Rooting Life and Death in Ethiopian Law: Suggesting a Holistic Approach to Human Rights Law

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Oh, come with old Khayyam, and leave the Wise
To talk; one thing is certain, that Life flies;
One thing is certain, and the Rest is Lies;
The Flower that once has blown forever dies.

Omar Khayyam[1]

Abstract

The article explores the intricate ways in which human rights are woven into a legal system. In order to fully understand any right, one has to be aware of the many intricacies that surround it. Especially those interested in the protection of human rights through legislation ought to approach the subject with a recognition of the multifaceted nature of rights and the many, and sometimes controversial, subtopics that accompany rights. Whereas the article takes up the matter in reference to Ethiopian law, the discourse on life is very likely to be drawn along the same topics and fault lines under other legal systems as well.

I. INTRODUCTION

Reading through the bill of rights in the Ethiopian Constitution we stumble upon the right to life before any other. There it stands, at the top of the list of the 'inalienable and inviolable'. The authors of the FDRE Constitution, our 'social contractors' as it were, employed three separate articles to emphasize that life is every person's inviolable and inalienable right. Although it is granted that all human rights are inviolable and inalienable

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[1] Edward FitzGerald (Edited by Christopher Decker), *Rubáiyát of Omar Khayyám: A Critical Edition* (Univ. Press of Virginia 1997) p. 184.

by virtue of article 10 of the FDRE Constitution,[2] article 14 reaffirms the same principle in relation to "life, the security of person and liberty." This is quickly followed by article 15 which declares the right to life by itself. The right is again reaffirmed in article 36 where the right to life is granted to children separate from their entitlement to the right as human beings. The right to life has been gracefully crowned as the mother of all rights; the most important of all rights without which other rights could not be exercised.[3] Despite the passionate aura in which this right is exalted, it has so far not been seriously studied in Ethiopian academia, whether that is in the legal field or the social sciences. The article begins with a holistic discussion of life, and following old Khayyam it inevitably ends with death, that is, at least - the right thereto.

The main challenge that the article desires to tackle is to demonstrate how human rights are intricately woven into the fabric of positive law. By showing that intricacy, it is hoped to consequently show that anyone wishing to root a right, any right, in a domestic legal system, needs to reach into many branches of the law so as to meaningfully protect the right. It is hoped that the article will demonstrate why it is often claimed that rights are interconnected and interdependent in so many ways. With respect to the right to life, the article not only shows how the right to life is interconnected with other rights but that it interconnects different fields of law and even different generations of right holders. In the end, the article proposes to lawyers and especially to human rights lawyers that, due to the interconnected nature of rights, both with one another and with other positive laws, it would be advantageous to incorporate or mainstream human rights into legal thinking. This would not only affect law making but also the teaching of law subjects other than human rights law.

II. ETHICAL MOORINGS OF THE RIGHT TO LIFE

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[2] Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995 (hereinafter "FDRE Constitution").

[3] Human Rights Committee, General Comment 6, Para. 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994); Misganaw Kifelew, *Non-Derogable Rights Under the FDRE Constitution*, (Unpublished, AAU Law Library, Submitted in partial fulfilment of the requirements of the LL.B. degree 2000) p.78; also see H. J. McCloskey, *The Right to Life,* Mind, New Series, Vol. 84, No. 335 (1975) p. 404.

The right to life is probably one of the oldest and most widely accepted precepts found in most societies.[4] When one thinks about the nature of any human right, or the right to life in particular, one is likely to presume that the right is self-evident and universally applicable. Nevertheless, such a view may stand on premises that are unstated, and possibly wanting, or a logic that is faulty. Whereas it is customary in legal discourse and research to seek theoretical justifications and genealogies for one's stances (or come to the stances through theoretical investigation) such an endeavor is not futile as it allows one to understand that the law has deeper purposes and sometimes just shallow histories.

Though this section does not undertake to justify the right to life in a thorough manner, it will explore some ethical and moral justifications of the right. It will cover just enough for the reader to take cues on how the right to life can and has been defended. Since it would be implausible for the article to simply presume a self-evident and universal right to life, lest it should risk philosophical naivety, it does set a minimally acceptable ground on which the right can be grounded only to continue on a positivist quest for the meaning of the right to life and how it is given fixture in the law.

Although it is contended that religion is a late comer to human rights discourse, contemporary religious hermeneutic enterprises have resulted in complex religio-ethical views on human rights.[5] In the monotheistic traditions the right to life is usually based on religious convictions such as the creation of man from the image of God or the sacred nature of the human species.[6] Yet another way to argue in favor of the existence of the right to life is to refer to the possession of a soul by humans as opposed to animals, other "things",[7] inanimate objects and living non-humans.

The right to life may also be based on religious edicts that prohibit murder. The right to life can be derived from the Christian and Muslim holy books in the form of concepts that prohibit murder such as the Bible's "[t]hou

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[4] See Elizabeth Wicks, *The Right to Life and Conflicting Interests* (Oxford Univ. Press 2010) pp. 22-47.

[5] Rasa Ostrauskaite, *Theorizing the Foundation of Human Rights*, E-Journal., December 2001, Elaine Pagels, "Human Rights: Legitimizing a Recent Concept", Annals of the American Academy of Political and Social Science, Vol.442 (1979).

[6] Jerome J. Shestack, 'The Philosophic Foundations of Human Rights, Human Rights Quarterly', Vol. 20 No. 2 (1998), p. 205.

[7] H. J. McCloskey, *supra* note 3, p. 406.

shall not kill"[8] and the Quran's "take not life, which Allah hath made sacred except by justice and law."[9] The customary Gada system, a belief system indigenous to Ethiopia, posits that "*Waqa* gave man a place under the sun; he is Waqa's creation independent of any one's will. Therefore his life should be respected."[10] Given that religion is taken rather seriously in Ethiopia, and many African countries, it is a worthwhile endeavor to explore religious and traditional discourse on how the right to life can be defended.

The natural rights tradition is one of the older theories to have dealt directly with the right to life. John Locke, the man who is credited for fathering the theory in Western academia, argued for the right to life in the following terms:

> *The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker...*[11]

Locke's argument is visibly theistic in its approach as were most other enlightenment philosophies. But that does not mean that the natural rights approach is necessarily religious. The theoretical basis of human rights could equally be consistently applied on evolutionary, anthropological or other empirical premises. For example McDougal, Lasswell et al. of the New Haven School of law apply sociological data to derive rights from common human values.[12] Naturalism oriented theories have today grown out of their religious connotations and have established a secular tradition.[13] Read thus, the right to life could be justified on the basis of the

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[8] Holy Bible, King James Version, (Ohio: 1924) Exodus 20: 13, Deuteronomy 5:17.
[9] Quran 6:151, Abdullah Yusuf Ali, THE HOLY QURAN: ENGLISH TRANSLATION OF THE MEANINGS (King Fahd Holy Quran Printing Complex 1987).
[10] Fikadu Hunduma, 'Forms of Restraints on the Power Process of the Gada Government from the Perspective of Modern Constitutional Principles,' (Unpublished LLB Dissertation) Faculty of Law Addis Ababa University p.57 (1995).
[11] C.B. McPherson, *John Locke Second Treatise of Government* (Hackett Pub. Inc.: 1980) p.10.
[12] See See Haroldd Lasswell & Myress McDougal, *Jurisprudence for a Free Society: Studies in Law, Science, and Policy* (1992) pp. 726-86. .
[13] Ostrauskaite, *supra* note 5; also Lloyd L. Weinreb, 'A Secular Theory of Natural Law', Fordham L. Rev. Vol. 72 Issue. 6 (2004) p. 2287 (arguing that since an Athenian (sic. secular)

human instinct for self-preservation and reproduction. Since it is only the fittest that will endure the cruelties of nature, human beings could be said to have evolved in such a way that they need to protect their lives from wild beasts and other human beings as well. This approach gives a socio-biological ground for the protection of the right to life. It is because of the evolutionary process that human laws, morality, religion etc. contain tenets that protect the right to life.

