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**The Right to Education of Children and Young People Living
with Podoconiosis: *The Case study in Wolaita Zone, Southern
Ethiopia***

By

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**The Right to Education of Children and Young People Living with
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**I hereby certify that this is my original work. Works of others included
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Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CDE	Convention against Discrimination in Education
CESCR	The United Nation Committee on Economic, Social and Cultural Rights
CPRD	Convention on the Rights of Persons with Disability
CRC	UN Convention on the Right of Child
ECtHR	European Court of Human Rights
ESC	European Social Charter
ESDP	Education Sector Development Program
FDRE	Federal Democratic Republic of Ethiopia
HIV/AIDS	Human Immune Virus/Acquired Immune Deficiency Syndrome
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MFTPA	Mossy Foot Treatment and Prevention Association
MOE	Ministry of Education
MOH	Ministry of Health

NGO	Non Governmental Organization
NTDs	Neglected Tropical Diseases
SERAC	The Social and Economic Rights Action Centre
SHN	School Health and Nutrition Strategy
UDHR	Universal Declaration of Human Rights
UNESCO	United Nation Educational, Scientific and Cultural Organization
UNICEF	United Nation Children's Fund

Key Terms

- Podoconiosis
- Right to Education
- Children and Young People living with Podoconiosis
- Realization of right
- Human right instruments
- Implementation

Definition of Key Terms

For the purpose of this study;

Children- refer to a person of either sex whose age is below 18 years.

Young People- is defined to include a person of either sex who is 15-24 years.

Abstract

Ethiopia has a largest number of podoconiosis patients who are suffering from enormous socioeconomic burden of the disease. Despite this fact, the issue of education of children and young people living with the disease has given little attention. Stigma and discrimination toward the patients coupled with disease related complications has denied many patients enjoyment of the right to education. This paper dedicated to assess realization of the right to education of children and young people living with podoconiosis in Wolaita Zone. To this end, cross-sectional qualitative study is employed to assess implementation of international and national commitments pertinent to the right to education of children and young people living with podoconiosis. In-depth interview, key informant interview and focus group discussions were employed as data gathering tools. The primary source of data were children and young people living with podoconiosis, school directors, parents or guardians of children and young patients, concerned government body and NGOs. A total of 107 participants of the study were selected using purposive and convenient sampling techniques. Secondary source of data are government policy and legal documents, and annual reports regarding education rights.

Finally, qualitative data collected, interpreted and analyzed. The core findings of the study are; the study finds out that disease related illness and complications are the cause of absenteeism, poor educational performance, repetition and complete drop-out of school among students with the disease. In disease endemic areas of Wolaita Zone, schools are not available, accessible, acceptable and adaptable to school-age children and young people living with the disease. Apart from this, the study disclosed that misconception about the disease among the school community, widespread stigma and discrimination against patients; unfavorable school environment and financial constraints are the major barriers to the enjoyment of the right to education by children and young people living with podoconiosis. These led to the conclusion that, though there are favorable policy and legal environment, it is far from being realized for children and young people living with podoconiosis.

CHAPTER ONE

1. INTRODUCTION

1.1 Background of the Study

Podoconiosis (endemic non-filarial elephantiasis, also known as mossy foot) is a non-communicable disease that causes bilateral swelling of the legs with mossy and nodular changes to the skin and considerable disability. It occurs following long-term barefoot exposure to volcanic red soils which contains high concentration of volcanic and silica particles, found in tropical highland areas with heavy annual rain fall.¹ Silica particles which penetrates the skin of bare foot are thought to induce lymphatic blockage, almost always confined to the lower limbs, especially the feet, lower leg and rarely extends above the knees.² Podoconiosis is known to be non-infectious geochemical disease, because it is caused by conjunction of environmental (which include geographical and chemical factors) and genetic factors.³ The disease led to disfiguring, disabling, debilitating, painful and life-long disease, though disease related death is rarely reported.⁴

Podoconiosis has been identified as specific disease entity for over 1000 year and is widespread in tropical Africa, central America and North India, yet it remained the most neglected and under-researched condition.⁵ Recently, it has been recognized as one of Neglected Tropical Diseases by WHO.⁶

¹. EW, Price. "The association of endemic elephantiasis of the lower legs in East Africa with soil derived from volcanic rocks" *Transactions of the Royal Society of Tropical Medicine and Hygiene* 70, (1976): 288-295.

². EW, Price & WJ, Henderson "the elemental content of lymphatic tissues of barefooted people in Ethiopia, with reference to endemic elephantiasis of the lower legs." *Transaction of the Royal Society of Tropical Medicine and Hygiene* 72, (1978): 132-136.

³. Davey et al. "Podoconiosis: non-infectious geochemical elephantiasis" *Transactions of the Royal Society of Tropical Medicine and Hygiene* 101, (2007): 1175-1180

⁴. Animut, Abebe. "The burden of non-filarial elephantiasis in Ethiopia" *Transactions of the Royal Society of Tropical Medicine and Hygiene* 101, (2007):1173-1174.

⁵. Davey G et al. "Podoconiosis: A Tropical Model for Gene-Environment Interactions?" *Transaction of the Royal Society of Tropical Medicine and Hygiene* 101, (2007):91-96

⁶. Deribe et al. "Ten Years of Podoconiosis Research in Ethiopia" *PLOS Neglected Tropical Disease* 7, no.10 (2013) e2302

Ethiopia is one of the countries with the highest number of podoconiosis patient. It is estimated that up to 1 million cases of podoconiosis (i.e. 25 % of the global total case load) exist in Ethiopia.⁷ This figure shows that the average prevalence of the disease in Ethiopia is greater than 5% in endemic areas. Abundant of experimental researches conducted have revealed that red clay soil of endemic area that is rich in fine particles of silica and aluminosilicates play a significant role in the pathogenesis. In Ethiopia, the red clay soil derived from volcanic rocks covers more than 200,000 KM² where more than 20.5 million people live and farm the fertile soil.⁸ Thus, these people are susceptible to the geochemical particles that cause the disease.

Podoconiosis is the disease of the poorest of the poor. Nonetheless, it is entirely preventable disease through regular use of robust footwear which protects the feet from the irritant clay soil.⁹ It has been documented that podoconiosis is serious public health problem in endemic areas of red clay soil like Wolaita Zone, where the prevalence of the disease exceeds 5%.¹⁰ It is also indicated that in endemic areas like Wolaita Zone the disease is more prevalent than fatal disease such as HIV/AIDS, Malaria and Tuberculosis.¹¹

The disease has also enormous social, psychological and economic implication for affected individuals.¹² Social stigma against people with podoconiosis is rife, patients being excluded from school, denied participation in local meetings, churches and mosques and barred from marriage with unaffected family. In Wolaita Zone of Southern Ethiopia, one study showed that the disease results in an annual economic loss of 16 million USD per year.¹³ The other study conducted on the knowledge, attitude and practice of the population in the highly endemic region of Southern Ethiopia found that more than half of the population (55.8%) showed stigmatizing attitudes toward social

⁷ . Davey et al, supra note 5, p.92

⁸ . Price, supra note 1

⁹ . EW, Price. *Podoconiosis: Non-filarial Elephantiasis*. Oxford: Oxford Medical Publications, 1990

¹⁰ . Desta et al. "Prevalence of Podoconiosis (Endemic Non-Filarial Elephantiasis) in Wolaita, Southern Ethiopia" *Tropical Doctor* 32, (2003): 217-20

¹¹ . Davey et al, supra note 5, p.92.

¹² . Davey et al, supra note 3

¹³ . Tekola et al. "Economic costs of endemic non-filarial elephantiasis in Wolaita zone, Ethiopia." *Tropical Medicine and International Health* 11, (2006): 1136-1144

interaction with patients and 63.8% had unfavorable attitudes towards the conditions.¹⁴ It is indicated that stigma linked to podoconiosis manifested through school dropout, lack of marriage prospects, exclusion from community events and psychological trauma.¹⁵

More recently, a study conducted on the right to health of podoconiosis patients in Wolaita Zone¹⁶; is found that the disease affects not only the health status of a person with the disease but also interferes with the enjoyment of other human rights; among this the right to education is the one which is at risk. The same study indicated that a number of children with podoconiosis have limited access to education due to disease related complications and rampant stigma against patients.¹⁷

Though the whole community in highly endemic areas of Wolaita Zone is the most vulnerable, the double burden of being patient and young relegates many of children and young people with podoconiosis to the margin of the society where, unseen and unheard, their rights are disregarded and their safety is denied. It is has been mentioned that children and young people with podoconiosis face enormous challenges in realizing their human rights including the right to education.¹⁸

A range of international human rights instruments has long established education as a human right for all people. The right to education is one of fundamental rights since it is a human right in itself and indispensable means for realizing other rights. The right to education is vital for economic, social and cultural development of all societies. Education has also a vital role in personality development. It is a tool by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in the community.

¹⁴ . Yakob et al. “High level of misconceptions and stigma in a community highly endemic for podoconiosis in Southern Ethiopia” *Transaction of the Royal Society of Tropical Medicine and Hygiene* 102, (2008): 439-444

¹⁵ . Davey et al, supra note 5, p.1177

¹⁶ . Ashine, K.M. “Legal and Policy Framework for the Realization of the Right to Health in Ethiopia: The Case of Persons Living with Podoconiosis, Wolyata Zone Southern Ethiopia” LLM thesis, Addis Ababa University 2011.

¹⁷ . Ibid

¹⁸ . Ibid

The right to education is one of the oldest and well-protected rights in international laws. The Universal Declaration of Human Rights (1948) firmly established the right to education for all. The United Nation Educational, Scientific and Cultural organization (UNESCO) Convention against Discrimination in Education (1960), is the first specific instrument concerned with the right to education, which dealt with principle of non-discrimination and equal opportunities in education. Nonetheless, it is the International Covenant on Economic, Social and Cultural Rights which provide the most comprehensive and detailed provision on the right to education. In addition to this, a number of international as well as regional legal instruments enjoin state parties to protect this right through domestic laws and policies. Accordingly, Ethiopia has recognized the right to education of everyone including children and young people with podoconiosis under domestic laws, educational policies, strategies and programs. Despite these commitments, the right to education of children and young people with podoconiosis has given very little attention.

1.2 Statement of the Problem

Podoconiosis has been present for centuries in Ethiopia, yet has received little attention from policy makers despite high prevalence and serious associated disability.¹⁹ About 11 million people (18 % of the national population) lives in endemic area in Ethiopia, and between 500,000 and 1 million are affected nationwide.²⁰

The government of Ethiopia recently recognized that podoconiosis has enormous socio-economic burden on the patients of endemic communities.²¹ Furthermore, a study documented that the disease is cause of increased absenteeism, loss of important work hours and exclusion from social activities and public services such as health-care facilities and educational institutions.²² One of the studies conducted in endemic

¹⁹ . Tekola et al, supra note 14, p.1136

²⁰ . Alemu et al. “Burden of Podoconiosis in poor Rural Communities in GullisoWoreda, West Ethiopia” *PLOS Neglected Tropical Disease* 5, no.6 (2011):e1184

²¹ . *National Master Plan for Neglected Tropical Diseases (NTDs)*, Ministry of Health, (Addis Ababa: Ethiopia), (2013-2015), p.14

²² . Molla et al. “Patients’ Perception of Podoconiosis Causes, Prevention and Consequences in East and West Gojam, Northern Ethiopia” *BMC Public Health* 12, (2012): 828

communities revealed that overwhelming majority of people living with podoconiosis is uneducated.²³ By the same token, it has been indicated that the rampant stigma and discrimination against patients hampered enjoyment of the right to education.²⁴ Most often teachers and fellow students reject pupil with the disease.²⁵ Even in some cases, parents or families prevents children and dependents from accessing social services fearing further stigma. In the context of education, this means that families don't send them to school because of fear of stigmas. Because of these and other factors it is too difficult for children and young people with podoconiosis to enjoy their rights with special emphasis to right to education.

