

National Moot Court Competition

November 2005

Addis Ababa

Action Professionals' Association for the People

1. The Republic of Senbelet is an African state which has ratified/ acceded to some of the major international and regional human rights instruments which consist of;
 - Universal Declaration of Human Rights(UDHR)
 - International Covenant on Civil and Political Rights(ICCPR)
 - International Covenant on Economic, Social and Cultural Rights(ICESCR)
 - Convention on the Rights of the Child(CRC)
 - Convention on the Elimination of All forms of Discriminations Against Women(CEDAW)
 - The African Human and Peoples' Rights Charter(AHPRC)

Statement of the Problem

2. In one of the latest reports of the World Bank, Senbelet has been placed at the forefront of countries whose considerable portion of nationals are living in abject poverty. According to the report, an estimated 50 % of the population of Senbelet lives below the absolute poverty line. The economy of the country is based on smallholder agriculture, with more than 80 % of the population (from the estimated 60 million) living in rural areas primarily engaged in subsistence farming. As such, agriculture accounts for approximately 45 % of the gross domestic product (GDP). In urban centers on the other hand, the majority of the economic activity (60%) is conducted by the informal sectors and the unemployment rate is about 32%.

3. Nature has also its own share of contribution to the economic downfall the country is facing today. Severe drought, massive crop failures, and extensive livestock losses adversely affected approximately 14 million persons during the year 2004, and caused GDP growth to slow. More than 13 million people living in the rural areas are classified as food insecure being unable to meet their subsistence requirements even in years of normal rainfall. As a result, for decades now the central concern for the government has been the widespread poverty mainly caused by the poor performance of the economy.

4. It has just been ten years since the state of Senbelet has introduced liberal democracy and free market economic system. Before that, the country followed a socialist political and economic system where the government had expropriated, among others, extra urban houses and started to administer it itself. This particular policy enacted by the government has caused many to apply for state owned housing whose price is affordable particularly for the poor. Despite the existing free economic system, the Federal state of Senbelet has maintained the ownership of such houses particularly at the capital city where about 70% of the population is living in government rented houses. Apparently, due to their low cost demand for government houses is ever increasing. More over, Article 39 of the Constitution of Senbelet provides that “The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State. Land shall not be subject to sale or to other means of exchange”.

5. Recent studies conducted by the government of Senbelet have shown that there is a scarcity of 300,000 houses needed only for the people living in the capital where 41% of the existing houses hosted an average of 3 persons in a single room, and 95 % of the houses do not have proper sewerage system. In some areas like Shera, 400 people live in less than one hectare and 15 % of the total houses are built by squatter.

6. The municipality of the capital is able to issue title deeds only for 20% of the privately owned houses which in turn make it difficult for the majority of house owners either to

sell or mortgage their house as well as to have a legally secured tenure. The country does not have policies or established practices which govern housing issues and neither is there a concerned government authority charged with the power of handling this issue. The criteria to get government owned land for private house construction is changing from time to time. For a long time, the practice to get a plot of land from the government was that one has to prove he or she does not own any house any where in the country. In the year 2003, however, the government abandoned this practice and started to distribute land to any national of the country who has the capacity and willingness to build a house. Surprisingly, after a year, the government again changed its mind and sticks to the previous practice.

7. According to the income tax regulation of the country, people who rent their houses are required to pay 40% income tax. The investment policy of Senbelet regarding real estate is being criticized for not attracting much investment as it stipulates severe requirements concerning the price of land, mode of payment, sell or transfer of houses, etc. Due to these and other reasons only few investors show interest to participate in real estate venture. The other problem revolving around the issue of getting a plot of land to construct private houses is the requirement of depositing 1,200 USD as a guarantee to assure that the applicant will really construct the house. Decreasing each year, the area of the plot of land that the government allotted for one house has now reached 72 Sq. M.

8. Due to internal and external pressure, finally the government of Senbelet has been forced to come up with a seemingly attractive and working measure that revived the hopes of the people living in desperate situation. According to this new step as proclaimed by the municipal administration, low cost houses will be constructed in the form of condominium at the expense of the government to be given to the homeless as well as to those residents who are living in inhabitable. In return, the beneficiaries are expected to cover only the construction cost of which would pay 10 % – 30 % in advance and the rest through long term payment. For people who can not afford to pay, it is possible to contribute their labor during the construction which

is to be deducted from the prices of the houses. As result, some 300,000 people living in the capital have applied for the houses.

9. Meanwhile, for the purpose of obtaining plots of land to construct the condominiums, many people, including the petitioners, have been evicted from their homes and stuffed in warehouses and tents. There are cases where more than 30 households are stuffed in one hall. As result of the eviction, some people have been forced to live in the outskirts of the city from where it is very difficult to go to work, school and markets. However, the municipality has pursued its act of eviction despite the persistent objection of the poor people. Officials of the municipality have promised now and then to give priority to the evicted people and being placed to live in such temporary shelters.