Jeremy Bentham's principle of "the greatest happiness of the greatest number" can also be used to build an understanding of a right to life. Imagine a world in which your life or the life of your loved ones can be taken by the next person on the street or any government official and without much consequence. Compare this world to one in which life is protected by the state. If it can be reasoned that the first situation will cause general social fear and anxiety (and thus greater unhappiness) and that you as well as the majority of the members of society will prefer the second situation then the right to life has been justified on utilitarian grounds. The best defense of rights in utilitarian philosophy is found in John Stuart Mill's *On Liberty* where he argued that individual rights and freedoms should not be interfered with as long as their exercise does not harm others.[14]

Positivist doctrine posits the existence of human rights not on any moral or metaphysical views but on the laws that are proclaimed by the state. Since the theory sees moral-philosophic justifications of rights as inherently subjective it focuses on positive law as an objectively ascertainable source of rights.[15] Therefore, the argument goes, the right to life exists only because it has been declared in the International Covenant on Civil and Political Rights ("ICCPR"), the FDRE Constitution and other laws. Thus, whether the impetus to make laws comes from religion, philosophy or simply the

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notion of natural law is the basis for the Christian natural law tradition contemporary secular natural law is only taking natural law back to its origins); also generally see 'Richard Vetterli & Gary C Bryner, Hugo Grotius and Natural Law: A Reinterpretation' Political Science Reviewer (1993) p. 370-402; Larry Arnhart, 'Thomistic Natural Law as Darwinian Natural Right', Social Philosophy and Policy, Vol. 18:1 (2001) p. 1-33.

[14] Vincent Barry, *Philosophy: A Text with Readings* (Wadsworth 2nd ed. 1983) p. 191-194. However, also see *Consequentialism, Stanford Encyclopedia of Philosophy,* (*Thu Feb 9, 2006) available at* <http://plato.stanford.edu/entries/consequentialism/> last accessed on 1/12/2014.

[15] See H. L. A. Hart, *The Concept of Law* (Odford Univ. Press: 2nd ed. 1994), for a notable account of positivism.

decision of the sovereign positivist analysis would focus on how to craft the laws that result and how to interpret and enforce them.

Whereas many of the approaches can be a basis for ethically grounding the right to life, this article adopts the positivist approach for three main reasons. First, such an approach begins with a post-ethics and post-formative point in the process of legislation thereby avoiding the moral controversies and debates that shape the law. It is extremely difficult to reject positive law as the most important source of human rights, the only concern being that the law can be potentially violative of an important moral edict. Second, positivist methodology is, as will be shown shortly, very practical in the technical construction of the notion of the right to life. Third, the article is primarily meant for the consumption of lawyers and law students especially those in the Ethiopian legal system. A positivist approach is therefore closer to home both in terms of technical understanding and professional contribution to a legal community that is trained in the positivist tradition.

III. WHAT THE RIGHT ENTAILS: A HOHFELDIAN RENDITION

The right to life, in the Hohfeldian categorization, can be understood as a claim-right. When we say that '**A** has a right to life' we are asserting that **A** has a claim against others who owe **A** corresponding duty to her right.[16] Another sense in which we can use the term is to denote that the right to life is a liberty-right. In that case when we say that '**A** has a right to life' what we mean is that **A** has the right to life in as much as **A** has no duty stop living or live in a certain way. Understanding the right to life as a claim-right is very useful as we can distinguish three elements from this observation. First there is the right holder who is making the claim (that is **A**). Second, there is the right itself. Third there are those to whom a duty is ascribed.

The first element of a claim right leads us to the question of who possesses or is capable of possessing rights. The answer to this question seems obvious at first sight since, by definition, it is only human beings that have

[16] Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, The Yale Law Journal, Vol. 23, No. 1. (1913), p. 16-59. L. H. LaRue, *Hohfeldian Rights and Fundamental Rights*, University of Toronto Law Journal, Vol. 35, No. 1. (1985), p. 86-93.

a human right to life.[17] But it is not the clear and standard cases of humanness that we will find troublesome. The trouble lies in borderline and challengeable instances of humanness. This article deals with future generations and fetuses as border line cases of humanness.

The second element of claim-rights concerns the nature of the rights. The nature of particular rights, from a positivist perspective, is matched if not defined by the correlating duties that they impose. In this context we can discern two distinct features most claim-rights share: they are either negative claim-rights or positive claim-rights. The former are rights against others requiring inaction or non-interference. They could also involve a duty to discontinue an ongoing violation or interference. The later, on the other hand, imposes a duty to take some kind of action. The main body of this article discusses the negative duty of the state and individuals to refrain from killing or infringing the right to life and other positive duties such as the duty to provide medical care or to clean the environment. The nature of the particular right also determines the scope of the right. That is, it determines what kind(s) of obligations are imposed and to what extent. With the scope of the right to life is raised the question of whether the right to life consists of a negative right not be prohibited from slaying one's self.

The third element is concerned with the identity of the duty bearers or addressees of the right or claim. Based on who the addressee is these are divided into rights *in personam* and rights *in rem*.[18] Rights *in personam* are claims held against a particular singled addressee. For example the state, international organizations or nongovernmental organizations could be identified as bearers of human rights duties. Rights *in rem* on the other hand are held against the world at large.[19] We could therefore say that **A** who has a right to life has a claim against every other individual including the state and judicial persons not to be harmed in her right. **A** may also have a right *in personam* to be provided with basic sustenance from her parents if she were a child for example.

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[17] Jack Donnelly and Rohda E. Howard, *International Handbook of Human Rights* (Greenwood Press: 1987) Ch. 1.

[18] Joel Feinberg, *Voluntary Euthanasia and the Inalienable Right to Life,* Philosophy and Public Affairs, Vol. 7, No. 2. (1978), p. 96.

[19] Jack Donnelly, Human Rights: Working Paper no 23, Graduate School of International Studies (2005).

A. A Duty Not to Kill

The right to life is primarily intended to protect individuals from arbitrary deprivation of life by state officials through arbitrary, summary and extra-judicial killings. Without the right to life the helpless individual is seen as vulnerable in front of the massive and oftentimes dangerous state machinery. Thus by imposing a duty on the state, the right to life makes sure that the individual is not arbitrarily deprived of her life. Where the right to life is violated, the right obliges the state to take measures to hold to account the state machinery responsible for the violations. This much being said about the role of the right to life, the question that comes to the fore is: how exactly is it that life is protected from harm?