Children and young people with podoconiosis are entitled to enjoy their human right to education on equal basis with their peers. Cognizant of this, "Education for All" represents a national commitment to ensure that every child and adults receives basic education of good qualities. Beside ratification of international instrument which recognize the right to education, Ethiopia has adopted laws, education policy, strategies and programs in order to realize the right to education. Nevertheless, the case of children and young people with podoconiosis has remained relatively invisible in the efforts to achieve universal access to primary education, and generally available secondary education. Further, the attention given to their cause is still insignificant compared to the seriousness of the problem.

It has been indicated that podoconiosis is continued to be serious public health issue in Wolaita Zone.²⁶ Despite high prevalence, high morbidity rate and enormous socio-economic impacts of the disease, lack of strong legal protection coupled with stigmatizing attitudes held by member of the community has intensified the burden of podoconiosis. Still a large number of children and young people with podoconiosis are forced to drop out of school, repeat class or remained out of school due to disease related illness, and unfavorable attitude of the society against podoconiosis victims. Undoubtedly, unfriendly and poorly arranged learning environment does not provide the

²³ . Alemu et al, supra note 20

²⁴ . Davey et al, supra note 5, p 1177

²⁵ . Ashine, K.M, supra note, 16, p.75

²⁶ . Ministry of Health National Master plan 2013, supra note 20, pp14-15

moral and material support to enable children and young people with podoconiosis to meaningfully and substantially realize their right to education. It should be recalled that states parties have principal obligation in realizing the right to education. This in turn, requires provision of available, accessible, acceptable and adaptable educational programmes and institutions. Besides this, state parties to the CRPD are bound to address psychosocial challenges that persons with disability faces in various settings including educational setting. When it comes to podoconiosis, though it is firmly established that the disease causes physical impairment and unfavorable attitudes,²⁷ lack of attention to educational needs of children and young people living with podoconiosis has denied them enjoyment of their right. Moreover, the minimum core of the right to education i.e. the right of access to public educational institutions and programmes on non-discriminatory basis is far from being effectively realized. Thus, this fact shows that there is gap between the law and practice.

1.3 Research Questions

The main research question of the study is as follows;

1. Does the Ethiopian law guarantee equal protection of the right to education of children and young people living with podoconiosis?

The sub-questions to be covered are:

2. To what extent are the domestic laws, policies, strategies, programs and international obligations, toward realizing the right to education , entered by Ethiopia have been implemented in the case of children and young people living with podoconiosis?
3. Are schools in Wolaita zone available, accessible, acceptable and adaptable for children and young people with the disease?
4. What challenges do children and young people with the disease face in exercising their human right to education?

²⁷. Molla et al, supra note 22

5. What effort has been undertaken by the government of Ethiopia, and non-governmental entities in ensuring the enjoyment of the right to education of children and young people with the disease?

1.4 Significance of the study

Podoconiosis is one of the “Neglected Tropical Disease” to which little attention has been paid both at national and international level. It has enormous socio-economic impact on the patients. Children and young people living with podoconiosis are relatively at greater risk of vulnerability compared to other patients. Among others, their right to education is at risk. They are denied equitable access and opportunity to education. Surprisingly this aspect of their right has given little attention on the part of the government and non-governmental entities. This particular research focuses on the right to education of children and young people living with podoconiosis and its realization in Wolaita Zone. Therefore, this study is expected to have the following significances;

- It identifies the intensity of the problems children and young people living with podoconiosis are facing while exercising their right to education.
- It gives insight into the educational needs of children and young people living with podoconiosis.
- It gives insight about the learning environment conditions whether they are friendly to learn
- It would create awareness about the right to education of children and young people who are living with podoconiosis, among the families, school communities and the society at large.
- It highlights the possible area of work for the government, NGOs and any concerned body to effectively realize the right to education of children and young people living podoconiosis.

- It helps to find possible solutions so as to curb problems regarding realization of the right to education for children and young people living with podoconiosis.
- It give information to concerned body which has given little attentions to the problems
- Finally, it serves as baseline to conduct further researches

1.5. The scope of the study

The study was conducted in Wolaita Zone, Southern Ethiopia, located 385kms from Addis Ababa, capital of Ethiopia. The scope of this study was delimited only to children and young people living with podoconiosis in the zone. Hence, conclusion reached considers only this group of patients in the stated zone.

Moreover, this study mainly focuses on exploring experiences around children and young people living with podoconiosis in exercising the right to education in Wolaita Zone. The study limited to assessing the implementation of treaties, laws, policies and programs pertaining to the right to education in the context of children and young people living with podoconiosis in Wolaita Zone.

1.6. Research Methodology

1.6.1. Study Setting

The study was conducted in Wolaita Zone, Southern Ethiopia. Wolaita Zone is one of the most densely populated areas in Ethiopia with an estimated total population of 1.7 million.²⁸ Most people earn their living from subsistence agriculture, and high prevalence of podoconiosis is documented in this area.²⁹ Community based disease prevention mechanism has been put in place since 1998 GC. In this respect, Mossy Foot Treatment and Prevention Association (MFTPA) which is international non-governmental

²⁸ . Central Statistical Agency: Summary and Statistical Report of the 2007 Population and Housing Census Result. Federal Republic of Ethiopia: Population Census Commission;2008

²⁹ . Desta et al, supra note 10

organization, has actively involved in prevention and treatment of podoconiosis patients living in Wolaita Zone.

1.6.2. Study Design and Data Collection instruments

The study was entirely qualitative and employed multiple methods (Focus group discussions (FGD), In-depth interviews (IDIs) and Key informant interviews, KIIs) to gain in-depth information with regard to implementation of the right to education of children and young people living with podoconiosis, and predominant barriers to the enjoyment of the right. Semi-structured topic guides were used to direct discussions, focusing on experiences around children and young people living with podoconiosis in exercising their right to education. In-depth interview, focus group discussion and key informant interview enabled deeper and more contextualized information to be gathered from children and young patients, family members and stakeholders. A total of 8 FGD, 56 IDIs and 4 KIIs were conducted in the study sites. A FGD guide was prepared for parents or guardians of child and young patients, network group of MFTPA, health agents and social workers of MFTPA sites. And IDI guide was prepared for children and young people with the disease, and school directors. The MFTPA project director and concerned government officers (Zonal Education Bureau, and Children, Women and Youth Affairs) were the Key informants for this study. Field visits which intended to observe the situation of students with the disease at school setting was conducted. In addition, the study employed intensive analysis of international and regional instruments, domestic legislations, policy, strategies and programs.

1.6.2. Source of Data

The study was conducted with both primary and secondary data. The primary sources include children and young people with podoconiosis, school directors, parents or guardians of child and young patients, Mossy Foot Association Network Group, MFTPA sites staffs, concerned government body and NGOs, particularly, Mossy Foot Treatment and Prevention Association (MFTPA). The secondary source of data were government policy document and laws, international human rights instruments, education abstract published by ministry of education, etc.

1.6.3. Sampling Techniques and Sample Size

Participants were recruited using convenience and purposive sampling method. In this study a total 107 participants from the following 7 group (1) 48 children and young people living with podoconiosis (2) 8 primary and secondary school directors (3) 28 parents or guardians of podoconiosis victim children and young people (3) 5 Mossy Foot Association Network Group who comprise community leaders, religious leaders (5) 14 MFTPA sites staffs (6) 2 Mossy Foot Association members (7) two from concerned government entities (officers from Education Bureau, and Children, Women and Youth Affairs of Wolaita Zone). In the case of children and young people with podoconiosis, those who are currently enrolling in school as well as those who are out of school were selected. While selecting these groups of participants, range of characters such as age, sex, level of education and stage of disease were considered. FGD participant family member were identified with the help of MFTPA site staffs. FGD participant network group and MFTPA sites staffs were selected based on their experience and knowledge about child and young podoconiosis patients. The MFTPA project director and social work department head were in key informant interviews as they have established extensive relationship with podoconiosis patients including child and young patients. And with regard to school directors as they are few in number and an attempt was made to address all of them who were available at the time of gathering the data. The study took place in four of 15 communities served by MFTPA which selected purposively based on location of sites and size of the patients.

1.6.4. Data Collection Procedure

To obtain reliable data the researcher personally collected all data in the research. The data collecting instruments were prepared in English version, translated into Amharic (working language) or Wolaitigna (local language) as appropriate, in order to make it easier for participants to understand the questions.

1.7. Limitation of the Study

During conducting the study, the researcher has encountered obstacles in collecting data for the research. At the beginning, Mossy Foot Treatment and Prevention Association (MFTPA) has hesitated to grant approval that enables the researcher to collect data from the subjects of the study who often prefer contact through MFTPA staff member prior to individual discussion and consent. As result, it took the researcher more time to get the required information so it was impossible for the researcher to address all subjects of the study in short day.

The other thing is paucity of publications and studies on this particular subject matter has made it difficult for the researcher to find any comprehensive data that support the current study and hence the researcher forced to rely on the few that are available on. While there has been much research works done on the area of psychosocial and socioeconomic impacts of the disease, comparatively little work has been done from the human rights perspective. Besides theses, time and budget limitation posed major challenges to conduct the study. Despite all these limitations, the researcher has accomplished her study.

1.8. Chapter Outline

In brief, the study has attempted to explore to what extent the international treaties, national laws, policy, strategies and programs which recognize the right to education realized in term of children and young people living with podoconiosis in Wolaita Zone, with the aim of assessing experience of children and young people with the disease in exercising their right to education, challenges and barriers these group are facing in enjoying the right, steps taken to realize the rights as well as remaining shortcomings in order to give information for key government bodies and non-governmental stakeholders for future interventions.

In doing so, the paper organized in the following manner. In general, the paper has five chapters each of which has its own section and sub-sections.

Accordingly, the first chapter is an introductory part which deals with background of the study, statement of the problem, research questions, objective and scope of the study, methodology and related issues. The second chapter intended to shed light on the meaning, cause and prevalence rate of podoconiosis, socioeconomic impact of the disease, the myth and misconceptions surrounding the disease, stigma and discrimination against people with disease and at last the status of child and young people with disease. By doing this, it highlights how the aforementioned issues will potentially affect the enjoyment of the right to education.

Chapter Three renders a brief explanation about the conceptual framework of the right to education and its status under different international, regional and domestic instruments including the FDRE constitution, educational policy and programs etc. This chapter discloses the legal grounds which enable children and young people with podoconiosis to claim their right to education in Ethiopia.

Chapter Four devoted to assess implementation of the right to education of children and young people living with podoconiosis in Wolaita zone. Finally, the last chapter, i.e. chapter five sets out brief conclusion and recommendation

CHAPTER TWO

2. REVIEW OF RELATED LITERATURE

2.1. Podoconiosis in Ethiopia

Podoconiosis (non-filarial elephantiasis, often called mossy foot) is long recognized as a common disease in Ethiopian Highlands, yet its socio-economic burden is largely ignored until recently. The term Podoconiosis was first coined by Ernest Price, from Greek *Podo* (of feet) and *konon*(dust)³⁰, to imply a non-infectious disease characterized by bilateral but asymmetrical swelling of the lower legs (see figure1.1). In addition, patients develop nodular skin change (see figure 1.2), mossy foot appearance and foul-smelling wounds.



Figure 1.2 a nodular form

Figure 1.1 A 14 years old girl podoconiosis patient

The disease is common among people who live and work on irritant red clay soil derived from volcanic rocks.³¹ Previous studies suggested that the disease is caused by long-term bare feet exposure to red clay soils rich with mineral particles (silicate, aluminosilicate, magnesium and iron).³² Fine Silica particles penetrate through the skin of the feet, inducing an inflammatory process and causing obstruction of lymphatic vessels in the limbs, which results in progressive swelling of the legs, usually below the knees.³³ Most cases of podoconiosis are reported in the areas of high altitude (above 1500m) with annual rainfall over 1000mm, suggesting the role of geographical factors in the pathology (cause) of the

³⁰ . Price, supra note 1

³¹ . Price and Henderson, supra note 2

³² . Ibid

³³ . Price, supra note 1

disease.³⁴ More recently, studies identified strong role of genetic susceptibility to the disease.³⁵ At present, the causes of podoconiosis are attributed to geographically-determined environmental factor on background of genetic susceptibility.