10. In the case at hand, a group of petitioners who are all nationals of Senbelet are living in the capital city in the place called Shera. These residents live in the midst of extreme filthy conditions. The majority of the households are not engaged in any formal undertakings to make their living. The elderly sitting on the pavements, covered with dust and spend much of their time begging for money to make their ends meet while their siblings snatch valuables and anything they could get from passersby. Their daughters on the other hand are forced to work as commercial sex workers.

11. Out of 200,000 houses initially planned, the municipality has finalized the construction of some 30,000 low cost houses with in two years. However, to the dismay of the petitioners and other categories of individuals who were excited about the good news, the mayor of the capital disclosed in an interview with the official newspaper of Senbelet that priority will be given to those who are capable of paying the highest money in an auction which would be conducted by his office. To this end the administration of the city has started advertising not only the houses whose construction has been finalized but also including other houses which are still under construction. According to the advertisement announced, there is no restriction to the

number of houses one can buy and it is irrelevant whether the buyer already has another house.

12. The petitioners have submitted their objection to the city administration stating that they should be given priority to get the completed houses as they are still sheltered in a warehouse. They also expressed that their health, including health their children, is at critical condition unless the municipality keeps it promises and provide them with the houses. However, the response of the city administration was depressing for the petitioners as it rejected their request blatantly. The justification forwarded was that it is the discretion of the government to decide on the fate of the constructed houses as they are built from government budget.

13. The government further replied that it will soon build some houses for people like the petitioners at the outskirts of the city using the money to be earned from the sale of the completed houses which are located at the heart of the city and can be sold with attractive price. In response to the rally held by people from different section and NGOs objecting the decision of the municipality, the spokesperson of the mayor stated;

“The free market economy system dictates each and every activities of the government and hence the role of government in the economic and social activity should not be more than creating the facility. Therefore, it is imprudent to expect the government to construct and provide houses for its people. Above all when the government decided to demolish the slum areas its objective was not solely to provide houses for the people. It was rather mainly to keep the international standard of the city and freeing these areas from being a place of hatching and sheltering criminals”.

14. The petitioners are bewildered as to what they should do to stop the decision of the city administration and get the houses. As most of them are earning their meager livelihood from informal undertakings it is obvious that they can not afford to compete in the auction. It is also unbearable for the petitioners to stay for another two or three years in this condition which is despairing in all perspectives. They are also thinking of the poor or absence of basic infrastructures like water and electricity as well as scarcity of basic services like school, health centers, as well as cost of transportation to their working and market places from the outskirts.

15. Being faced with this situation, the petitioners approached a local NGO called Advocacy for Public Interest (API) to assist them to get judicial remedy. More than ever they are determined to enforce their right to housing in a court of law. They particularly would like to institute an urgent action for an order directing the municipality to refrain from selling the houses by auction and keep its promise. They allege that their plea will not be confined only to an injunction order but they will also seek an order obliging the municipality to give them the completed houses with out auction and with a price of construction. The form of payment should also be made by way of installment taking to account their income as well as the city administration's initial plan.

16. After providing thorough elaboration about human rights particularly the right to housing, the petitioners have reached consensus to delegate API to prepare the petition and lodge it to the appropriate court of law. They particularly have agreed to incorporate the following points in the petition.

- The mandate (jurisdiction) of courts to adjudicate the present claim.
- The obligations of the state of Senbelet assumed under international instruments to provide housing to those nationals who can't afford to buy their own houses;
- The obligation of the state of Senbelet to act positively to ameliorate the deplorable living conditions of the petitioners including but not limited to access to housing, health-care, sufficient food;
- The supremacy of international human rights instruments over national laws
- Absence of pro-poor programs and policies on housing.
- The apparent failure on the part of the government to allocate sufficient budget.

17. Meanwhile, the municipality's legal department reading about the said actions of Shera residents on a newspaper has decided to prepare for the defense which

revolves around implementation measures taken to alleviate housing problems apart from policy and legislative measure taken by the government on national and municipal level. The legal department in particular (but not limited to) would like to emphasize its contention on the following undertakings

- As a positive obligation, housing rights can not entail on the government immediate obligation which could be forced through court of law.
- The budget constrains that the government faces to provide housing for all
- The urban development policy(housing included as one component)lately adopted by the parliament
- Measure taken to motivate real-estate developers
- Establishment of housing agency
- The large sums of money spent and significant number of houses built by the government in short period of time
- The fact that all the undertakings Shera residents were engaged in (theft, begging and prostitution) are apparently immoral and illegal; and public interest demands their eviction
- Above all courts do not have jurisdiction on social cases like the rights to housing, food, health, education etc. whose realization depend on the economic development of the country, and hence it is unthinkable to be enforced in court of law.

18. Based on the above facts participants to the Moot Court competition are requested to prepare memorandums both for the petitioners and for the respondent as well which would be argued before the court.

Note: The state of Senbelet has a similar constitutional and legal system like the Federal Democratic Republic of Ethiopia.