The answer to this question can be stated in the form of an assumption or a general dictum. Assume that the state is not allowed to take the life of individuals under all foreseeable circumstances except one. This circumstance is one in which the state takes away life in self-defense – its own defense, the defense of the society and/or the defense of the life of citizens. If we call this exception the "legitimate self-defense exception" we can say that any life taken except for a legitimate defense is illegal and a violation of the right to life.[20]

It is of no doubt that a state which kills individuals who are in arms to destroy its existence is in no fault. The state would in fact be at fault if it failed to eliminate or otherwise arrest such individuals because inaction could lead to its own death, the death and destruction of its society, and most certainly the death of numerous individuals. Thus, in a situation in which the state, its institutions or its peace is fired upon (as in an armed uprising, an armed conflict or a similar attack) it may legitimately defend itself by firing back. Its right to fire back is, of course, also regulated as this is not a prerogative given lightly.

Since the state, a constructed entity, cannot itself bear arms or operate weaponry, the Criminal Code refers to officials of the state when it gives permission to the state to defend itself. Article 68 of the Criminal Code

[20] The issue of legitimacy may of course be raised not only in the context of the legitimacy of the state's acts but also on the legitimacy of the state itself. The concern in the second situation arises where one enquires into whether an undemocratic state can use deadly force under any circumstance. We will pursue only the first context in this article since second context will require of us to go into questions of state legitimacy and social contract. Questions only remotely connected with the article.

states that acts in respect of public (state or military) duties, undertaken within the limits permitted by law, do not constitute a crime and are not punishable.[21] Article 77 (1) also states that:

> *An act done by an officer of a superior rank in active service to maintain discipline or secure the requisite discipline in the case of a mutiny or in the face of the enemy shall not be punishable if the act was the only means, in the circumstances, of obtaining obedience.*

These rules do not of course give the state a blank check on the fate of other's lives. Although state killing, or firing back, is envisaged under these situations it is only a last resort and when killing is absolutely necessary under the circumstances.[22] The state therefore may under no circumstances allow its police force to follow a shoot-to-kill policy as an exception to the right to life. Where life is lost in the operations of the police it should always make an investigation to ascertain if the death was necessary and justified.[23] A police officer who is found to have violated the right to life will most certainly be dismissed in addition to being prosecuted in a court of law.[24]

An overbroad iteration of the principle that the police should use lethal force only out of necessity and when justified in the circumstances can be found in article 38(2) of the Federal Police Administration Council of Ministers Regulation No. 86/2003. It should however be noted that compared to the standards contained in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[25] and the Economic and Social Council's Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions,[26] Ethiopian law falls far too short since it does not have detailed legislative principles, substantive rules or procedures that deal with this matter.[27]

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[21] The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No.414/2004, Federal Negarit Gazeta May, 2005 Addis Ababa [hereinafter "Criminal Code"].
[22] See, e.g. Article 79(1) of the Criminal Code.
[23] Andrew Le Sueur et. al., *Principles of Public Law* (Taylor & Francis, Inc. 2nd Ed. 1999) p. 384.

[24] See, Articles 52 cum 54 of Regulation No. 86/2003.
[25] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
[26] Recommended by Economic and Social Council resolution 1989/65 (24 May 1989).
[27] A detailed analysis of the shortcomings is not dealt with here primarily because the Ethiopian law on the topic constitutes of one phrase while the international standards are exponentially

Although the law does set up the requisite institutions, the "Federal Police Discipline Committee" and the "Public Complaints Hearing Organ",[28] that could ensure that federal police officers do not use lethal force in violation of the principles of necessity and justification, there are no rules of conduct or standards that these organs can enforce. This shortcoming is replicated at the regional-state level as well.

The law still operates in protecting the life of uninvolved individuals even where the country is submerged in an all-out war. As long as one is not involved in conducting violence or partaking in hostilities one still has the right to have her life protected by the law. The law protects all civilians, the wounded, sick, and shipwrecked and prisoners of war as they do not fall under the "legitimate self-defense" exception to the prohibition against killing.[29] Even so, we know all too well that people tend to ignore the law in war where anarchy and savagery prevail. That seems to be the reason why the FDRE Constitution instructs the Parliament to set up a "State of Emergency Inquiry Board" the same time a public emergency is declared.[30] Thus even in extraordinary times the executive is not to be fully trusted with the life and rights of citizens. That appears to be the logic behind establishing an independent State of Emergency Inquiry Board that monitors the executive and people in power so that they do not abuse their powers or take measures beyond what is needed to avert the emergency.

The FDRE Constitution's framework on the declaration of states of emergency is potentially one of its most dangerous shortcomings. Despite the significance of the matter it has been given little attention in the literature and has not been litigated, as a formal state of emergency has never been declared under the FDRE Constitution.[31] At least at first sight,

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more detailed. Put another way, there is so little Ethiopian law/policy on this that makes comparison pointless.

[28] See articles 68 and 22 respectively of Federal Police Administration Council of Ministers Regulation, Reg. No. 86/2003, Federal Negarit Gazeta 9th Year No. 39 (7 Apr. 2003) and Federal Police Commission Proclamation No. 313/2003, Federal Negarit Gazeta 9th Year No. 30 (4th Jan. 2003).

[29] Criminal Code Articles 269-275.

[30] Article 93(5) of the FDRE Constitution.

[31] Although *de facto* states of emergency have existed in the country (such as in Ogaden, Gambella and Oromia regional states) only one involved official announcement of derogation. The only official derogation took place in the context of the 2005 post-election violence and was litigated in *Coalition for Unity and Democracy v. Prime Minister Meles Zenawi Asres*. The most detailed account of this case is found in Abdi Jibril Ali, 'Distinguishing Limitation on Constitutional Rights from their Suspension: A Comment on the CUD Case', Haramaya L.

the FDRE Constitution seems to make the right to life one of its derogable rights as its list of non-derogable rights include only equality, protection against inhuman treatment, slavery and human trafficking, and the right to self-determination.[32] If we take a literal approach to the FDRE Constitution, therefore, the Ethiopian government can decide to suspend the exercise of the right to life and literally kill anyone, at any time and place and for any reason. Not only does such a literal interpretation not make sense, Ethiopian lawyers and legal scholars who have studied this topic are in full agreement that the FDRE Constitution should be interpreted in conformity with international law which makes life a non-derogable right.[33] While this interpretation makes perfect sense, states of emergency are not typically declared by legal scholars in ivory towers. This means that we will have to wait until specific laws or the judiciary and the House of Federation mete out rules that prevent states of emergency from being a *de jure* licenses to kill.

Although the prohibition from taking away the life of persons applies primarily to the state and its agents, the proscription also extends, *in rem*, to all individuals. From the perspective of duty bearers every single person has a duty to refrain from killing another. And from the point of view of the holder of the right she has a negative right not to be interfered with. And since *in rem* rights bestow upon the right holder a consequent right to defend the right from third party interference, the scope of the right could be said to include a right to preserve and defend life. The right to preserve and defend life could additionally be based on the principle of legitimate self-defense. After all, the Criminal Code allows the taking of another's life in circumstances of necessity and self-defense as long as the killing is the only proportionate alternative at the time.[34] Thus one who repels a threat to her own life by ending another's is not only licensed to do so but might even be considered as doing justice a favor.[35]

Rev., Vol. 1 (2012), p.1 (fn.2 of this article also contains a reference to other publications on the topic).

[32] Art. 93 (4) (c) of the FDRE Constitution.

[33] See Kifelew, *supra* note 3, *passim*; Ali, *supra* note 31, pp. 17-19; Belay Frenesh Tessema, 'A Critical Analysis of Non-Derogable Rights in a State of Emergency under the African System: The Case of Ethiopia and Mozambique', Submitted in partial fulfilment of the requirements of the degree LL.M. at the Center for Human Rights of the Faculty of Law University of Pretoria Ch.4 (Unpublished 31 Oct. 2005).