Most podoconiosis cases appear to occur at second and third decade of life but studies indicated that a child as young as 4 can be affected by disease.³⁶ The disease mainly affects an economically active age group (between 15-64).³⁷ In endemic areas, podoconiosis is associated with subsistence farmers, weavers, goldmine workers and potters whose exposure to volcanic soils is common.³⁸ Nevertheless, it is not uncommon to see children and young people affected by disease. Both male and female are at risk of being afflicted by the disease.

Scientific researches revealed that the disease goes through three phases: initial phase, progressive and latter phase.³⁹ The initial phase (first and second stage) presents early symptom such as burning limb, persistent foot swellings below ankle whereas the progressive phase involves increased swelling of legs below knee, thickening of skin, mossy foot appearance.⁴⁰ At the last phase, podoconiosis becomes permanently established either in the form 'soft' or 'water-bag' lymphodema (swelling) or hard or leathery leg 'elephantiasis'.⁴¹ The initial phase is reversible through low cost intervention like washing the infected foot in daily base. But once a patient developed last phase, the disease may lead to life-time disability.

Podoconiosis is often mistaken to other forms of elephantiasis. It is non-filarial elephantiasis which is distinguished from other form of tropical elephantiasis caused by

³⁴ . Deribe et al. "Spatial Distribution of Podoconiosis in Relation to Environmental factors in Ethiopia: A Historical Review." *PLOS Neglected Tropical Disease* 8, no.7 (2013): e68330

³⁵ . Davey et al, supra note 3

³⁶ . Davey G & Newport M. "Podoconiosis: the most neglected tropical disease?" *Lancet* 369, (2007):888-889

³⁷ . Desta et al, supra note 10

³⁸ . Davey et al, supra note 5, p.1176

³⁹ . LC. Fuller. "Podoconiosis: endemic non-filarial elephantiasis" *current opinion in infectious disease* 18, (2005):119-122

⁴⁰ . Davey G "Podoconiosis, Non-filarial Elephantiasis and Lymphology" *Lymphology* 43, (2010): 168-177

⁴¹ . Ibid, p 172

filial parasites transmitted by mosquitoes.⁴² Podoconiosis is a soil borne disease caused by mineral particles (rather than parasites, insects or vectors) contained in red clay soil while filial elephantiasis arises from insect borne.⁴³ Beside these, podoconiosis differs from filial elephantiasis through its appearance: it develops in foot and confined to lower legs.⁴⁴ In contrast, filial elephantiasis extends above the knee.⁴⁵ That is why it is sound to use the scientific name ‘podoconiosis’; rather than the general term ‘elephantiasis’. In addition, unlike leprosy, podoconiosis does not involve either thickened nerves or lack of sensation.⁴⁶

Ethiopia experiences greatest burden of podoconiosis as one million people affected by the disease nationwide, and an additional 11 million (18%) of the population are at risk through exposure to red clay soil of volcanic origin, particularly basalt.⁴⁷ Ethiopian basalt area which contained mineral particles covers more than 200,000 Km² which is approximately one-fifth of the land surface and fertile soils of these areas is a home of agrarian population of 20.5 million people.⁴⁸



Figure 1.3- a picture taken when a farmer and his boy working in the reach volcanic soil bare foot.⁴⁹

⁴² . Tomczyk et al. “Addressing the Neglected Tropical Disease Podoconiosis in Northern Ethiopia: Lessons Learned from a New Community Podoconiosis Program”. *PLOS Neglected Tropical Disease* 6, no.3 (2012):e1560

⁴³ . Kloos, H., et al. “Podoconiosis (Endemic non-Filarial Elephantiasis) in Two Resettlements Schemes in Western Ethiopia.” *Tropical Doctor* 22, (1992):109-12

⁴⁴ . Desta et al. “Predictive Value of Clinical assessment of patients with podoconiosis in an endemic community setting.” *Transactions of the Royal Society of Tropical Medicine and Hygiene* 101, (2007):621-623

⁴⁵ . Tomczyk et al, supra note 42

⁴⁶ . Ibid

⁴⁷ . Desta et al, supra note 44, p.621.

⁴⁸ . Price, supra note 1

⁴⁹ . Ashine, K.M, supra note 16, P.13

The country estimated to bear one fourth (25%) of the global burden of the disease.⁵⁰ Previous studies documented that prevalence of the disease within Ethiopian ranges from 2.4% to 7.2%.⁵¹ The disease is well-described in the Wolaita Zone, southern Ethiopia than anywhere in the country. Wolaita Zone is one of highly endemic areas with podoconiosis prevalence of 5.46%.⁵²

Table 1. Prevalence of Podoconiosis in Wolaita Zone, by Woreda⁵³

Woreda	Total population of Woreda	No. of patients in Woreda	Prevalence of the disease (%)	Weighted prevalence (%)	comment
Humbo	123,610	8,465	6.85	0.56	
Offa	142,907	9,634	6.74	0.63	
D/Woyde	192,201	11,806	6.14	0.80	
S/Zuria	211,325	12,361	5.85	1.00	
B/Sore	304,102	12,776	4.04	0.90	
D/Gale	267,646	11,463	4.28	0.78	
K/Koisha	180,503	11,960	6.63	0.78	
Total	1,424,094	78,465	5.8	5.46	

Source of population: SNNPR ROP Socio economic profile in 1994 EC.(2001/2002).

Table 2. Prevalence of Podoconiosis by Age and Sex.

Age group (year)	Male	Female	Total	Overall (%)	comment
0-5	13	28	41	0.05	
6-15	2,698	2,574	5,272	6.72	
16-20	6,020	5,978	11,998	15.30	
21-30	8,635	8,263	16,898	21.53	
31-45	10,586	10,462	21,048	26.82	
46 and above	11,624	11,584	23,208	29.58	
Total	39,576	38,889	78,465	100%	

⁵⁰ . Deribe et al. "the burden of neglected tropical disease in Ethiopia, and opportunities for integrated control of and elimination" Parasites and Vectors 2012

⁵¹ . Davey et al, supra note 5, p.1176.

⁵² . Desta et al, supra note 10

⁵³ . Mossy Foot Treatment and Prevention Association Manual (2008) Ledger of statistics of patients getting treatment in outreach clinic (unpublished document)

Several research conducted in the community have demonstrated that Podoconiosis has devastating impact on the patients. For instance, the disease has significant economic impact on the affected member of the society.⁵⁴ Moreover, the disfiguring and debilitating effect of the disease has mainly contributed to impoverishment of millions in affected community. Though the disease is preventable and can be totally eradicated with the help of simple and affordable intervention, stigmatizing attitude and poor understanding about the disease remained to be intractable obstacle.

2.2. Stigma and Discrimination toward Children and Young People Living with Podoconiosis

No doubt that stigma and discrimination limits social and economic opportunities of individuals, and increase their vulnerability. By now, podoconiosis has been found to be one of neglected tropical diseases which cause enormous stigma and discrimination against patients.⁵⁵ Due to misconceptions and myths, people with podoconiosis often experience various forms of social stigmatization and discrimination in private (family) as well as public settings. In early study, EW Price indicated that patients with the disease prefer to have leprosy than podoconiosis since stigma surrounding the former had diminished.⁵⁶

Recent studies demonstrated that many people in affected community had stigmatizing and discriminating attitude toward patients with the disease.⁵⁷ Majority of them don't feel comfortable having social interactions with affected communities. On the other study, patients mentioned experience of stigma and discrimination at school, church, market place and community gatherings.⁵⁸

Studies documented that people with podoconiosis are victims of felt stigma (perceived fear of actual stigma) as well as enacted stigmas, i.e. actual experience of stigma and

⁵⁴ . Tekola et al, supra 13

⁵⁵ . Tora et al. "A qualitative study on stigma and coping strategies of patients with podoconiosis in Wolaita zone, southern Ethiopia." *International Health* 3, no. 3(2011): 176-81

⁵⁶ . Davey et al, supra note 5, p.1177.

⁵⁷ . Yakob et al, supra note 14, p.441.

⁵⁸ . Molla et al, supra note 22

discrimination such as loss of job, prejudicial attitude, and school drop-out.⁵⁹ According to recent study, patients choose ‘avoidant’ coping strategy in order to overcome felt as well as enacted stigma or discrimination.⁶⁰ It is indicated that this type of coping strategy is dangerous to well-being of podoconiosis patients since it encourage isolation and exclusion from important social events or service.⁶¹ For example, in the case of education, it means that school-age children with the disease are more likely to stay away from schooling or drop-out school.

Stigmas toward patients are manifested through differential treatments at social events, isolation from the rest of the community and limited access to education and health services. The use of derogatory naming such as “egiriabata” in Amharic or “gediyakita” in local language has effect of prejudice and stereotypes which lead the community to mistreat people with podoconiosis. Even worse, parents use discriminatory remarks against their children or young persons living with the disease.⁶² It is also indicated that parents prevent disease affected children or dependants from accessing social services such as health care facilities because of fearing increasing stigma.⁶³

Stigmatizing attitudes continued to exert immense pressure on social and economic well-being of people with podoconiosis. That is why previous studies have suggested that any effort or intervention program for podoconiosis should address issues such as poor knowledge about the disease, unfavorable or stigmatizing attitudes and actions.⁶⁴ Because any of those efforts may not be effective without primarily addressing stigma and discrimination problems related to the disease. Having said a little about the negative effect of stigma and discrimination against people with podoconiosis, the next topic renders an explanation about socioeconomic impact of disease.

⁵⁹ . Deribe et al. “Stigma towards a Neglected Tropical Disease: Felt and Enacted Stigma Scores among Podoconiosis Patients in Northern Ethiopia” *BMC Public Health* 13, (2013):1178

⁶⁰ . Tora et al, supra note 55

⁶¹ . Ibid

⁶² . Tora et al. “Factors related to discontinued clinic attendance by patients with podoconiosis in southern Ethiopia: a qualitative study” *BMC Public Health* 12, (2012):902

⁶³ . Ibid

⁶⁴ . Tora et al, supra note 55 ;Molla et al, supra note 22; Yakob et al, supra note 14

2.3. Socioeconomic Impact of Podoconiosis

Podoconiosis places a huge economic and social burden on people living with the disease.⁶⁵ The main reasons are attributed to chronically debilitating consequence of the disease and intense social stigma associated with the disease.

People living with the disease frequently experience disease related acute pain, which make them bedridden, hence, unable to work or take part in daily life activities.⁶⁶ This means that students living with disease may loss considerable days of schooling. In comparative cross-sectional survey conducted, podoconiosis patients loss 45% of their economically productive time because of morbidity related with the disease.⁶⁷ On the other study, more than half of the affected community have mentioned that their movement impaired by the disease.⁶⁸ Thus, podoconiosis is one of the reasons why people in endemic areas cannot escape poverty.

Beside these, stigma and discrimination related to the disease exacerbated the physical and economic burden experienced by patients with disease. Podoconiosis is one of the most stigmatizing diseases in endemic area.⁶⁹ Sever stigma associated with the disease led patients exclusion from social events like weeding or funeral, religious places, public transportations service.⁷⁰

In addition to this, podoconiosis limits chance of marriage, and access to education and health services.⁷¹ Once an infected individual identified within family lineage (blood line), the whole family become target of stigma.⁷² Consequently, siblings of podoconiosis victim have less marriage prospect. Because of this fears, some families hide their children with the disease from public scene. In one of the studies conducted in endemic

⁶⁵ . Tekola et al supra not 13, Desta et al, supra note 10

⁶⁶ . Alemu et al, supra note 20, p.

