, is the basis of justice and therefore the basis of every legal system, which claims to be just. The State and the law exist for the individual living in a society. Despite the fact that the human rights law was created, among other things, to set a limit and a system of check and balance the powers of the state against individual persons, the State increasingly becomes regarded as a guardian of human rights (Rana, Rajat, 2009). The Universal Declaration of Human Rights proclaims a common standard of achievement for all peoples. The two covenants that are called Civil and Political Rights and, Economic, Social and Cultural Rights further made these human rights standards legally binding. Most of the countries also signed to confirm their recognition to most of these rights and incorporate them in their constitution, national legislation and other domestic legal laws.

Coming to Ethiopia, the current Federal Democratic Republic of Ethiopia Constitution recognizes that human rights and freedoms, emanating from the nature of mankind are inviolable and inalienable and thus shall be respected. It further goes on providing that the fundamental rights and freedoms included in the Constitution shall be interpreted in a manner conforming to the international human rights instruments (i.e. The principles of the Universal Declaration of Human Rights, International Covenants on Human Rights) and other international instruments adopted by Ethiopia (Rakeb Melesse, 2002). All in all, Ethiopia is under duty to properly enforce human rights within its own territory.

1. International Human Rights and State parties

International human rights law is the part of international law designed to promote and protect human rights at the international, regional and Country levels. As a form of International Law, International Human Right Law is primarily made up of treaties, covenants, declarations, conventions and agreements between states intended to have binding legal effect between the parties that have agreed to them (Samrawit Tadesse, 2013: 1) Accordingly, enforcement of International Human Right Law can occur on a domestic, a regional or an international level by Countries that ratify the instruments as they commit themselves to respecting those rights and ensuring that their domestic law is compatible with international legislation.

1.2 States’ Obligations to Respect, Protect and Fulfill

One might object that human rights do more than protect to risks. Sometimes they protect against intentional outcomes, and simply forbid agencies from directly instantiating an event. For instance, human rights simply forbid the executive from imprisoning opponents for political reasons, engaging in torture, punishing innocuous religious expression, or depriving access to clean water (Anthony R. Reeves, 2015: 416). For example, imprisoning political opponents without due process is primarily wrongful, it might be thought, in its unjustified restriction of liberty.

A human right is a claim-right possessed in virtue of some aspect of the status of being human. But when one says it is a claim right is to indicate that another has at least one corresponding duty and that failure to carry out the duty violates the dignity of the right holder. Simply the above idea meant that some aspect of human dignity protects certain human interests by imposing obligation on the other. The main essence is that, to claim there is a human right is to say that there is some interest that is protected by a duty in another specifying a standard of behavior. Human rights involve at least; (1) protected interest, (2) duty, (3) duty-bearer (Anthony R. Reeves, 2015:408).

On the basis of international human rights law state is considered as a duty –bearer and the state has the duty to respect, protect and fulfill human rights. According to art.2 (1) of the International Covenant on Civil and Political Rights each State Party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant,
without discrimination of any kind (John k. Quayson, 2012: 3). Furthermore, States parties on the basis of the International Covenant on Human Rights have the duty to respect, protect and fulfill the incorporated rights. This description of state duty propagated originally by Henry Shue has received wide support and is frequently used in the analysis of human rights, in general, and socio-economic rights, in particular (Ibid).

Most of the countries which signed to implement human rights at the domestic level enshrined the international human right principles in to their constitution. However, the potential of domestic courts to enforce international human right laws has remained largely differing from country to country. There exist widely divergent perceptions of the state’s interpretation regarding the relationship between international law and domestic law which explains state practice on domestic implementation of international law varies greatly.

2. Theorizing international human rights and national laws (dualism and monism)

The relationship between international law and national law troubles both theorists and courts. Though there are various methods through which States implement international treaties into their domestic law, the methods were traditionally classified by using the rough dichotomy of ‘dualistic’ and ‘monistic’ countries, or theories. On the one hand, monists argue that international law and domestic law together form a unified legal system, often characterized by the primacy of international norms (Martin Scheinin, 1999). They further argue that municipal courts shall apply international law directly without the need for any act of adoption by the courts or transformation by the legislature. On the other hand, dualists claim that domestic law and international law are two completely different legal systems, with the result that international law may be applied by domestic courts only if ‘adopted’ by such courts or transformed into local law by legislation (Ibid). While maintaining that international law is not foreign law, monists have been compelled to accept that municipal courts cannot directly apply the whole body of international law binding on a state. This led to the emergence of the ‘harmonization theory’, which has a disagreement with the absolute monist position by acknowledging that in cases of contradiction between international law and municipal law, the judge must apply his own jurisdictional rules (Tekle Soboka, 2005).