[34] Criminal Code Articles 75 and 78.

[35] See Philippe Graven, *An Introduction to Ethiopian Penal Law* (Oxford Univ. Press 1965) p. 220.

On the same principle we may also justify the society's (or the state's) use of coercion, including the destruction of life in order to secure its members from loss of their various guaranteed rights (to life, liberty, security etc…). This is to say that the death penalty may be imposed on those who violate basic interests of society as long as the imposition does not sink below some standards of justice. These standards are set forth in the FDRE Constitution and the International Covenant on Civil and Political Rights. The following is a rough summary of those standards:

- The death sentence can be imposed only for serious crimes that are determined by the law;
- The law cannot impose a death sentence retroactively;
- The death sentence should not be imposed except by a competent court and by a final decision;
- Anyone sentenced to death should have a right to ask for pardon or commutation;[36] and
- The death sentence should not be imposed on minors and pregnant women.

Despite the existence of a second optional protocol to the ICCPR,[37] which aims at the abolition of death as a criminal sanction, both international and national laws are far from abolishing the death penalty. Nonetheless efforts are being made at limiting the instances in which the sentence is passed and executed. Although Ethiopia is not party to this Protocol, its laws do try to minimize the application of the death sentence. Ethiopian law also tries to mitigate the horrors of execution in addition to complying with the standards noted above.

The Criminal Code provides not only that the death sentence be reserved for grave crimes but to exceptionally dangerous criminals who had completed the crime in the absence of extenuating circumstances.[38] It also prohibits the execution of fully or partially irresponsible persons and seriously ill persons.[39] Regarding expectant mothers, it provides not only that they should not be executed while pregnant but that their sentence

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[36] The FDRE Constitution gives the power of pardon to the president of the republic; see Att. 71(7).
[37] Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, G.A. res. 44/128, annex, 44 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/44/49 (1989).
[38] Article 117 of the Criminal Code.
[39] Article 119 of the Criminal Code.

may be commuted to rigorous imprisonment for life if their child is born alive and in need of nursing.[40] Furthermore, the execution of the death penalty may be limited by operation of laws that allow for amnesty, commutation or pardon as long as the interest of the public is not adversely affected.[41]

Note that despite all the care taken to mitigate the ills of the death penalty, the morality of the punishment is taken for granted by the FDRE Constitution under Article 15. The FDRE Constitution deals explicitly with the relationship of the right to life to the death penalty which means that the right of the state to carry out the death sentence is not somehow implied or derivative. The social contractors have therefore, possibly foreseeing future debates, incontestably concluded the legal legitimacy of the death sentence. By way of rationale this article presented the relationship between the right to life and the death sentence as one of the state's legitimate right to defend the rights of its members and protect them against crime and criminals. But this by no means seals all issues concerning the death penalty since it may still be challenged on other, non-legal and especially moral and practical, fronts. We shall not deal with those since our prime concern here is with the right to life and not with the death penalty as such.

B. A Duty to Preserve and Protect Life

The state's duty towards the right to life is not limited to the broad idea of refraining from killing. The state is also required to take positive steps, including legal, policy and institutional measures to preserve and protect life and ensure that any violations are considered and dealt with appropriately. The position here is that states, and in exceptional situations individuals, have a duty that goes beyond restraining from killing and extends to requiring action to protect the life of those in danger of dying.

Criminalizing and prosecuting homicide,[42] genocide and war crimes that involve killing[43] may be considered as a first step towards fulfilling the state's positive obligation to observe the right to life. The state should also go beyond prohibiting direct killing and proscribe acts notorious for leading to direct killing. Such secondary measures towards fulfilling the

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[40] Article 120 of the Criminal Code.
[41] Articles 229-30 of the Criminal Code, Procedure of Pardon Proclamation, Proc. No.395/2004 10th year No. 35 Addis Ababa-17th April, 1994.
[42] Articles 538 -544 of the Criminal Code.
[43] Articles 269-272 of the Criminal Code.

state's positive obligation may take the form of prohibitions against and regulation of weaponry production, distribution and possession.[44] Or it may be manifested in rules that prohibit unlawful arrest, detention, or torture and ill-treatment by government officials lest such acts should lead to the death of victims.[45] Rules prohibiting incommunicado detention and providing for *habeas corpus* also provide an additional layer of protection to minimize chances of disappearances and subsequent death.[46] But criminalizing killings and conditions that increase the likelihood of the loss of life may not suffice since without a criminal justice system, police/security forces, courts and correctional facilities the criminal law may be useless. And again, given an enforcement mechanism, state authorities ought to ensure the functioning of this mechanism as effectively and efficiently as possible.

The duty to prevent death may also, sometimes, lie on private citizens. The law imposes a duty to assist or a duty to rescue a person who is in an imminent and grave danger to her life.[47] Each individual, therefore, has a duty to assist a person who has been fatally knocked down by a speeding vehicle, an obligation to save a drowning person or a duty not to ignore a visually impaired person who is striding towards the edge of a cliff. The duty to assist becomes even more serious on those who belong to the medical profession or are otherwise under a professional or contractual obligation to lend aid.[48] Thus provided that there are no risks to one self, all individuals are expected by law to protect the right to life. The law in fact

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[44] Articles 481, 499, 808 of the Criminal Code.

[45] Articles 423, 424 of the Criminal Code, see, Fact Sheet No.6 (Rev.2), Enforced or Involuntary Disappearances, The Office of the High Commissioner for Human Rights Geneva, Switzerland. Declaration on the Protection of All Persons from Enforced Disappearance, proclaimed by the General Assembly in its resolution 47/133 of (18 Dec. 1992); General Assembly resolution 33/173 on Disappeared Persons 90th Plenary meeting (20 Dec. 1978).

[46] See ibid; also Articles 19 - 21 of the FDRE Constitution and articles 177-179 of Civil Procedure Code of the Empire of Ethiopia of 1965, Negarit Gazeta Extraordinary Issue No. 3 of 1965 (Addis Ababa 1965); Article 5 (10) of Proclamation No. 25/1996, Federal Negarit Gazeta 2nd Year, No. 13 (15 Feb. 1996). Although it is not relevant anymore Article 7 (3) of Proclamation No. 22/1992, Proclamation Establishing the Office of the Special Prosecutor (1992) had made an exemption to *habeas corpus* for a limited amount of time.

[47] Article 575 (1) of the Criminal Code.

[48] Article 575 (2) Criminal Code.

goes as far as punishing the reckless driver who puts the life of others at risk.[49]

C. The Right to Medical Care

That a state should preserve and protect the right to life, as its positive obligation, is not disputed. But what exactly fits the duty may not be as clear. Taken to a logical, although not necessarily a legal, extreme the obligation may be extended to the provision of state funded medical care to those who might not survive without state help. So can the state, as the main supplier of public medical services, be held accountable for the death of those who could not afford private medical care?