⁶⁷ . Ibid

⁶⁸ . Molla et al, supra note 22

⁶⁹ . Yakob et al, supra note 14

⁷⁰ . Tora et al, supra note 55, p.176.

⁷¹ . GebreHanna E. "The social burden of podoconiosis and familial occurrence in its development" MPH thesis, Addis Ababa University 2005.

⁷² . Ibid

area, the majority of people with podoconiosis are found to be uneducated, and the proportion of unmarried women among all patients was significantly higher than the proportion for the whole community.⁷³ These presents further evidence of the widespread stigma toward the patients.

Moreover, fear of further stigmatization among podoconiosis patients has been found to be a barrier to access different social services. From these, it can be concluded that Podoconiosis has an adverse effect on economic productivity, educational attainment and quality of life of the affected community. As result, the disease has pushed great number of already poor families to near destitution.

2.4. Children and Young People living with Podoconiosis in Wolaita Zone: The Invisible Members of Society

Podoconiosis poses a huge burden for people living with the disease. Nonetheless, the double burden of being young and patient relegated many children and young patients to the margin of the society where unseen and unheard, their rights denied and their safety ignored. Previous studies reported that podoconiosis interfered with education, health, safety and security of child and young patients.⁷⁴ Child and young podoconiosis patients are suffering from disease related complications. Most of them live in rural areas where basic social services are not available. In this regard, study revealed that people living with podoconiosis face challenges in accessing social services due to physical difficulty associated with the disease.⁷⁵

In addition to this, evidence suggests that disease related acute pain and recurrent illness results in absenteeism from schooling, poor performance and drop out from schools.⁷⁶ Furthermore, in endemic areas of Wolaita Zone, stigma against the patients is rampant, leading to exclusion and isolation from the rest of the society.⁷⁷ Most children and young patients spend most part of their time working on their families' farm land or doing some

⁷³ . Alemu et al, supra note 20

⁷⁴ . Ashine, K.M, supra note 16

⁷⁵ . Tora et al, supra note 62

⁷⁶ . Ashine, K.M, supra note 16

⁷⁷ . Yakob et al, supra note 14

business in order to support their poor family rather than going to school. Even worse, some families hide their child and dependant patients from the public, fearing being identified as podoconiosis patient family.⁷⁸ This in turn, has an immense effect on health, education and daily life of children and young people with podoconiosis.

Despite this evidence of large burden of the disease, the issue of child and young patients has been given little attention on the part of researchers as well as policy makers. Perhaps the main reason is attributed to the commonly held view that podoconiosis is caused by prolonged bare foot exposure to irritant soil of volcanic origin.⁷⁹ Furthermore, the disease considered as ‘an adult disease’ which is prevalent among an economically active age group between 15 and 64.⁸⁰ Here, the argument is that the disease is not prevalent among children or young age group so that socioeconomic burden of the disease on this age group cannot be an issue. However, this view has a devastating consequence on children and young people living with the disease. First of all, children and youth victims of podoconiosis combined together, represent the largest group of podoconiosis affected community with prevalence rate of 22.02 % (see MFTPA manual 2008).⁸¹ Second of all, this approach significantly contributes to exclusion and invisibility of children and young patients within the society.

While most research studies have revealed that prolonged bare foot exposure to red clay soil is determinant in pathology (cause factors) of the disease, there is no study which clearly defined how long an individual should be exposed to red clay soil so as to develop the disease. At present, all community-based studies documented that most patients develop early symptom and signs (which include swollen leg, bloke toe, itching) in their second and third decade and increase progressively up to sixth decade of life.⁸² Furthermore, studies indicated that early stage of the disease can be found in under 10 years old.⁸³ Beside this, evidence suggested that children and young people from

⁷⁸ . Tekola-Ayele F &Yeshanehe W.E. “Podoconiosis: Non-infectious Tropical Lymphedema of the Lower Legs.” 2013

⁷⁹ . EW Price, supra note 1

⁸⁰ . Desta et al, supra note 10

⁸¹ . MFTPA manual 2008, supra note 53

⁸² . Davey et al, supra note 5

⁸³ . Ibid

podoconiosis patient family are at great risk since genetic factor plays a role in development of the disease.⁸⁴

Moreover, different studies conducted in endemic community of Wolaita Zone indicated that children and young persons living with the disease are equally suffering from the burden of the disease.⁸⁵ Podoconiosis and social stigma associated with the disease affected the life chance of many children and young people, increasing their exposure to risks and limiting access to basic social services including education service, potentially adding to their vulnerability.

Although information is limited, children and youth patients appear to have very unequal access to education compared to non-affected peers.⁸⁶ It has been indicated that children and young persons living with the disease are more likely to ‘drop out’ of school.⁸⁷ Thus, the disease has an adverse effect on education right of children and young people, reducing the likelihood of achieving the Millennium Development Goals (MDGs) such as promote education (MDG 2) and ‘education for all’ commitments. It is against this background, the next chapters deal with legal and policy frameworks of the right to education and its implementation in the case of children and young people living with podoconiosis.

⁸⁴ . Davey et al, supra note 4

⁸⁵ . Ashine, K,M, supra note 16; GebreHanna E, supra note 71

⁸⁶ . Ashine, K.M, supra note 16, pp 74-75

⁸⁷ . Ibid

CHAPTER THREE

3. THE PROTECTION OF THE RIGHT TO EDUCATION UNDER INTERNATIONAL, REGIONAL AND DOMESTIC LEGAL SYSTEM

3.1. The Conceptual Framework of the Right to Education

3.1.1 Defining the Concept: Right to Education

Education is the cornerstone of any society, the building block which supports all other structures. It is hard to imagine economic growth of a nation without having effective educational system. Almost all core international as well as regional human instruments have enumerated the right to education, but none of them have provided clear definition of the term 'education' or education right. Most often, education right is understood from the perspective of the goal of education or its importance for individual development and social transformations.

In one of the most celebrated case, *Brown Vs Brown*, the Supreme Court of United State of America, has underscored the importance of education by stating that:

Today education is perhaps the most important function of state and local government. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed force. It is the very foundation of good citizenship. Today it is a principal instrument in awakening a child to cultural values, in preparing him for the latter professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal term.⁸⁸

Here, the court stressed that individuals are right holder while the state is a chief provider of education.

⁸⁸ . Beiter, Klaus Dieter. *The protection of the Right to Education by International Law: including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights* Vol.82. Leiden/Boston MartinusNijhoff Publishers 2006, p.18.

The term education can be understood in broader sense or narrower sense. In broader sense, education refers “all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable that group to subsist”.⁸⁹ In this context, education embrace a broad range of experience and life-long learning through which individuals learn about social, cultural, spiritual and philosophical values that prepare him for performing daily life and adapting to his environment. From this it follows that, education right implies to having an opportunity to learn within multiple forms of education.

On the other hand, in narrower sense, education means “instruction imparted within a national, provincial or local education system, whether public or private”.⁹⁰ In this context, education connotes learning process within formal education system.

Practices of human rights monitoring bodies suggest the notion ‘education’ should be understood in broader sense.⁹¹ The CRC Committee has made clear that “education goes far beyond formal schooling to embrace the broad range of life experience and learning processes which enable children, individually and collectively, to develop their personalities, talent and abilities and to live a full and satisfying life within society”.⁹² This reconfirmed through practices of the Committee which often recommend state parties to set up non-formal education programmes. Furthermore, state parties are required to indicate efforts toward non-formal education system in their periodic reports. This trend firmly establishes the conclusion that right to education refers to having access to either formal or non-formal education.

However, the current study primarily addresses the right to education in the context of narrower sense of the term ‘education’; thus, it refers to learning opportunities created by formal educational institutions such as primary, secondary and tertiary institutions.

⁸⁹ . Ibid

⁹⁰ . Beiter (2006), K.D, supra note 88

⁹¹ . *Committee on Economic, Social and Cultural Rights (ESCRS Committee)*, General Comment No.13, the Right to Education, UN Doc No.E/C.12/1999/10(1999), par. 4

⁹² . *Committee on Right of the Child (CRC Committee)*, General comment No. 1, The aim of Education, CRC/GC/2001/1 (2001), par. 2

Beside this, the present study concurs with the view that the right to education is beyond attending educational institutions or programmes, thus, it must involve learning.⁹³ It has been emphatically noted that right to education should be understood in the sense of right to be educated.⁹⁴ This in turn requires education system, or teaching methodology to be participatory. Thus, it is when learners can take part in every aspect of educational activities; actual learning which is beyond attending educational program can be realized. This goes to say that the right to education is not only about access to education (formal or non-formal education system) but also of content or process. Hence, an individual shall have access to education which enables him to develop basic skills as well as all-rounded personality development.

That is why Jack Donnelly and Rhoda Howard designated 'right to education' as an empowerment right, which has a great liberating potential.⁹⁵ Education provide "the individual with control over his or her life, and in particular, control over (...) state".⁹⁶

3.1.2. Nature and Content of the Right to Education

Manfred Nowak asserted that the right to education is one of the most complex rights in international human rights law⁹⁷: it is a "multiplier"⁹⁸ or empowerment right⁹⁹ as well as an essential means to promote other rights¹⁰⁰, the realization of which "enhances all rights and freedoms" while its violation "jeopardizes them all".¹⁰¹ Thus, fulfilling the right to education is a key to the unlocking other human rights and freedoms. Historically, the right to education derived from the socialist and liberal theoretical traditions.¹⁰² This

⁹³ . Beiter (2006), K.D, supra note 88, p.20

⁹⁴ . Ibid

⁹⁵ . Coomans, F. "Clarifying the core elements of the right to education" in *the Right to Complain About Economic, Social and Cultural rights* edited by F.Complian& F.V. Hoff, 1995.

⁹⁶ . Ibid

⁹⁷ . Kalantry et al. " Measuring State Compliance with the Right to Education using Indicator: a Case Study of Colombia's Obligation under ICESCR" *Cornell Law Faculty Working Papers* (2009),p.9

⁹⁸ . Tomasevski K. *Right to Education Primer 3: Making Education Available, Accessible, Acceptable and Adaptable* Lund: Raoul Wallenberg institute 2001, p.10

⁹⁹ . Coomans, supra note 95

¹⁰⁰ . General comment No.13, supra note 91, para.1

¹⁰¹ . Tomasevski, supra note 98

¹⁰² . Beiter (2006), supra note 88, pp. 21-25

cross-cutting character of the right to education explains the difficulty of delineating the right as first generation, second generation or third generation right.

Most often, the right to education is a socioeconomic right, because it entails state obligation to provide various forms of education.¹⁰³ Realizing the right to education demands state effort to set up and maintain an education system. The state obligation is of a positive nature. The right to education, however, can also be labeled as a civil and political right, since it obligates state parties to refrain from interfering in the parental freedom to decide on education of their children. This respect of the liberty of parents fits most naturally into the category of first generation rights. The right to education as third generation right is also implied by educational right provisions, which emphasize the duty of state co-operation in education sector.¹⁰⁴ From these it is apparent that the right to education displays rights belonging to all categories. Nevertheless, the positive aspects are more prominent.

When analyzing the core elements of the right to education, Coomans has distinguished two aspects of the right to education: social aspect and freedom aspect.¹⁰⁵ The social aspect implies that realizing the right to education demands reallocation of resources while the freedom aspect of the right entails state obligation to respect the parental liberty regarding education of their children, and private entities entitlement to establish their own educational system.¹⁰⁶ Moreover, Coomans consider of great importance to give a core content of the right to education.¹⁰⁷ This is indispensable step given the fact that state parties may avoid their obligation toward ESCRs due to imprecise and indeterminate nature of the rights. According to Coomans, the core element of the right to education are (1) the right of access to the existing public education in non-discriminatory way (2) free choice of education without the interference by state or third person. He further argued

¹⁰³ . Article 13 of ICESCR cum Article 28 of the CRC.