2.1 Status of International Human Rights Instruments in Ethiopia Constitution

The status of international human rights instruments in the current Ethiopian Constitution is quite impressive. For example, Article 9(1) of the Federal Democratic Republic of Ethiopia Constitution states that “the Constitution is the supreme law of the land”. Article 9(4) describes ratified international treaties as an integral part of the law of the land besides that Article 13(2) of the Constitution includes a provision, which arguably places certain international human rights instruments on par with the Constitution. Article 13(2) states: the fundamental rights and freedoms specified in this constitution 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 (Takele Soboka, 2005: 136).

One could argue that a constitutional requirement to interpret in conformity with the aforementioned international human rights instruments places these instruments on par with the Constitution. Even though nice list of human rights in the constitution and giving priority to international human rights than the domestic law there is a criticism to Ethiopian constitution to its undermining principle of human rights. For example, some scholars argue that providing guidelines for interpreting the Constitution is far removed from establishing international human rights instruments as the supreme law of the land. Article 93 of the Constitution illustrates the problem which arises if international human rights instruments are not considered on par with the Constitution. Article 93 describes procedures for times of emergency, including which fundamental rights and freedoms are derogable. Article 93 provides that all fundamental rights and freedoms are derogable during a state of emergency, except for Articles 18 (prohibition on cruel, inhuman, or degrading treatment), Article 25 (equality before the law), and Article 39(1) and (2) (ethnic group rights). This list incredibly does not
include the right to life. This fact alone seems to demand that certain international human rights instruments are on par with the Constitution; otherwise, the federal government would have a constitutional basis for violating a citizen’s right to life during a state of emergency.

3. **The Reality of Human Rights in Ethiopia**

The current constitution of the federal democratic republic of Ethiopia provides broad human right protection in conformity with international human rights law and principles. Nevertheless, the House of federation, a parliamentary political organ that represents the political interests of Ethiopia’s ethnic groups, is mandated to interpret the constitution at the exclusion of the judiciary.

The list of enumerated fundamental rights and freedoms in the FDRE constitution is progressive and impressive. The question however is whether there exist strong and competent institutions to protect and enforce these rights. One of the most crucial institutions in the protection of human right should be the judiciary, but when constitutional dispute arises in Ethiopia court must forward the case to the House of federation for adjudication. In Article 13(1) the FDRE constitution states that the judiciary has the duty to enforce the fundamental rights and freedoms in the constitution. However the judiciary has been lost one of its powerful tools in guarding against the infringement of constitutionally guaranteed human rights, the power of the judicial review (Aron Degol, 2008).

Ethiopia’s system of non-judicial constitutional review has many practical implications for the protection of human rights. A body which is empowered to interpret the constitution should be independent and free from any kind of political influence. The House of federation’s representatives are accountable, not to the constitution, but the Nation Nationalities and peoples of Ethiopia whom they represent. The house of federation is also a political organ operating within the context of a federal government dominated by a ruling party, the EPRDF, which has an excess of power in all branches of government (the 1995 EPDRF constitution). The House of federation lacks complete independence from the EPRDF and the executive branch of government. Thus, the House of federation is not likely to rule against the government when adjudicating constitutional disputes. As a political organ under the influence of the executive, the House of Federation should not be called upon to decide sensitive political issues because it cannot be expected to decide such a matter in a fair, unbiased manner. Fundamental rights and freedoms may lose out to political considerations favoring the ruling party and the executive. The case brought by the leading opposition political party the CUD, against the prime minister in 2005, is the perfect example of how the House of federation is unwilling to rule against another organ of the federal government. The CUD case involved the exertions of power by the prime minister following the May 2005 parliamentary elections. The CUD questioned the prime minister’s constitutional authority to issue a decree banning public demonstrations thereby curbing the constitutional right of assembly for a month following the disputed elections (Dagnachew Teklu, 2005).