The answer to this question is a mixed one. On the one hand the state cannot be expected to respond to and treat every patient whose life may be at risk. Not only will the state's budget be stretched between equally important social needs but its health budget may be allocated in such a why that not all needs are addressed at the same time. Allocation of resources to fight the AIDS epidemic may, for instance, mean that fewer cancer patients will be able to benefit from state funded medication. But this, on the other hand, does not mean that the state is responsible for the health, and therefore life, of its citizens. The state is indeed under a constitutional obligation to provide part of its resources for public health.[50]

Although the FDRE Constitution does not contain detailed and robust provisions on the right to health, and its relation to the right to life, it does provide that the state should allocate "ever increasing resources" to public health.[51] Even if the country has limited resources,[52] it will be in violation if its health budget diminished every year. We could also say the same if the budget was poorly utilized or if it was not utilized at all.[53] Even though this

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[49]Article 572 of the Criminal Code. See also, Neil A.F. Popovic, 'In Pursuit of Environmental Human rights: Commentary on the Draft Declaration of Principles on Human Rights and the Environment', Columbia Human rights Law Review, Vol. 27 (1996) p. 515.

[50] Article 41(4) of the FDRE Constitution.
[51] Ibid.
[52] Whether the country has addressed its health needs is immaterial because according to article 90 (1) of the Constitution it will be held accountable only to the extent its resources permit.
[53] The nexus of the right to life with the state's budget (or fiscal policy) points to an indirect link or conflict with other rights that require the state's positive attention. For example, every cent spent on a school, an orphanage or a museum might have also been used in saving lives via the

much is clear about the state's obligations, the specific application of the duty is not as clear. Therefore, it is expected that this aspect of the right to life is a field yet to evolve and to grow through judicial practice and jurisprudence.

The positive claim or a right to life *in person am* can also be raised by a malformed child against its parents or guardians. The law is clear on whether a mother can abort a fetus with a serious and incurable deformity.[54] But could the same rule be applied to a child with such a malformation after it has been delivered? It is certainly the case that once the malformed child is born it will be entitled to a negative right to life in the sense that it cannot be administered with a lethal injection. But it is a difficult matter to decide if the child will be entitled to a positive right to medical treatment without which it would die.

Jeffrey Parness and Roger Stevenson suggest that we should look into whether the child needs a 'life-saving' or a 'life-prolonging' medical treatment.[55] In the former case the child would die if it were not for the medical treatment, but it would subsequently survive on its own. In the second case, on the other hand, the life of the child depends on the constant supply of medical treatment without which the child would die. The core of the suggestion is that the child ought to have a claim to medical treatment in the former case but not in the later. Although the Parness-Stevenson position can be adopted as a general precept through which to set the parameters of the right to life, homicide and infanticide, the nuances of its application should be carefully dealt with. For example, while the principle can be clearly applicable to a vegetative patient who would die if cardiovascular device is turned off from a patient who would die if her insulin treatment is stopped but would nonetheless live a complete life by taking insulin or asthma medication.

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construction of hospitals or the purchase of nutrition rich food and medicine for a poverty or drought stricken village.

[54] Article 551(c) of the Criminal Code.

[55] Jeffrey A. Parness and Roger Stevenson, '*Let Live and Let Die: Disabled Newborns and Contemporary Law*,' Univ. of Miami L. Rev Vol. 37 (1982) p. 70.

D. The Right to a Safe and a Healthy Environment

It is often said that human rights are interdependent and interrelated. The violation of one right usually entails the violation of another set of rights and it is usually the case that many rights cannot be respected unless some other rights are also respected. For example if the freedom of expression were abolished one could hardly imagine how the right to religion, assembly or democracy could have any value. Likewise, the right to life and the right to a clean and a healthy environment are inter-linked. Similar to the right to medical care, the right to a clean and a healthy environment can be seen as part of the positive duties imposed on the state for the protection of life.

One of the most likely effects of environmental pollution on humans is the deterioration and even destruction of life and health. Radioactivity, contaminated drinking water, and toxic waste are most certainly the deadly ingredients of our environment.[56] The link between the right to life and the right to the environment is so close that it has been suggested to derive the right to the environment from the right to life.[57] Those countries whose constitutions do not contain the right to a safe and healthy environment have often resorted to these rights in order to afford protection to the environment. The Indian Supreme court has ruled that:

> *It would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Indian constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 of the constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and*

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[56] Marquita K. Hill, *Understanding Environmental Pollution: A Primer* (Cambridge Univ. Press 2004), *passim*.

[57] Conor Gearty & Adam Tomkins, *Understanding Human Rights* (Printer: 1999) p. 435. It has also been argued that the right to shelter and the right to conscientious objection are derivatives of the right to life. See Marc-Oliver Herman, 'Fighting Homelessness: Can International Human Rights Law Make a Difference?,' Georgetown Journal on Fighting Poverty. Vol. 2. (1994) p. 60. Emily N. Marcus, 'Conscientious Objection as an Emerging Human Right', Virginia Journal of International law, Vol. 38 (1998) p 518.

> *spoliation should also be regarded as amounting to violation of Article 21…*[58]

Similar solutions have also been reached by the respective judiciaries of Bangladesh, Pakistan, Tanzania and the Inter-American Commission of Human Rights.[59] This approach is hinged around the fact that the right to a certain standard of environment is unrecognized and environmental degradation does indeed adversely affect substantive rights such as the right to life. Whether it is the right to a healthy environment, the right to life, the right to property, to residence, to health, the right of indigenous peoples or socio-cultural rights, environmental degradation and global climate change are bound to cross the line to human rights and many a time that of life itself.

Although the link between the right to life and the right to a safe and a healthy environment can be established with relative ease the relation is somewhat narrow. This is because the former operates in the time dimension of the present while the later in the time dimension of both present and future. This begs the question: Can future generations have the right to life? Ethiopian law, or at least the country's constitutional system, provides an incredibly diverse opportunity to protect not just the life of living human beings but that of future generations in addition to providing for a separate right to a safe and healthy environment.[60] While it is interesting that the FDRE Constitution also provides the environment itself rights independent of the rights of human beings that is a separate topic that will not be taken up here.[61]

E. The Right to a Potential Life

We have seen that the right to life may be infringed by actions that pollute and destroy our immediate environment. But another aspect of the right to

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[58] Quoted by: Shyam Divan & Armin Rosencranz, *Environmental Law and policy in India: Cases, Materials, and Statutes* (Oxford Univ. Press, 2nd ed. 2002), p. 51.

[59] Ibid, p.435; see Yanomami Case, The Human Rights Situation of the Indigenous People in the Americas, Inter-Am. OEA/Ser.L/V/II.108, Doc. 62 (2000); Velasquez Rodriguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988).

[60] See Arts. 44 & 92 of the FDRE Constitution.

[61] See Art. 92 (4) FDRE Constitution, declaring that "Government and citizens shall have the duty to protect the environment." One of the ways this can be interpreted to mean is that the environment as a corresponding right to be protected against the government and citizens.

a clean and healthy environment is that it raises the issue of time and space. Does the FDRE Constitution recognize this right to presently living persons or does it also recognize the right of future generations?

Protecting the right to a clean and healthy environment requires states, among other things, to incur astronomical costs in preventing, controlling and reversing the effects of pollution. Developing countries have, therefore, found their need to develop (and develop fast) at odds with the protection of the environment. Thus there is a real conflict between the right to development and the right to the environment.

The solution adopted by the Ethiopian Constitution is that of "sustainable development."[62] According to what has come to be known the "Brundtland Report" sustainable development is a concept that implies development that meets the needs of the present generation without compromising the ability of future generations to meet theirs.[63] Therefore, by accepting the right of the peoples of Ethiopia to a sustainable development, the FDRE Constitution does not only try to solve the conflict between the right to a healthy environment and that of development. It throws into the fray the right of future generations to meet their needs of development and at the same time to live in a safe and a healthy environment.