¹⁰⁴ . Article 28(3) states that “state shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching method. In this regard, particular account shall be taken of the needs of developing countries”.

¹⁰⁵ . Coomans, supra note 95

¹⁰⁶ . Ibid

¹⁰⁷ . Morgan, A. “The Protection of the Right to Education in International, European and Inter-American Human right system.” LLM Short Thesis, Central European University 2012, p .6

that these elements constitute the very essence of the right to education.¹⁰⁸ Violation of one or more of these elements means that the right would lose its intrinsic or material element. In this context, restricting access to existing public education to people belonging to vulnerable groups like children and young people living with podoconiosis constitutes violation of the right to education.

Others asserted that the normative content of the right to education embraces three basic rights: the right to receive education, the right to choose the nature and type of education and the right to equal education.¹⁰⁹

The Committee on Economic, Social, and Cultural Rights on its General Comment No 13 provides another form of normative content of the right to education. This commentary will be given considerable attention throughout our discussion, because it provide the authoritative interpretation on the right to education and address the content of the right. Accordingly, the right to education is understood to comprise four essential and interrelated components: availability, accessibility, acceptability and adaptability.

Availability: - refers that educational institutions and programmes should be provided in sufficient quantity, with the necessary facilities to function appropriately; this includes the availability of sanitation facilities for both sex, safe-drinking water, trained teachers receiving domestically salaries. The teaching material should be adequate, including - a library, computer and information. The concept of availability is explicitly protected in educational right provisions, but differs depending on the level of education.¹¹⁰

Accessibility: - this means education institution and programmes be accessible and open to everyone. ESCRs Committee considers accessibility to have three components. Firstly, education service provided by government should be non-discriminatory and ensure the participation of the most disadvantaged group of children. All forms of

¹⁰⁸ . Coomans F, supra note 95

¹⁰⁹ . Abebe, H. "The right to education of Children with Intellectual disability and its implementation in Addis Ababa." LLM thesis, Addis Ababa University 2011.

¹¹⁰ . See the text of Article 13 of the ICESCR and Article 28 of the CRC. Thus, the state obligation to ensure availability of primary education is one of the highest. Thus, state parties are required to ensure free and compulsory primary education, which should made available to all.

discrimination which likely to impede children's access to education has to be avoided, giving priority to marginalized, vulnerable or disadvantaged group of children.¹¹¹ Secondly, the teaching should be take place in reasonably accessible place, for example, learning in neighborhood school or by means of modern technology (distance learning). Third and finally, education must be economically affordable to all. Similar to availability of education, economic accessibility differs depending on the level of education.

Acceptability: - this perspective is focused on developing acceptable curricula and teaching method. E.g. it has to be relevant, culturally appropriate and of good quality to students, and in appropriate cases to parents. It is the responsibility of government to assure that education is of a quality that has meaning to individual students, to the community and to society at large.¹¹² The obligation to make education acceptable goes far beyond parental freedom of choice or language of instruction issues, and poses duty on state parties to ensure education system which respects learners human rights and dignity.¹¹³ For instance, acceptable education requires restriction on school discipline or freedom from corporal punishments.

Adaptability: -addresses the need for education to be flexible and able to respond to the needs of students within their diverse social and cultural settings. Adaptability of education urges education system should respond to the various needs of individual students, rather than expecting that children fit into the standards of the school in term of course outline and facilities available. The system of education should be all inclusive, hence, every individual child is able to participate in education system regardless of their status, e.g. disable children, working children etc.

¹¹¹ . General Comment No.13, supra note 88, para.6.

¹¹² . Tomasevski, supra note 98 ,p.29

¹¹³ . Ibid, p. 14

3.1.3. The Scope of State Obligation regarding the Right to Education

The former UN Special Rapporteur on the right to education, Katrina Tomasevski remarked “the government is the primary duty bearer in the implementation of the right to education. Therefore, it has to ensure and protect children’s right to education through ensuring four aspects of education”.¹¹⁴ By same token, Article 2 of the ICESCR proclaimed that:

Each state party to the present covenant undertakes to take steps, individually and through international assistance and co-operation especially economic and technical, to the maximum of its available resource, with the view to achieving progressively the full realization of the rights recognized in the present convention by all appropriate means, including particularly the adoption of legislative measures.

This provision ascertains that state parties assume principal responsibilities to realize the right to education.

Like all human rights, the right to education imposes three level of obligation: obligation to respect, protect and fulfill. The ESCRs Committee has noted that states have obligations to respect, protect and fulfill each of the four “essential features” of the right to education.¹¹⁵

A. The Obligation to Respect

Obligation to respect refers to state obligation to refrain from interfering with enjoyment of the right to education. They shall avoid any measures or practice that hinder or prevent the enjoyment of the right to education. It has been noted a state must respect the availability of education by not closing existing public or private schools.¹¹⁶ In one of the case, the African Commission on Human and People rights found that a two-year-long closure of universities and secondary schools in Zaire constitutes violation of Article 17

¹¹⁴ .Tomasevski, supra note 98

¹¹⁵ . General Comment No.13, supra note 91, para.43.

¹¹⁶ . Ibid, para.50

of ACHPR.¹¹⁷ In this case, the failure of the state to sustain availability of schooling constitutes apparent violation of the right to education. Furthermore, this obligation calls for state parties' abstention from interfering with parental liberty to arrange education of their children, and private entities entitlement to establish education system of their own. In addition, it requires that the state does not discriminate on the basis of sex or ethnic origin or any other status, with respect to the right to education.

Obligation to respect entails that a state should refrain from interfering not only directly but also indirectly. For example, state should refrain from tolerating any practice infringing individual's freedom to use those materials or other available to them in the way they find most appropriate to satisfy economic, social and cultural rights¹¹⁸; from denying or limiting access to education service; and from imposing discriminatory treatments on admission or school enrollment. Thus, state should ensure that children and young persons living with podoconiosis in public educational institutions are not denied access to education and related support. Most often, state duty to respect comes to picture with regard to freedom aspect of the right to education.

B. The Obligation to Protect

Obligation to protect requires state parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The state guarantees the exercise of the right to education in horizontal relations. In this respect, state parties have duty to ensure accessibility of education by ensuring that third parties, such as parents and member of a community, private employers don't impede children's access to education. The duty to protect enjoins state parties to guarantee protection against third party induced discriminations in the enjoyment of the right to education. For example, state party should protect vulnerable children from bullying or discriminatory treatment by fellow student in public schools. This is particularly relevant to children with risk of high

¹¹⁷ . The African Commission in *Free Legal Assistance Group, Lawyers Committee for Human Rights, Union Interafricaine des Droit de l'homme, Les temoins de Jehovah V Zaire* Communication 25/89, 47/90, 10/93 and 100/93 of 1996

¹¹⁸ . General Comment No.13, supra note 91, para.50

vulnerability such as children with disability, children and young people living with podocniosis, HIV/AIDS victims.

This obligation requires the state to take positive actions to prevent any acts of private actors or individuals that pose a threat to realization of the right to education. This positive action may take various forms ranging from awareness creation campaign to taking legislative measures against child labor or early marriage. For instance, state obligation to protect against discrimination in education requires adoption of anti-discrimination bill.

By the same token, the African Commission on Human and people's rights, in the **Ogoni Case** (SERAC), asserted that 'duty to protect' generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of the law and regulations so that individuals will be able to freely realize their rights and freedoms.¹¹⁹

C. The Obligation to Fulfill

Obligation to fulfill related with state obligation to take proactive steps to move towards the full realization of the right to education. It requires state parties to take positive action to ensure that individuals and communities enjoy the right to education. There are two dimension of duty to fulfill.¹²⁰ The first is duty to facilitate which is about state obligation to assist individuals and communities to gain access to right to education this include adopting appropriate legislation that facilitate and regulate access to education. The second is a duty to provide various facilities and services directly when individuals unable to realize the right by themselves by the means at their disposal. By way of illustration, the ESCRs Committee has reiterated that state parties have duty to facilitate education by putting in place proper curricula which reflects the contemporary needs of students in changing world.¹²¹ The Committee further noted that obligation to fulfill requires state parties to develop functioning curriculum, and programmes.¹²² It also

¹¹⁹ . The African Commission in *The Social and Economic Rights Action Center and the Center for Economic and Social Rights V Nigeria* Communication 155 of 1996 (SERAC), Para 46

¹²⁰ . General Comment No.13, supra note 86, para.50

¹²¹ . Ibid

¹²² . Ibid

requires state parties to set up and maintain education system, by building schools, providing teachers and teaching materials.

Besides the common tripartite typology of obligation, the African Commission on Human and Peoples' Rights has introduced the fourth level of state obligation, i.e. 'obligation to promote'.¹²³ Obligation to promote requires state parties to ACHPR, to make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructure.¹²⁴ This approach matches with recent developments, and practices of human rights monitoring bodies.¹²⁵ Moreover, the ACHPR explicitly places obligation on state parties "*to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood*".¹²⁶ This stipulation has profound implication for full and effective realization of the rights and freedoms of vulnerable or marginalized groups. For instance, in the case of education of vulnerable groups such as girls, children and young people living with podoconiosis, or children with disability, full realization of the right requires, among other things, awareness raising campaigns, human rights education and disaggregated data regarding the enjoyment of the right by these groups. Therefore, state parties have obligation to respect, to protect, fulfill and promote the right to education and related rights enunciated under the Charter.

¹²³ . SERAC case, supra note 119, Para, 44

¹²⁴ . Ibid, Para, 46

¹²⁵ . Though specific 'obligation to promote' is absent from General Comment No.13, this type of state obligation can still be read into article 13 of the ICESCR. CESCR in its General Comment 3, regarding the nature of state obligation, has reiterated that 'appropriate means' for the purpose of Article 2(1) includes 'educational measures' which is part of 'obligation to promote'. Furthermore, CESCR in its recent General Comments has of view of that state 'obligation to fulfill' contains obligation to provide, facilitate and promote. In light of this, state 'obligation to promote' is related with, among other things, raising awareness, and appropriate education regarding exercise of the rights enshrined under the Covenant. For instance, regarding the right to water, state parties are under obligation to promote education concerning the hygienic use of water, protection of water source etc (see General Comment No. 15). By the same token, state obligation with regard to right to highest attainable standard of health (article 12) includes duty to promote medical research and health education as well as information campaigns (see General Comment No. 14). Similarly, state obligation regarding the right to education includes obligation to promote, e.g. awareness creation regarding benefit of girl's education, etc.

¹²⁶ . ACHPR, Article 25.

3.1.4. The Right to Education: Its Debatable Aspects

3.1.4.1. The Obligation of Progressive Realization: Resource Oriented Nature of the Right to Education

The first challenge in identifying clear governmental obligations in realizing the right to education is often considered to be the nature of legal obligations under the economic, social, and cultural rights.¹²⁷ The human right to education is subject to concept of progressive realization and availability of resources. Realization of the right to education depends upon among others the availability of resources or developmental context of within each state. Admittedly, state parties are not obligated to fulfill educational needs of everyone immediately; rather, state may meet these needs over time.¹²⁸ Thus, it might be argued that adequate resources are not available to realize access to education of all. In this part, the discussion will mainly focus on ICESCR because the issue discussed in detail in its commentary.

The ESCR Committee has described that “the notion of progressive realization” as “a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights”.¹²⁹ At the same time the committee emphasized that ‘progressive realization’ of rights does not means that state parties are relieved of their obligation under the covenant, rather this duty obliges state parties to move as quickly as possible toward the goal of full realization of the rights of the covenant.¹³⁰ The Committee has taken similar stand in the case of the right to education, and commented that:

¹²⁷ . The formulation of Article 2 of the ICESCR is different from its equivalent provision in ICCPR. In the ICCPR, the standard of the state parties’ obligation is of immediate nature. Whereas Article 2 of the ICESCR employed a number of qualifiers or limitations on which realization of the rights enshrined under the document depends. Among the most noted are “take steps”, “maximum of available resources” and “progressive realization” .