The federal first instance court received the case and proves that the prime minister had overstepped his constitutional bounds. But the house of federation ordered that the prime minister had not exceeded his constitutional authority. The federal high court had no choice but to reject the appeal on the same grounds (Ibid).

The Ethiopia government didn’t properly carry out its international human rights obligation. Rights of citizens are frequently violated by the government deliberately. This practice of the Ethiopian government is revealed by different international governmental and nongovernmental organizations human rights report.

The advocacy of Human right, a non –governmental organization in special consultative status with ECOSOC on its report in 2012 mentioned that, the government of Ethiopia engages in practices that violate its obligation under article 1, 2, 6-8, 10-13, and 15of the international covenant on Economic, Social and Cultural rights.
The Human rights Watch on its 2012 report mentioned that Ethiopian authorities continued to severely restrict basic rights of freedom of expression, association and assembly. Thirty journalists and opposition members were convicted under the country’s vague Anti-terrorism proclamation of 2009.

Since the promulgation of the charities and civil societies proclamation in Ethiopia (CSO Law) in 2009, which regulates nongovernmental organizations and the Anti-Terrorism proclamation, freedom of expression, assembly, and association have been increasingly restricted in Ethiopia. The effect of these two laws, coupled with the government’s widespread and persistent harassment, threats and intimidation of civil societies, journalists and other who comment on sensitive issue or express views critical of government policy has been severe (Human Rights watch, 2013)

Today in Ethiopia, NGOs funded by foreign sources may no longer engage in human right advocacy. The current civil society organization law of Ethiopia imposes limitations on the activities of all civil society organizations that do not fit the CSO law’s definition of “Ethiopian” charities/societies. Under the CSO law, “Ethiopian” charities/societies are NGOs formed under Ethiopian law that consist exclusively of Ethiopians and receive no more than ten percent of their income from foreign sources (Ibid).

The current Ethiopia CSO law prohibited most of NGO organizations from participating in activities which is necessary for
1) The advancement of human and democratic rights
2) The promotion of equality of nations, nationalities and peoples and that of gender and religion
3) The promotion of the right of the disabled and children’s
4) The promotion of the efficiency of the justice and law enforcement services

The CSO law’s distinction between “Ethiopian” and “foreign” NGOs have far-reaching consequences. Article 2(2)-(3) of the CSO law, when read in conjunction with article 14(2) (j)-(n), effectively muzzles the activities of independent civil society organizations and human right defenders. For instance, EHRCO has several members and support committees in the major cities of Europe, the United States and Canada. But based on the CSO law, it cannot continue operating under its current structure and will be forced to choose between two alternatives, both of which would effectively require EHRCO to disengage from human rights monitoring and investigation. If EHRCO wants to retain its current members and receive their financial support, it will be required to register under the new law as a foreign/society and abandon its work in the field of human rights promotion and the rule of law. In the alternative, EHRCO could revoke its foreign membership, stop accepting membership fees from those individuals and attempt to continue its core activities, i.e. monitoring and investigating human rights abuse in the country, after losing the sources of up to 99 percent of its funds (observations by the committee of against torture, 2011). Under either scenario, the CSO law would effectively force EHRCO to cease its human right activities. Besides, the CSO law directly inhibits rights to association, assembly and free expression. Hence the current CSO law of Ethiopia violates Ethiopia’s obligation under the ICCPR, the Universal Declaration of Human Rights (UDHR), the African Charter on Human and Peoples Rights (ACHPR) and the Vienna Declaration of human Rights Defenders (DHRD).

3.1 The Relation between Cultural Practices and Human Rights

Culture is a very important element of any nation as it determines, to a large extent, the way people behave and go about their day-to-day lives. It is also one of the major factors influencing the pace of development and the direction that the process of development takes. Without a systematic analysis of culture, it is difficult to gain a meaningful understanding of why some individuals, communities and societies operate the way they do (Ntata, P. and C. Sinoya,1999).