Although we can argue in support of the right to life of future generations based on the principle of sustainable development and intergenerational equity we are still not in a position to compare this potential right with the right of presently living human beings. Future generations exist only in prospect and that prospect can conflict and often give way to different interests ranging from the need to develop capitalist greed and general indifference.[64] Nevertheless, it is the duty of the present generations not to act in ways that might impair the same. The criminal law, in fact, aims towards the protection of the environment by criminalizing actions which might destroy the environment.[65] It is to be noted that the aggravating factor of criminal liability for environmental pollution is the consequence of

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[62] FDRE Constitution Article 20.
[63] Report of the World Commission on Environment and Development: Our Common Future Full report: Transmitted to the General Assembly as an Annex to document A/42/427 (4 Aug. 1987).
[64] See David Worr, 'The Right to Life and Conservation, Journal of Conservation Biology', Vol.20 No.4 .937 (2006).
[65] See articles 517-521 of the Criminal Code

serious damage to the life of persons or to the environment.[66] This formulation is understandable since damage to a potential life cannot be measured or proven in court. It is rather presumed that any serious harm to the environment is bound to destroy lives in the future.

Another issue which has an element of the time-space dimension concerns the abortion debate. The most common form of the anti-abortion stance is known to hold that human life begins at the moment of conception or implantation. The fetus, as any other human being, has all the rights of humans including the right to life. And for this reason abortion is equated with murder pure and simple. A good example of this stance can be found in the Constitution of Ireland which states that:

> *The state acknowledges the right to life of the unborn and, with due regard to the equal rights of the mother, guarantees in its laws to respect and as far as possible, by its laws to defend and vindicate that rights.*[67]

Not everyone opposed to abortion believes that a fetus is a human being. Some argue that the fetus, although not a human being, is a potential human being with a potential right to life. This position is premised on the fact that if nothing is done to prevent its normal development and if nature is allowed to run its course, the fetus would eventually become a human being.[68]

On the other side of the argument are those who reject the moral right to life of a fetus. Since various groups on both sides hold extremely divergent views we will only consider two from this side of the arguments. There are those who argue that abortion is women's moral right to reproductive self-determination. Therefore irrespective of the fetus they are inclined to see things from the women's perspective. While some hold that the fetus cannot be considered a human being until it is born, others hold that it can be considered a human being only if it satisfies some elements of humanness: sensation or physical likeness. McGinn, a moral philosopher who believes

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[66] Article519 (2) of the Criminal Code

[67] Article 40 (3) (3°) of Bunreacht na hÉireann (Constitution of Ireland, enacted in 1937 last amended 24 June 2004).

[68] Dale Jacqette, *Two Kinds of Potentiality: A Critique of MC Ginn on the Ethics of Abortion*, Journal of Applied philosophy, Vol. 18. No.1 (2001) p. 79.

that consciousness and the sensation of pleasure and pain are the determining factors for life writes that:

> *What makes a fetus morally valuable is sentience when the fetal organism.....has become complex enough, by the division of cells and so forth, to have feeling and perception-consciousness-that is the time at which it's rights kick in. Awareness is what makes the difference, having an inner mental life. And the closer an embryo is to this insentient condition, no matter what its species, the less moral weight it has. The greater its sentience the more we have to take its interests into account.*[69]

When we look at the laws of Ethiopia we can notice that none of these theories apply to them with ease. We can approach the right of fetuses in Ethiopian law from the perspectives of our civil law and criminal law.

The Civil Code makes it clear that fetuses are not human beings and that they have neither rights nor duties when it declares: "[t]he human person is the subject of rights from its birth to its death."[70] The fact that a fetus could be considered as having rights under exceptional circumstances[71] is immaterial in this context because an abortion will have an invalidating effect on the exception. That is, being born alive and viable is a necessary requirement for a fetus to be considered a person. An aborted child cannot be born alive and viable and, therefore, cannot be considered as a person under the provision of the second article of the Civil Code.

But when we look at the Criminal Code it looks as if it is protecting the right to life of the fetus. The title of the section which deals with abortion reads "Crimes against Life Unborn". This might be a strong indication that the law considers fetuses as humans or at least potential human beings as the penalty for abortion is very small compared to that of homicide. But the moment the child is born it is considered as a full-fledged human being and its intentional murder will be punished with the maximum of the death penalty.[72] Although the phrasing, "crimes against life unborn" could open

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[69] Ibid.
[70] Article 1 of the Civil Code of the Empire of Ethiopia, Proclamation No.165/1960.
[71] Ibid Article 2 (Where its interests so demand).
[72] Id., Arts 544 & 539; The harshest punishment for abortion is preserved for individuals who effect an abortion without the consent of the pregnant woman and the punishment is set at a maximum of ten years (Art 547(2)).

the way for us to argue that the fetus may have a right to life, it should by no means be taken to imply a necessary connection since not everything that has a life has a right to life. It could be for reasons other than the protection of a *right to life* (say morality, social policy etc…) that the life of the unborn is protected.

It is contended here that the Criminal Code does not vest fetuses with a right to life. Fetuses are instead gifted with a potential right to life and are therefore potential human beings with no face and no name. It looks as if the main, if not exclusive, reason for the law maker's criminalization of abortion is on the ground of the moral and religious convictions of our parliamentarians and of society at large.[73] The two main numerically dominant religions in Ethiopia abhor abortion not because it is the killing of a human being but because it is seen as tampering with the Gods' creation. This may become evident when we look at the instances in which abortion may be allowed. The Criminal Code does not, for example, criminalize the aborting of a child conceived by rape and incest. Allowing the abortion of a child conceived from incest brings out the moral and/or religious motivation of the legislator since incest is a victimless-moral crime. The code also does not penalize an abortion by a woman who is unfit to bring up the child because she is physically or mentally unfit or even because she is a minor.[74]

Although these exceptions are understandable they also show us that the Criminal Code is not protecting a right inherent in the fetus. If it were, it would not have made sense to set-off the right to life with simple policy considerations. As we have shown throughout this paper the right to life is a very important right to be tampered with only in situations of individual or collective self-defense. So it may be theoretically self-contradictory for the Criminal Code to have claimed to set-off the right to life with, for example, the in-expediency for a minor or an infirm to raise a child. Or is it worth to trade-off the right to life for the shame of having a child of incest? Therefore the trade-off may be understood not if the fetus is considered a human being, but if it is considered a potential human being with a

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[73] Social research on the issue seems to indicate that there is a direct correlation between the opposition to abortion and conservatism. Even among conservatives the opposition to abortion correlates directly with the frequency of church (Mosque?) attendance. Michael A. Cavanaugh, 'Secularization and the Politics of Traditionalism: The Case of the Right-to-Life Movement', Sociological Forum, Vol. 1, No. 2. (1986), p. 252.

[74] See Article 551 of the Criminal Code.

potential right to life. This conclusion is further confirmed by the fact that these exceptions are no more applicable once the child is born.