¹²⁸ . *Committee on Economic, Social, Cultural Rights (ESCR Committee)*, General Comment No.3, the nature of State parties obligation, UN Doc. E/1999/23 (1999), para.9

¹²⁹ . *Ibid*, p.9

¹³⁰ . *Ibid*

*Progressive realization means that state parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards full realization of the right to education.*¹³¹

Thus, the full realization of the right to education might be achieved progressively but steps toward that goal must be taken within reasonably short time. The ESCR committee insisted that the progressive realization of the rights in the covenant requires taking of “deliberate, concrete and targeted steps”.¹³² Furthermore, it has been noted that the concept of progressive realization in no way authorizes retrogressive measures. That is why the ESCR Committee has held that deliberate retrogressive measures should be carefully considered.¹³³ The Committee repeated the same view in its General Comment 13:

*There is a strong presumption of impermissibility of any retrogressive measures taken in relation to the right to education, as well as other rights enunciated in the covenant. If any deliberately retrogressive measures are taken, the state party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the covenant and in the context of the full use of the state party’s maximum available resources.*¹³⁴

In this regard, the CRC Committee considered state parties practice of introducing or increasing school fees contrary to the provision of the Convention.¹³⁵ In similar vein, the Limburg Principles reiterated that state parties should give particular attention to measures that improve the standard of living of the poor and other disadvantaged group while implementing the rights set forth in ISECR.¹³⁶ Accordingly, state should give special attention to education of children and young people living with podocniosis, since education is a keystone of self-sustaining life.

The fact that the right to education is subject to progressive realization does not mean that there are no obligation which are of immediate nature. It has been noted that ‘appropriate means’ within the meaning of article 2(1) of ICESCR includes legislative, administrative,

¹³¹ . General Comment No.13, supra note 91, para.44

¹³² . General Comment No.3,supra note 128

¹³³ . Ibid

¹³⁴ . General Comment 13, supra note 91, para.45

¹³⁵ . E.g. CRC Committee, Concluding Observation: Botswana (CRC/C//15/Add.242, 2004)

¹³⁶ . The Limburg Principles on the implementation of International Covenant on Economic, Social and Cultural Rights, U.N DOC. E/CN.4/1987 117, reprinted in symposium, *the implementation of the International Covenant on Economic, Social and Cultural Rights*, 9 HUM.RTS,Q.122 (1987)

judicial, economic, social and educational measures, consistent with the nature of the rights set forth in the covenant.¹³⁷ These revealed that there are still great deals of things state parties can do toward actual realization of the right to education, even with limited resources. For instance, in the case of education of children and young people living with podocniosis, state party should adopt legislative measures against discrimination in education; formulate policies and programs that improve educational participation of these group; promote public campaigns against stigma and discrimination of persons with podocniosis; support active involvement of non-state actors; actively seek assistance and cooperation that benefit these group.

In addition to this, regardless of resource constraint, state parties have an immediate obligation to guarantee the right to education in a non-discriminatory manner. In this respect, ESCR Committee has affirmed that the prohibition against discrimination enshrined under article 2(2) is subject to neither progressive realization nor the availability of resources.¹³⁸ The Committee understands the concept of discrimination in light of UNESCO Convention against Discrimination in Education.¹³⁹ Hence, both 'static' and 'active' discriminations in education should be addressed immediately. The right to education is a right of progressive implementation; some aspects of the right are not. These include: ensuring the right of access to public educational institutions and programmes on non-discriminatory basis; providing primary education for all; adopting and implementing a national educational strategy that includes provision for fundamental, secondary and higher education.¹⁴⁰

3.1.4.2. Justiciability of the Right to Education

Justiciability of social, economic and cultural rights has long been subject of argument among scholars and practitioners. In many respect, this has kept these rights from attaining their true legal stature. A normative provision is justiciable if it can serve as the

¹³⁷ . The Limburg Principles, supra note 136, para. 17

¹³⁸ . General Comment 13, supra note 91, para.31

¹³⁹ . Ibid

¹⁴⁰ . General Comment No.13, supra note 91, para 31.

basis of a judicial or quasi-judicial decision.¹⁴¹ The notion of Justiciability in international law is linked with the legal enforceability of socioeconomic rights. Thus, the very concept of Justiciability focuses on two issues: the legitimacy of judicial intervention and the competence of courts to adjudicate issues in the sphere of socioeconomic rights.¹⁴² Dieter Beiter holds that a right to be judicially enforceable (justiciable) if they impose on the state party a clearly defined duty; immediate compliance therewith must be possible without taking additional measures; and if they must not allot discretionary power to the state party in the implementation of the right.¹⁴³

Conversely, most socioeconomic rights including the right to education is positive right in nature, which requires active involvement of state parties. It has been asserted that socioeconomic rights are purely aspirational norms which suffer from “painful lack of precision and specification”¹⁴⁴ therefore; they are not capable of being judicially enforceable.¹⁴⁵ Most scholars and practitioners have viewed ICESCR as “promotional convention” of predominantly political character devoid of legal enforceability.¹⁴⁶ This assertion is premised by the fact that provisions like article 8 of UDHR or Article 2 sub-article 3 (b) of ICCPR is absent from ICESCR.

However, recent developments have proved the broad assertion that socioeconomic rights are not capable of judicial enforceability is no more retained.¹⁴⁷ The Limburg principles on implementation of the international covenant on Economic, social and cultural rights has stressed that “...equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights”.¹⁴⁸ It further goes on to state that “appropriate means” within

¹⁴¹ . Beiter (2006), supra note 88, p.398.

¹⁴² . Ibe, Stanley. “Beyond Justiciability: Realizing the Promise of Socio-economic rights in Nigeria” *African Human Rights Journal* 7, (2007): 225-248

¹⁴³ . Beiter (2006), supra note 88, pp 394-401

¹⁴⁴ . Trispiotis, I. “socio-economic Rights: Legally Enforceable or Just Aspirational?” *Opticon* 1826, no.8(2010)

¹⁴⁵ . Ibid

¹⁴⁶ . Beiter (2006), supra note 88, p.376.

¹⁴⁷ . Kalantry, S. et al. “Enhancing Enforcement of Economic, Social and Cultural Rights Using Indicator: A Focus on the Right to Education in the ICESCR” *Human Rights Quarterly* 32, (2010):253-310

¹⁴⁸ . Limburg Principles, supra note 136, para.3

the meaning of article 2(1) of ICESCR includes ‘judicial remedy’; therefore the application of some socioeconomic rights can be made justiciable immediately.¹⁴⁹

In General Comment No. 3, the ESCR Committee has asserted that provision of judicial remedies is among the measures which might be considered appropriate within the meaning of article 2(1). The Committee is of view of that a number of articles of the covenant are capable of immediate judicial protection and enforcement.¹⁵⁰ The Committee upholds similar position in its General comment No 9,¹⁵¹ *the domestic application of the covenant*, by reiterating “...whenever a covenant rights cannot be made fully effective without some role for the judiciary, judicial remedies are necessary”.¹⁵²

With regard to the right to education under article 13, the Committee considers that judicial remedies particularly suited to protect every children’s right to free and compulsory primary education, the right of parent to choose for their children education which is in conformity with their religious and moral conviction and protecting the right of individuals and bodies to establish and direct private schools.¹⁵³ The committee has also noted that the right of access to educational institutions without discrimination will be appropriately promoted through provision of judicial remedies.¹⁵⁴ Likewise, the aim of education set out under article 13(1) suggests justiciable aspects.¹⁵⁵ The right to education entails aspects which are immediately applicable, therefore, fully susceptible to judicial review.

International acceptance of Justiciability of socioeconomic rights is also evident from the growing jurisprudence on economic and social rights from regional human rights bodies and some domestic jurisdictions. There are landmark decisions of the European Court of

¹⁴⁹ . Ibid, para 8

¹⁵⁰ . General comment No. 3, supra note 128, para.3

¹⁵¹ . *Committee on Economic, Social and Cultural Rights(CESCR)*, General Comment No.9, the domestic application of the Covenant, U.N DOC. E/C. 12/1998/24 (1998).

¹⁵² . Ibid, para.9.

¹⁵³ . General Comment No.3, supra note 128, para.5

¹⁵⁴ . Ibid

¹⁵⁵ . Beiter (2006), supra note 88, p. 399

Human Rights (ECtHR) and European Committee on Social Rights which empowered to consider socioeconomic complaints under the revised European Social Charter (ESC).¹⁵⁶

The African Commission on Human and Peoples Rights has forwarded ground-breaking decision in the case of SERAC Vs Nigeria (com 55/1996), where the African Commission found violation of range of socioeconomic rights. This communication is important and special, because it is there the Commission has analyzed multilayered obligation upon state and affirmed that "...there is no right in the African Charter that cannot be made effective".¹⁵⁷ This view refutes the radical position that socioeconomic rights are resource based rights that cannot be made subject to judicial or quasi-judicial review.

Beside these, national courts in a number of states have entertained economic and social rights including the right to education.¹⁵⁸ In addition, there are a number of countries which recognizes constitutional right to education, complemented by judicial protection of the right.¹⁵⁹ Generally, it may be concluded that the right to education is capable of judicial enforcement in international as well as domestic jurisdiction.

¹⁵⁶. One of the best illustrations is the European Committee on Social Rights decision in the case of *Autisme-Europe V France* (communication No. 13/2002 (2003), where the Committee held the view that state party's failure to take necessary measures to ensure the right to education of children and adults with autism constitutes violation of the right to education under article 15 and 17 of the European Social Charter.

¹⁵⁷. SERAC, supra note 119, para. 68. The preamble section of the Banjul Charter also gives insight that socioeconomic rights are justiciable on equal footing.

¹⁵⁸. The Right to education, Report of the Special Rapporteur, K Tomasevski, submitted in accordance with Commission Resolution 2000/9 UN ESCOR 57TH session UN Doc E/CN.4/2001/52 (2001). Moreover, national courts, for e.g. the Indian Supreme Court, in *Unni Krishnan JP Vs State of Andhra Pradesh*, held that the right to education is implicit, and "flow from the right to life guaranteed under article 21 and every child has a fundamental right to free education up to the age 14 years'. Thus, the Court took firm and dynamic approach that may contribute to a better and effective protection of the right education.

¹⁵⁹. Ibid, para.67.

3.1.5. Minimum Core Obligation of the Right to Education

The ‘minimum core obligation’¹⁶⁰ is the concept set to ensure a basic level of enjoyment of each economic, social and cultural right. It guarantees respect for minimum essential level of right which is necessary for survival, life and dignified existence of mankind. It has been noted that the principle of ‘minimum core obligation’ is instrumental to address the indeterminate claims of socioeconomic rights.¹⁶¹ Philip Alston argues that “elevating ‘claims’ to rights status is meaningless, if its normative content could be so indeterminate as to allow for the possibility that the right holders possess no particular entitlement to anything”.¹⁶² He further goes to conclude that the minimum core obligation in the realm of socioeconomic right “gives rise to an absolute minimum entitlement, in the absence of which a state party is to be considered to be in violation of its obligation”.¹⁶³ Young holds that the concept of ‘minimum core obligation’ seeks to establish a minimum content for notoriously indeterminate nature of socioeconomic rights.¹⁶⁴ Nonetheless, opponents of ‘minimum core obligation’ approach contends that the principle may threaten the broader long-term goals of realizing ESCRs by creating ceiling and corresponding obligation of state parties. They further argue that the ‘minimum core obligation’ concept tends to rank different claimants of rights, and attention may center on the performance of developing countries.¹⁶⁵

In spite of these limitations, the international community has long recognized ‘minimum core obligation’ approach in the realm of socioeconomic rights. The Limburg principle on the implementation of economic, social and cultural rights has stated that “state parties are obligated, regardless of the level of economic development, to ensure respect for the

¹⁶⁰ . General comment No.3, supra note 128, para 10

¹⁶¹ . Young, K.G. “The Minimum of Economic and Social Rights: A Concept in Search of Content.” *The Yale Journal of International Law* 33, No.133 (2008) :113-174

¹⁶² . Kalantry S et al, supra note 147, pp.270-272

¹⁶³ . Ibid

¹⁶⁴ . Young, supra note, 161

¹⁶⁵ . Ibid

minimum subsistence rights for all”.¹⁶⁶ The Maastricht Guideline on violation of economic, social and cultural rights also reaffirms the same approach.¹⁶⁷

Furthermore, the ESCRs Committee has adopted the ‘minimum core obligation’ concept in its General comment 3, and describe it as obligation “*to ensure the satisfaction, at the very least, minimum essential level of each of the rights.....including the most basic forms of education*”.¹⁶⁸ The Committee is of view of that ‘minimum core obligation’ is not subject to derogation.¹⁶⁹ The committee has articulated five minimum core obligations with respect to the right to education. these are to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure education conforms to the objectives set out in article 13(1); to provide free and compulsory education for all; to adopt and implement a national education strategy which include provision for secondary education; to ensure free choice of education without interference from the state or third parties, subject to conformity with ‘minimum educational standards’.¹⁷⁰

Therefore, state parties are under strict obligation to realize these minimum cores of the right to education. Otherwise it has to justify that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.¹⁷¹

¹⁶⁶ . Limburg Principles, supra note 136, para.25.