Each nation has some ways of life that are unique to it. As it is rightly argued, people without a culture are like a tree without roots. Culture is at the root of national development, and for that development to be sustainable that culture must be vibrant. At the same time it is worth noting that, some elements of culture can be obstacles to development. There are certain cultural practices that are unique to certain groups. Some of these practice impact negatively on the enjoyment of human rights in general and the rights of women in particular. (Malawi human rights Commission, 2005).
Culture determines the power relations within society. In most societies there are cultural institutions, beliefs and practices, that undermine women's autonomy and contribute to gender-based discrimination. Every culture has its ways of valuing girls and boys, and assigns different patterns of behaviors, attitudes, roles, rights, responsibilities and expectations in the socialization process (Kalkidan Bekele, 2007).

Women are the majority of the world's poor; the economic and social gap between men and women remains unequal. Among 1.3 billion living in poverty in the world 70% are women. Worldwide women do not equally own, inherit or control property, land and wealth. They have limited ownership of income, property and credit. The existing poverty gap has been directly linked to the existence of different stereotypes, traditions and cultural practices exercised in the world (UNICEF 2004).

Women are entitled to full protection of human rights and freedoms because they are human beings. The important first step towards effective protection of women’s right is to recognize their violations. This could be illustrated by traditional practices detrimental to women and violence against women. Previously, their inclusion in the human rights agenda was hampered by views that ‘the private sphere’ should be exempted from human rights norms. In other words, what husbands, fathers, employers, colleagues and neighbors do to women was deemed not to constitute as a human rights issue (Malawi human rights Commission, 2005).

When we come to Ethiopia, different studies revealed that the cultural practices and beliefs put their immense impact on the enjoyment of human rights particularly on the rights of women. In different parts of the country various cultural practices exist that advocate a gender-based violence against women.

Among them marriage by abduction is one of them. In Ethiopia, the practice of marriage by abduction is accepted by most of the society who lives in the rural areas and still it happens frequently. The practice violates the rights of the girl child in the sense that in most cases, the girl is forced into marriage without her consent.

Child marriage is also another cultural practice that put its own effect on the enjoyment of human rights particularly the rights of women in Ethiopia. Child marriage is a violation of human rights whether it happens to a girl or a boy, but it represents perhaps the most prevalent form of sexual abuse and exploitation of girls (Malawi Human Rights Commission, 2005).

Although various cultural practices and beliefs are practiced for different reasons, there consequence brings so many sufferings to women. Among these are sexual abuse, exploitation of girls and drop out from school are some of them. In particular the above mentioned consequences of cultural practices ought to be interrogated against the backdrop of international standards those spelt out in human rights instruments such as CEDAW, CRC, ICCPR and ICESCR (Ibid).

### 3.2 The problems of women’s right in Ethiopian rural community

In Ethiopia, many factors that can be grouped into economic, social, legal and cultural are still constitute a barrier to human rights advancement. In most parts of Ethiopian rural community the role assigned to men and women is pre-determined by societal attitudes. Women’s role is seen as reproductive and not productive hence the false dichotomy between private and public spheres and the value placed on marriage and motherhood. The conceptualized dichotomy that women work is in the private sphere and that of men in the public sphere limits women’s participation in and benefits from development programs. Women by process of socialization have accepted their status as being perfectly in place. In particular, the status of the peasant community of Ethiopian women has tended to be conditioned by tradition and the philosophy of the dominant religions. Aware of the danger of oversimplifying the issue I tend to say that the dominant religions tended to encourage submission of women to men. Those cultural practices and traditional beliefs such as, non inheritance right of women, Male Preference and Succession Rights are not only discriminatory but also inimical to women’s advancement in Ethiopia and highly incompatible with domestic legal laws and international human right principles.
Ethiopia is a party to several international human right instruments that uphold non-discrimination and equality of persons and most of the international human rights principles are enshrined in the constitution of the country but the problem is there is no clear mechanism to properly implement them.

In Ethiopia we have a large number of people who lives in the rural areas and uneducated that means Very few people are aware of about their basic human rights and know about the organs of state and their respective duties. Human rights education is thus very vital to inform the society about their rights and duties as a legal person so that people may be able to pursue their rights more vigorously. In the absence of adequate knowledge of rights and the mechanisms available to realize them, violations cannot be recognized and rights cannot be protected.

Even though the presence of Lack of awareness about the legal laws in peasant community of Ethiopia, it is not the only reason for the violation of human rights of women. Sometimes by giving priority for local customs and norms human right laws are deliberately violated.