Distinguishing birth as a point of departure for the existence and exercise of the right to life could be criticized for being arbitrary; not based on any theoretical or moral grounds of justification. Is there much of a difference between 36 week old fetus and a child that was born on the 35th week? The criticism has a valid point to make. Yet it does not follow from this that the fetus has the right to life before its date and time of birth. It only indicates that the law's choice of a point of reference for bestowing the right to life is an arbitrary one. The fact remains, however, that a fetus does not have a positive right to life. This conclusion is confirmed by the fact that these exceptions are no more applicable once the child is born.[75]

IV. THE RIGHT TO DIE

It is in the nature of most rights that they are claims of the right holder against society at large. In Hohfeld's famous contribution to the language of rights we can see that one of the connotations of "**A** has the right to **X**" is that **A** has a liberty with respect to **X**.[76] **A** as the right holder is at liberty and has the power to effect changes in **X**. As with most rights it is true that the right holder may do whatever she wishes with the right. If we take a random list from the FDRE Constitution we can see that this connotation is valid for most rights. Take the right to privacy for example. The right holder can if she wishes waive it and allow others to come into the private domain. The boxer could not go into the ring without giving up her physical security. The owner of property can use, utilize and dispose of her property whenever she wishes to do so.

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[75] But then again, there are those who argue that even the infant cannot be considered as an entity that has a right to life. For example Michael Tooley, who conceives of rights as moral entitlements that human beings have because of their conceptual capacity to desire the entitlements, argues that infants are incapable of possessing rights. The incompatibility of Tooley's arguments with the one proposed in this article basically lies in the foundational argument for the existence of human rights. That is, this article's argument is founded on positive laws while Tooley is looking beyond the law for a moral basis of rights. See Michael Tooley, 'Abortion and Infanticide, Philosophy and Public Affairs', Vol. 2, No. 1. (1972), p. 37-65. See also Alan Carter, *Infanticide and the Right to Life*, Ratio Vol.10 Issue.1 (1997) p. 1-9 for an excellent exposition of Tooley's position.

[76] Andrew Heard, *Introduction to Human Rights Theories* (1997) available at <http://www.sfu.ca/~aheard/intro.html> accessed on 1/12/2014.

The question that we ought to be struggling to answer is whether the same is true to the right to life. We will approach the issue from three different ways, we will first see if the right to refuse medical treatment implies the right to choose to end one's life. Then we will see if the right to life implies the right to commit active suicide. And the last point concerns whether the right to commit suicide carries with it a right to be assisted in the commission of suicide.

Medical treatment usually involves the invasion of bodily integrity. The Civil Code clearly provides that any person may at any time refuse to submit herself to a medical or surgical examination or treatment.[77] Medical or surgical intervention may also amount to willful injury and assault in criminal law in the absence of the patient's consent.[78] We may thus argue that a mentally competent adult can effectively refuse medical treatment even if it means that the refusal will eventually result in her death. While the right to die by refusing medical treatment can be easily derived from the law it is not clear how and to what extent the law provides for exceptions.

The law's precept on this matter is therefore that an individual may choose to end her life by refusing medical treatment or refusing to take food. However, compulsory medical treatment may be imposed in epidemic-like emergencies or to prevent such emergencies. According to the Food, Medicine and Health Care Administration and Control Proclamation, any person who is suspected of having or is confirmed to have a communicable disease, or a disease transmitted from plants or animals, can be tested, quarantined and treated.[79] The Criminal Code also provides that any person who refuses to take steps or cooperate with the demand to cooperate in such a context can be prosecuted.[80] In situations where a person does not comply and as a result causes the infection of others may be responsible, depending on the circumstances, for negligent or even intentional homicide or bodily injury.[81] While one can imagine that more

[77] Article 20 of the Civil Code
[78] See articles 69, 70 and 553.-560 of the Criminal Code.
[79] Arts. 26-28, Proclamation No. 661/2009, Federal Negarit Gazeta 16th year, No. 9 (13 Jan. 2010); a similar pronouncement is found in the now repelled Public Health Proclamation 200/2000, Federal Negarit Gazeta, 6th Year No. 28, (9 Mar. 2000) (See Art. 17 (2)).
[80] See Arts. 438, 440, 441, & 806 of the Criminal Code.
[81] See Book V, Title I of the Criminal Code.

sweeping powers can be accorded to the state in epidemic induced states of emergency no law has yet been issued on this matter.[82]

Let us call the situation in which one dies for refusing medical treatment a "passive suicide". The term is intended to apply to persons who may wish to die without actively extinguishing their lives. These for example may be people who wish to die in a hunger strike if their demands are not fulfilled (who will eventually need medical attention if they get to that point). Another category of persons who may commit passive suicide are people with religious convictions against any form of conventional or scientific medical treatment. Good examples of the second type are belief groups such as the Jehovah's Witnesses and some Christian denominations such as the "Christian Scientists".[83]

What we will call an "active suicide" is a situation whereby a person, whether sick or healthy, ends her own life by destroying at least one of her vital biological functions. This type of suicide has always been condemned by both religious and secular thinkers around the world. Aristotle, for example, had a synergetic view towards suicide. He argued that the individual is part of the community just as the fingers are part of the body.[84] Thus a person who kills herself is by effect causing an injury (or say bleeding) to the community at large.[85] Saint Thomas Aquinas' argument, as he puts it:

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[82] As a continuation of the discussion on the declaration of states of emergency and derogability of the right to life one could ask if the government can declare an emergency which allows it to kill individuals who are infected with a highly fatal transmittable disease if it is proven that the safety of everyone else may be ensured by such action. It has been contended that the legal community's position is that the government does not have such power. However, only a specific law or judicial determination will decide this matter.

[83] Larry May "Challenging Medical Authority" in P*raying for a Cure: When Medical and Religious Practices Conflict* (Peggy DesAutels et. al. (eds.), Rowman & Littlefield Pub., Inc. 1999) p.71. Although the issue has not been covered in this article consider the fact that the religious freedom of such groups (Constitution Art 27 (4)) can and does clash with the right to life of children (unluckily) born to such families, see Seth M. Asser and Rita Swan, 'Child Fatalities From Religion-motivated Medical Neglect', Pediatrics Vol. 101 No. 4 (1998).

[84] David G. Ritchie, *Natural Rights* (George Allen & Unwin: 1952), p.126.

[85] "[A]nd he who through anger voluntarily stabs himself does this contrary to the right rule of life, and this the law does not allow; therefore he is acting unjustly. But towards whom? Surely towards the state, not towards himself. For he suffers voluntarily, but no one is voluntarily treated unjustly. Aristotle (translated by W. D. Ross), *Nicomachean Ethics* (OverDrive, Inc. 2009) p. 138.

> *… because naturally everything loves itself, and consequently every thing naturally preserves itself in being, and resists destroying agencies as much as it can. And therefore for anyone to kill himself is against a natural inclination, and against the charity wherewith he ought to love himself. And, therefore, the killing of oneself is always a mortal sin, as being against natural law and against charity.*[86]

Plato's argument is based on an analogy to the right holder of some property.[87] He sees life as a divinely bestowed gift or trust from God.[88] This would see life as belonging to God, to be used for her benefit, and not to be disposed at by anyone other than her. This view will most certainly rule out suicide (even passive suicide). It would even rule out various risky or unhealthy behaviors which God might regard as misuse of life. Plato's analogy is currently in vogue amongst liberal individualists, although this time the analogy is put in reverse. Similar to the right over property, the owner of life is seen as the absolute master of her right. Chetwynd S.B while making the analogy argues:

> *If the right to life is like that of property rights understood in a negative sense, then it may be required to help me preserve my property …… but no one can require me to look after it in any particular way, again with the proviso that my use or lack of care of it does not harm others. If I want my house to fall down around me, and don't think the effort of saving it is worth making, that decision is mine alone, providing of course it does not injure anyone else as it falls down!* [89]

Such views of the right to life, which are very individualistic and hold that any interference with one's wish to end one's life would violate the absolute right over life, seem to be anchored in Ethiopian law. Since Ethiopian laws do not prohibit suicide it may be argued that the right to life embraces a

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[86] Ritchie, *supra* note 84, p 126.