¹⁶⁷ . Maastricht Guidelines par 9. The Guidelines were adopted in Maastricht, the Netherlands, on 22-26 January 1997.

¹⁶⁸ . General comment No.3, supra note 128, para.10.

¹⁶⁹ . Ibid, para. 14.

¹⁷⁰ . General Comment No 13, supra note 91, para. 57.

¹⁷¹ . General comment No.3, supra note 128, para.10.

3.1.6. The Principle of Non-discrimination and the Right to Education

Non-discrimination has been identified as general principle of fundamental importance for implementation of human rights.¹⁷² The prohibition against discrimination is subject to neither progressive realization nor the availability of resources.¹⁷³

The principle of non-discrimination is abundantly guaranteed in several global and regional, general and specific human rights instruments. In General Comment 20,¹⁷⁴ the ESCR Committee proposes the term ‘non-discrimination’ should be understood to imply “any distinction, exclusion, restriction, preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognized enjoyment or exercise, on equal footing, of the Covenant rights”.¹⁷⁵

International instruments have identified numerous grounds for discrimination such as race, colour, sex, language, religion, political opinions, national or social origin, property, birth or other status. The notion of “other status” is wide-open concept which embraces additional grounds other than the listed one.¹⁷⁶ According to ESCR Committee ‘other status’ defined to include ‘health status, disability and sexual orientation’.¹⁷⁷ Thus, a state party is under obligation to prohibit any kind of discriminations against children and young people living with Podoconiosis, based on their poor health status.

ESCR Committee insists state parties to eliminate not only formal discrimination which requires state parties to abrogate discriminatory legal or policy documents, but also to address substantive discrimination which demands “*paying sufficient attention to groups*

¹⁷² . Hodgkin R and Newell P. *Implementation Handbook for the Convention on the Rights of Child*. 3rd ed. Geneva: AtarRotoPresse, 2007, p.17.

¹⁷³ . General comment No.13, supra note 91, para 31

¹⁷⁴ . *Committee on Economic, Social and Cultural Rights*, General Comment No. 20, Non-discrimination in Economic, Social and Cultural Rights, UN Doc. No. E/C. 12/GC/20 (2009).

¹⁷⁵ . *Ibid*, para.7

¹⁷⁶ . *Ibid*, para.27

¹⁷⁷ . General Comment 20, supra notes 171, para.32.

of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situation States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. ”.¹⁷⁸ The Committee has made it clear that there is no justification for lack of protection of vulnerable members of society, for instance, children and young people living with podocniosis, from disease related discrimination, be it in law or fact.

Nonetheless, eliminating discrimination, and thereby attain equality among different groups or individuals cannot be attained without treating “equals equally while unequal’s unequally”.¹⁷⁹ Thus, the commitment toward prohibition of non-discrimination entails taking special account of discriminated or marginalized persons and groups who are hindered from enjoying their human rights on equal footing with others. The ESCR Committee has empathically noted that state parties are under obligation to take special measures to suppress conditions which perpetuate discrimination against groups or individuals, so long as the measures represent reasonable, objective and proportional means to redress the de facto discrimination.¹⁸⁰ A similar approach has been adopted by the CRC Committee which remarked the following:

*The non-discrimination obligation under article 2(1) of the CRC requires states actively to identify individual children and group of children recognition and realization of whose right demands special measures For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes. It should be emphasized that the application of the non-discrimination principle of equal access to rights does not mean identical treatment. A general comment by the Human Rights Committee has underlined the importance of taking special measures in order to diminish or eliminate conditions that cause discrimination.*¹⁸¹

There seems to be a stronger obligation to proscribe discrimination against those children who are vulnerable because of their specific situation. This will undeniably include

¹⁷⁸ . Ibid, para8.

¹⁷⁹ . Beiter (2006), supra note 85, pp 408-412

¹⁸⁰ . General Comment 20, supra note 174, para.9

¹⁸¹ . *Committee on the Rights of the Child (CRC committee)*, General Comment No.5, General measures of implementation of the Convention on the Rights of the child, UN Doc. CRC/GC/2003/5 (2003),para.12

children living with podoconiosis, who are barred from access to school because of their poor health status.

International human rights law proscribes discrimination in the context of access to all educational level, the standard and quality of the education, resource allocation and the condition under which it is given.¹⁸² Under international human rights law, states have an obligation to prohibit and eliminate discrimination on all grounds and ensure equality in relation to access to education.¹⁸³ The ESCR Committee in its General Comment No 13, regarding the right to education, has made it clear that “the adoption of temporary special measures intended to bring about de facto equality for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, as long as such measures don’t lead maintenance of inequality”.¹⁸⁴

Accordingly, a state party is under obligation to take special measures regarding education of children and young people living with podoconiosis, who are likely to be victim of discrimination in educational sphere.

In this respect, state expected to adopt legislative, administrative or educational measures to change stigmatizing attitudes so as to ensure that this group of children are equally enjoy their right to education.¹⁸⁵ Furthermore, a state party has obligation to guarantee that the environment in which education take place or the whole process of learning is not discriminatory.¹⁸⁶ For instance, a state party has duty to ensure that the learning environment is friendly by putting in place facilities or course syllabus which meets the educational needs of diverse groups of children. Further, state parties are obligated to protect vulnerable children from bullying or harassment in the learning environment.

¹⁸² . Verheyde,M. “Article 28:The Right to Education” in *A commentary on the United Nation Convention on the Rights of the Child* edited by John VandeLanotee, Andre Alen, EugeenVerhellen, Fiona Ang, Eva Berghmans and MiekeVerheyde Leiden/Boston MartinusNijhoff publishers 2006, p.37.

¹⁸³ . See Article 2 of ICESCR cum Article 2 of the CRC.

¹⁸⁴ . General Comment No.13, supra note 91, para 36

¹⁸⁵ . General Comment No. 20, supra note 174, par 37

¹⁸⁶ . General comment No.1, supra note 92

Because prohibition of non-discrimination *demands from state parties that they prohibit private persons and bodies from practising discrimination in any field of public life.*¹⁸⁷

Promotion of non-discrimination principle and equal enjoyment of right to education goes hand-in-hand. The link between non-discrimination and the right to education has been emphasized on several occasions.¹⁸⁸ Further, the African committee of Experts on the Rights and Welfare of the Child found violation of Article 11 ACRWC in the context of prohibition of discrimination.¹⁸⁹ It can be safely deduced that realizing the right to education linked with prohibition of discrimination.

3.2. Right to Education under International Instruments

The right to education has a solid base in international human rights instruments. Education as human right has been enshrined in several core international legal instruments. Because of space limitation, only the most relevant and significant legal instruments will be discussed in the next section of the paper.

3.2.1 Universal Declaration of Human rights /UDHR/

Education as human right was recognized for the first time, at universal level, in Article 26 of Universal Declaration of Human rights.¹⁹⁰ Though UDHR lays down only the moral foundation of the rights enshrined in the document, it was the first legal instrument to give expression to the right to education. Article 26(3) states:

¹⁸⁷ . Limburg Principles, supra note 136, par 40

¹⁸⁸ . ECtHR has found breach of Article 14 (prohibition of discrimination) together with Article 2 of Protocol No. 1 (the right to education) on a number of occasions. For instance, in *D.H and Others V the Czech Republic Case* (Application No. 57325/00), the ECtHR found violation of the principle of non-discrimination in the context of education. Similarly, the Court in *Sampains and Others V Greece Case*, (Application No. 32526/05) held the view that failure to provide schooling for Roma children and their placement in separate school constitutes violation prohibition of discrimination in education.

¹⁸⁹ . In the case of *Human Rights and Development in Africa and the Open Society Justice Initiative Vs the Government of Kenya*, held the view that discriminatory treatment of Nubian children based on their status and their Parent's social origin gave raise to violation of their right to education under article 11 of ACRWC.

¹⁹⁰ . *Universal Declaration of Human Rights*, G.A.Res. 217A(III)U.N. GAOR,3rdSecc., 1st plen.mtg.,U.N.Doc.A/810 (Dec. 10,1948) [hereinafter UDHR]

1. Everyone has the right to education. Education shall be free, at least in elementary and fundamental stages. Elementary education shall be made generally compulsory. Technical and professional education shall be available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to full development of the human personality and to strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial or religious group and shall further the activities of United Nation for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

As spelled out in the three separate paragraphs of Article 26, the right to education comprises different facets, which mainly includes access to education provided at various stages, right to receive education that fosters certain values, and parent's freedom to decide on education of their children. In view of that, the provision proclaims everyone's entitlement to free elementary and fundamental education.¹⁹¹ The former recognizes primary school-age children's right to formal schooling while the latter denotes education for illiterate adults and others who had not previously had an opportunity to complete or undergo primary education, hence, provided education outside formal educational system. Here, the law went even further, declaring flatly "elementary education shall be compulsory".¹⁹²

During the drafting process, it has been empathically noted that 'compulsory' does not in any way implies 'coercion'. Rather the term should be understood in the way that neither state nor third party like family or community can prevent a child from receiving elementary education.¹⁹³ It is also suggested that the concept of 'compulsory elementary education' does not mean state exercise monopoly over education nor did it exclude parental freedom to choose education of their children. Meanwhile, it should be noted that compulsory education presupposes free education. If education is not free of charge, making it compulsory would be illusory. From this it follows that, a state has an obligation to furnish opportunities for elementary education to everyone and ensure that no one could be deprived of these opportunities.

¹⁹¹ . UDHR, Article 26(1).

¹⁹² . Ibid

¹⁹³ . "The Right to Education: Towards Education for All Throughout life." UNESCO, 2000.

However, article 26(1) did not mention about secondary education. The question that comes to scene at this point is that weather omission of right to secondary education is deliberate or slips of the drafter's pen. Drafting history of the document revealed that 'higher education' is understood to mean all forms and levels of education beyond elementary and fundamental education.¹⁹⁴ Accordingly, right to secondary education level can be read into article 26(1) of the UDHR. More clearly, protection of 'access to higher education' would be meaningless unless right to secondary education is guaranteed.

Unlike elementary (primary education), education as one of everyone ought to receive could not be established as regards other stages of education. Article 26(1) proclaims that technical and professional education must be made generally available and higher education shall be equally accessible to all on the basis of merit. First and foremost, 'free and compulsory education' does not apply to other levels of education. Secondly, right to higher education is subject to additional qualification, i.e. merit. In this case, requirement of 'merit' is interpreted to mean higher education would be open to those who had the ability to receive it. Therefore, it can be argued that a different concept, one of equal opportunity was applied to other stages of education.