In most of Ethiopian peasant community those who are active in the local politics are those who were born and brought up in that locality. Governments officials at the local level are themselves part of the local community and they are more loyal to the customs and norms of their community than to enforce national laws which contradict with the local customary laws. There is an official tolerance of cultural, societal and customary norms that shape and govern the institution of marriage and family life among the Ethiopian peasant communities. Given the widespread nature of the practices and its being a norm, no one considers customary practices as an illegal issue which contradicts with human rights. Even though the presence of a number of early arranged marriage in different peasant community of Ethiopia, there are no as such many cases of an early-arranged marriage reported to the Justice Office as an illegal marriage.

Not only in Ethiopia peasant community but also in different parts of the world peoples give priority for their customs and cultural norms than the legal law. For example, a research in Malawi founds that, governments try to establish laws that coexist with human right principles, but various cultural value of the society make the law useless, because the societal values serve as a basic rule to the day to day activity of the society than the law which is already designed by the government. Due to the fact that the Violation of international human rights laws by such cultural practices persists, because they are not questioned and take on an aura of morality in the eyes of those practicing them (Malawi Human Rights Commission, 2005).

4. Conclusion

The current constitution of Ethiopia provides broad human rights protections in conformity with international human rights laws and principles. The question, however, is whether there exist strong and competent institutions to protect and enforce these rights. The House of federation, a parliamentary political organ that represents the political interest of Ethiopia’s ethnic groups, is mandated to interpret the constitution at the exclusion of the judiciary. What is more important concerning to human right is the extent to which courts of law apply human rights norms in their judgments independently without the influence of other government organs but in Ethiopia the judiciary is not independent. Ethiopia’s system of non-judicial constitutional review weakens the judiciary’s power to check the constitutional excesses of the other branches of government and perpetuates an inefficient system that precludes access to justice. Political freedoms are repressed in Ethiopia with state control of the media, limited academic freedom, and intolerance for opposition towards the government.

In Ethiopia, there are governmental laws that directly contradict with human rights laws and principles. The current Civil Society Organizations law of Ethiopia effectively forces international nongovernmental organizations to cease their human right activities in Ethiopia. NGOs have a big role to create awareness to the society about human right issues, in Ethiopia there are large number of people who live in the rural areas and uneducated- In the absence of adequate knowledge of rights and the mechanisms available to realize them, violations cannot be recognized and rights cannot be
protected. Besides, the CSO law of Ethiopia directly inhibits rights to association, assembly and freedom of expression. Hence the current CSO law of Ethiopia violates Ethiopia’s obligation under the International covenant on civil and political rights (ICCPR), the Universal Declaration of Human Rights (UDHR), the African Charter on Human and Peoples Rights (ACHPR) and the Vienna Declaration of human Rights Defenders (DHRD).

The other thing that stands as hindrance for the proper implementation of human rights in Ethiopia is the deep rooted cultural values and norms of the society. Even though the presence of lack of awareness about the legal laws in rural community of Ethiopia, it is not the only reason for the violation of human rights. Sometimes by giving priority for local customs and norms human right laws are deliberately violated. There are various laws in different legal documents of Ethiopia that coexist with human right principles, but various cultural value of the society make those law useless, because the societal values serve as a basic rule to the day to day activity of the society than the law which is already exist in different legal documents. Due to the fact that the Violation of international human rights laws by such cultural practices persists, because they are not questioned and take on an aura of morality in the eyes of those practicing them. In most of Ethiopian rural community those who are active in the local politics are those who were born and brought up in that locality. Governments officials at the local level are themselves part of the local community and they are more loyal to the customs and norms of their community than formal (legal) national laws which contradict with the local customary laws. There is an official tolerance of cultural, societal and customary norms that shape and govern the institution of marriage and family life among the Ethiopian rural communities.

The customary law of most of Ethiopian rural community is repugnant to natural justice, equity, good conscience and human rights. Ethiopia is a party to several international human right instruments that uphold non-discrimination and equality of persons and most of the international human rights principles are enshrined in the constitution of the country but the problem is there is no clear mechanism to properly implement them. Hence, human rights laws and principles that exist in the Constitution and in some other legal documents of the country are not the human reality in Ethiopia.

References


**The 1995 Federal Democratic Republic of Ethiopian Constitution.**