[87] An identical concept can be found in Islamic theology reflected in both the major sources of doctrine and jurisprudence: the Quran and the Hadith. See Seyyed Hussein Nasr, *The Heart of Islam Enduring Values for Humanity*, Harper (2002) p. 278. Dr Mohammad Taqi-ud-Din al-Hilali (et. al) (Trans.) *Translation of the Meanings of The Noble Quran in the English Language*, (An-Nisa 29) p. 111.

[88] Ibid.

[89] S.B Chetwynd, 'Right to life, Right to Die and Assisted Suicide', Journal of Applied Philosophy, Vol.21, No.2, (2004) p. 178.

right to take away one's life whenever and under any circumstance one wishes. Since the law does not say anything about the reasons of not proscribing suicide and the legislative material explaining the legislator's intents does not explain this point, it leaves the reasons to the reader's imagination. One could argue that the real reason is because the prohibition of suicide is not a practically enforceable rule and there is thus no reason to punish the dead or the survivor who needs medical and psychiatric/psychological help. However, granted that moral norms against suicide are prevalent in Ethiopia, there is also a narrative that glorifies martyrdom and suicide as part of Ethiopia's national(istic) fabric. One can cite Emperor Tewodros' suicide which is ceremoniously narrated as a heroic story as evidence of the fact that suicide is not universally condemned in Ethiopian culture.[90]

Although suicide, whether passive or active, is not prohibited by law it is nevertheless unlawful to help another person to end her life. One could be sentenced up to ten years for instigating or assisting a person who had attempted or committed suicide.[91] Furthermore, if one who wishes to die and physically incapable of performing the final act or nonetheless wants another person perform the act, the person who performs the euthanasia will be liable for homicide.[92] If we interpret these rules in light of our conclusion about active suicide we could point out some social-policy issues that may be behind this law. The first is that we cannot know whether the assistant is acting from ulterior motives, or may have over-persuaded the potential suicide in order to gain from the death. A second one may be that potential murderers may find a convenient way of hiding a crime by claiming to fulfill the wish of their victim thus misleading justice. This may be particularly troubling in a country where investigation methods and technologies are basic.[93] It may also be feared that allowing assisted suicide may devaluate the worth of life since there will be a score of people, including doctors, who are known to have killed a patient, a spouse, a mother, a friend etc… and is still walking amongst us and sanctioned by the law. Therefore, the right to life in Ethiopian law stretches

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[90] See Taddese Beyene, Richard Pankhurst, Shiferaw Bekele, *KASA AND KASA: Times and Images of Tewodros II and Yohannes IV (1855-1889),* (Institute of Ethiopian Studies: 1990).
[91] Article 542 of the Criminal Code.
[92] Articles 538-541 of the Criminal Code, also note that according to Art. 70 of the Criminal Code it is only "upon complaint" crimes that are excused if committed with the consent of the victim and willful killing is not one of them.
[93] □□□□ □□ □□□ □□□□□, □□□□□ □□□□ □□□□ □□ □□□□□ (□□□□□ 1999 .) [Trans: Mesfin Mare Wolde-Giorgis, Criminal Investigation Methods and Techniques] p. 1-6.

far enough to include a right to end one's life although it falls short of the right to be assisted to commit suicide.

By way of critique, one has to say that rather than prohibiting assisted suicide and euthanasia the law ought to have allowed them as medical procedures while setting up mechanisms that are less prone to abuse. One can imagine many hypothetical scenarios in which the law as it stands now can be impractical if not immoral. A good example is a person who is terminally ill, is in incredible pain and wishes to die painlessly and rather hastily. Since the law does not allow such a person to be supported to commit suicide or to consent to being euthanized, it is condemning this person to long term, unnecessary and inhumane suffering. Rather than leaving a person who is physically capable of committing suicide to her own means, it would have made more sense to allow her to be assisted to die or euthanized in a more compassionate and less painful way. The situation is comparable for the person who is not physically capable of committing suicide as this will lead to protracted suffering and no other options. Providing mechanisms that avoid the risks associated with abusing suicide and euthanasia laws and allowing assisted suicide and euthanasia should thus be on the agenda of the Ethiopian parliament, policy circles and civil society.

SOME CONCLUSIONS

Although a claim cannot be made for an exhaustive exposition of all the legal aspects of the right to life, we have touched upon the main issues concerning the subject. While bigger topics such as the derogability of the right to life will require separate treatment, among the issues discussed in some detail included the issue of whether the right to life entails a negative duty on society and state, first, to abstain from wanton killing, and second, not to interfere with the liberty of individuals concerning the disposition of their lives. While the first of these conclusions is the least controversial (if at all) the second will go down for many very slowly and begrudgingly. It is hoped then that the second conclusion, as well as other conclusions and arguments in the article, will stir enough disagreement to start scholarly debates on Ethiopian law and policy. Given how we borrow most of our laws, lest we should reinvent the wheel, it is unlikely that serious debates have taken place in what the public views are on many of these issues.

Another issue that has been discussed includes that of whether the right to life entails some positive duties. The first of these duties is that of preserving and protecting life, imposed primarily on the state and also on

private citizens (albeit in a limited way). We have also seen that the state has a positive duty to provide medical care to its citizens; a duty that it could relieve itself of by providing and efficiently unitizing an ever-increasing health budget. The third set of positive duties concerns the state's duty to keep the environment safe and healthy. We saw that despite the fact that environmental concerns are considered as human rights of their own kind, their protection is inseparably interwoven with the protection of the right to life.

Yet another interesting issue that we pursued concerned the fact that the right to life operates in a time-space continuum of the present and the future. In other words, the same way we can talk of our claim emanating from our right to life, so can we of the right to a potential life of potential human beings and of future generations. Yet the salient difference between us and potential humans, such as future generations and fetuses, is that they are incapable of standing up for their right and are, therefore, at the mercy of those of us who wish to make a claim in their stead. Furthermore, the law itself distinguishes between "us" (of the present) and "them" of the future by giving a better protection to us.

Finally, a significant take away of this article is an observation of how the right to life is interconnected with other rights and is also intricately woven into the legal system. Life is, to start with, at the base of all other rights as most rights can be exercised and claimed only where one is alive. Additionally, the right to life is interconnected with other rights such as the right to a safe and healthy environment, sustainable development, the right to medical care, and women's rights. The right to life also includes the right to have access to judicial remedies to punish violators or to protect one's self from violations or to deter fatal crime. The fact that the right to life is not a mere hortatory international or constitutional declaration comes out when one sees how as it is connected to a web of legal issues in all fields of the law and policy.

In addition to international law, constitutional law and a plethora of law related ethical and policy issues, the article has touched upon domestic human rights law, civil law, criminal law, law of persons, police/military codes of conduct, humanitarian law, administrative law, medical law, amnesty/pardon law and environmental law. It is then for this reason that any legislative work on human rights protection, human rights education, or the study of the field, needs a thorough and a holistic approach. Without such an approach neither the enforcement of human rights nor their study would be complete.