The provision has explicitly mentioned that education at any level or form should seek to achieve certain values.¹⁹⁵ Inclusion of aim of education in the concept of right to education is justified since there is a possibility to abuse education right. Thus, the aims of education listed under article 26(2) are considered as essential element of education. Therefore, educational policy, curriculums, teaching-learning process should be governed by those values. The right to education is also guarantees parental freedom to decide on the kind of education their children should pursue.¹⁹⁶ This provision intended to confirm parent's priority over state or educational institution in matter of education. The rationale behind having article 26 sub article 3 is to provide protection against state indoctrination.¹⁹⁷ To conclude, children and young people living with podoconiosis are

¹⁹⁴ . Ibid

¹⁹⁵ . See UDHR, Article 26(2) .

¹⁹⁶ . UDHR, supra note 187, Article 26 (3).

¹⁹⁷ . Beiter (2006), supra note 88, pp 90-94.

entitled to education right guaranteed under Article 26 of the UDHR, which is the document explicitly mentioned in Article 13(2) of the FDRE constitution.

Article 26 must further be read in conjunction with article 2 of the UDHR, which states that “ *everyone is entitled to all rights and freedoms set forth in this declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”. This affirms that right to education accrues to every person on equal term. Consequently, children and young people with podoconiosis have the right to education on equal basis with their peers. Here, the phrase ‘Other status’ can be interpreted to include the case of children and young people living with the disease. At minimum, they are protected against discrimination as far as access to public education concerned.

Furthermore, Article 2 commits a state party to refrain from discriminatory acts which has the effect of excluding any person from enjoying the right to education. Thus, a state party has duty to adopt non-discrimination legislations in order to achieve formal equality in exercising right to education. Nevertheless, adoption of equal treatment legislations cannot warranty actual equality. Hence, principle of non-discrimination under article 2 should be interpreted as entailing a duty for the state party to take positive measures in respect of rights enshrined under UDHR. Accordingly, the state required to take positive steps in order to realize substantive equality in the enjoyment of the right to education. This would compel state party to ensure equal opportunities and equal treatment for children and young people with podoconiosis in the field of education.

3.2.2 The International Covenant on Economic, Social and Cultural Rights /ICESCR/

The International Covenant on Economic, Social and Cultural Rights makes International Bill of Human Rights along with Universal Declaration of Human Rights and International Covenant Civil and Political rights. It is first legally binding universal instrument to protect socioeconomic and cultural rights. The right to education enjoys extensive protection under ICESCRs. Article 13 and 14 are the most comprehensive

provisions of the right to education in international agreements. It rearticulates, amplifies and elaborates on article 26 of the UDHR. Article 13 provides as follows:

1. The state parties to the present covenant recognize the right to everyone to education. They agree that education shall be directed to full development of the human personality and the sense of its dignity, and shall strengthen the respect of human rights and fundamental freedoms. They further agree that education shall be enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic and religious groups, and further their activities of United Nations for maintenance of peace.
2. The state parties to the present covenant recognize that, with the view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material condition of teaching staffs shall be continuously improved.
3. The state Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authority, which conform to the minimum educational standards as may be laid down or approved by the state party and to ensure the religious and moral education of their children in conformity with their convictions.
4. No part of this article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that education given in such institutions shall conform to such minimum standards as may be laid down by the state.

Article 13 set out detailed formulations of the right to education. Paragraph one repeats the aim of education listed under article 26(1) of the UDHR, but introduces two additions. Beside these additions, ESCRs Committee has noted that attention should be paid to purposes or aims of education enshrined in a range of international legal documents.¹⁹⁸ On the whole, Article 13(1) highlights the right to education imposes obligation as to the nature of the education provided. Education at any level or form, therefore, should seek to achieve those instrumental and intrinsic values of the right.

¹⁹⁸ . General Comment No.13, supra note 91

Article 13(2) lays down the main component of the right to education. This provision enumerates State Parties obligation to provide education to their citizen. Accordingly, state parties are expected to ensure availability and accessibility of education at various levels. Availability of education related to state obligation to ensure provision of schools, teachers and teaching materials. Ensuring that education is available revolves around establishing educational institutions, freedom to establish private schools, funding schools, recruiting teachers, providing teaching materials and designing functional curriculums.¹⁹⁹ General availability implies that schools, teachers and teaching materials must be available to all.

In contrast, accessibility of education implies state obligation to ensure enjoyment of the right to education by all, especially through eliminating exclusion and discrimination.²⁰⁰ The accessibility of education is best achieved through removing obstacles impeding admission. Here, the state parties are obliged to outlaw any legislation or practices which entail denial of school admission. For instance, school fees and discrimination are often impeding access to education; hence, any effort aimed to remove these obstacles will likely improve accessibility of education.

As formulated in the aforementioned provision, primary education has two distinctive features: it shall be compulsory and available free to all.²⁰¹ Here again, primary education is at the top of educational pyramid. The Committee has pointed out education has a vital role in safeguarding children from exploitative and hazardous labor.²⁰² It can certainly be derived from this that free and compulsory education until certain age functions as protective measure against economic exploitation of children either by parent or employer.

The notion of compulsory primary education implies that such education must be generally available. Obviously, making education compulsory presupposes provision of

¹⁹⁹ . Tomasevski K, supra note 98, pp 13-15.

²⁰⁰ . Bhola, H.S. "Access to education: a global perspective." In *widening Access to Education as Social Justice: Essays in Honor of Michael Omolewa* edited by Akopvire O. & H.S. Bhola, 44-68. AA Dordrecht Springer, 2006.

²⁰¹ . General Comment No.13, supra note 91, para10.

²⁰² . Ibid, para 1.

sufficient educational institutions and programs. The ESCR Committee has submitted that the term “compulsory education” implies that neither state nor parent or guardian can prevent school attendance or enrollment by their children.²⁰³ Nevertheless, compelling somebody to go school he can’t afford would lead to absurd result. Thus, education can be compulsory only where it is truly available free of charge on a non-discriminatory basis to all. The ESCR Committee emphatically noted that direct and indirect cost of education limits the enjoyment of the right and jeopardize its full realization.²⁰⁴ Hence, state parties have duty to provide free primary education, so that, education can be generally accessible. Reading in conjunction with article 2(2) of the ICESCR, state parties are also obligated to remove any barriers to the enjoyment of primary education. The right to primary education, therefore, accrues to every child on equal term.

Furthermore, state parties are under obligation to make secondary education generally available and accessible to all by every appropriate means.²⁰⁵ The CESCR has pointed out general availability signifies that secondary education should be distributed throughout the country in such way that is available on the same basis to all.²⁰⁶ Moreover, they are obligated to provide secondary education which is accessible to all. Thus, no one should be deprived of secondary education on the basis of capacity or other grounds. From the wording of the provision, it is clear that state parties have discretionary power to decide which means they regard as appropriate. However, they are still expected to secure free secondary education progressively. This stipulation highlights that introduction of fee might be retrogressive action.

Unlike secondary education, state parties are not expected to make higher education generally available, such education is also not to be generally accessible.²⁰⁷ Thus, it should be available “on the basis of capacity”. This requirement implies that only students who meet the term will be admitted to institution of higher education.

²⁰³ . *Committee on Economic, Social and Cultural rights*, General comment No.11, plan of action for primary education, UN Doc. E/C.12/1999/4, 1999, para 6

²⁰⁴ . *Ibid* 7

²⁰⁵ . See ICESCR, Article 13(2)(b).

²⁰⁶ . General Comment No. 13, *supra* note 91, para 13.

²⁰⁷ . See ICESCR, Article 13(2)(c).

Nonetheless, higher education should be equally accessible, thus, denial of higher education opportunity on any grounds other than capacity is not justifiable.

In general, article 13(2) framed in term of state obligation toward the right rather than entitlement accrues to individuals. Nevertheless, right to education accrue to individual can still be implied by the same article. In this regard, Coomans has remarked "...in term of individual rights, the right to education implies the right of access to educational institutions 'existing at a given time' and the right to draw benefit from the education received, which means the right to obtain official recognition of the studies completed."²⁰⁸

Beside this, several provisions of the ICESCR have a bearing on the right to education. Among these, principle of non-discrimination, which enshrined under article 2(2) and 3 have significance in the full realization of the right to education. The provisions guarantee protection against discrimination of any kind in exercising the right to education. Therefore, state parties are under obligation to remove discrimination, and secure formal as well as substantive equality in the enjoyment of the right to education at all level and form.

3.2.3 The Convention on the Rights of the Child /CRC/

The UN Convention on the Rights of the Child is the most ratified and accepted document.²⁰⁹ Procedurally, the Convention established the Committee on the rights of the child (hereinafter CRC committee) as its monitoring body. In this role, the Committee has introduced holistic perspective and dynamic interpretation to the rights envisaged under the CRC.²¹⁰ Education of children has been given enough attention, as it is enumerated in detail under article 28 and 29 of the convention. The right to education in CRC does not simply rearticulate the existing international education right provision but

²⁰⁸ . Coomans F, supra note 95

²⁰⁹ . *United Nation Convention on the rights of the Child*, adopted in Nov. 20, 1989, 1577 U.N.T.S3(entered into force Sep. 2, 1990) [hereinafter, CRC]

²¹⁰ . David P. " A Holistic Vision of the Right to Education" In: *Educational Challenges and Human Rights* (2003):39-55

insert new dimension to it.²¹¹ It has been asserted that CRC has reconceptualized the existing international education rights law from the child's perspective.²¹² Thus, the right to education understood from different dimension. Furthermore, the right to education as both a human rights in itself and indispensable means of realizing other rights is vigorously illustrated within the CRC than any other document.

Article 28 and 29 CRC provided as follows:

1. State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. State parties shall take all appropriate measures to ensure that school discipline is administered in manner consistent with the child's human dignity and in conformity with the present convention.
3. State Parties shall promote and encourage international co-operation in matters relating to education, in particular with the view to contributing to the elimination ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 28 of the convention formulates the right of the child to education. It recognizes that education is essential for all children and the right must be achieved on the basis of equal opportunity, reflecting that many children around the world suffer discrimination in access to education, for example children from marginalized group, children in rural area, vulnerable children and disabled children.

Paragraph one of article 28 endorses article 13 of the ICESCR. Thus, state parties are under obligation to provide three level of education on the basis of equal opportunity. Some argue that CRC does not offer strongest international protection to education.²¹³

²¹¹ . Verheyde M, supra note 182, pp 7-10

²¹² . Ibid

²¹³ . Verheyde M, supra note 182 ; Beiter (2006), supra note 88

Compared to ICESCR, state parties' obligation with regard to various level of education framed in weaker term under the CRC.²¹⁴ Nevertheless, article 28(1) guarantees the right to receive education by imposing positive state obligation on state parties to develop and maintain various level of education (primary, secondary and tertiary).

In addition to this, the practices of CRC Committee make believe that state parties' obligation toward primary education is one of highest, thus, they have to ensure provision of free and compulsory education. The Committee, on number of occasion, stressed that charging of fees in primary education is inconsistent with the state obligation under article 28(1).²¹⁵ The Committee even went further to urge state parties to set up pre-primary schooling establishments as well as to raise awareness of the importance of early childhood education.²¹⁶

Beside this common obligation concerning primary, secondary and higher education, article 28(1) introduces two new provisions which obligate state parties to make educational and vocational information available and accessible. Furthermore, state parties are required to take measure to encourage regular attendance and reduction of drop-out rate (article 28(1) (e)). This provision is novel since it is omitted in the main international and regional human right standards. Thus, it imposes duty upon state parties to make sure that children de facto receive education by getting them, and keeping them into school. In this case, the CRC committee has noted with deep concern that large number of school drop-out is inconsistent with state obligation under article 28(1).²¹⁷

The CRC Article 28(2) is innovative in stipulating that states are under a responsibility to ensure school discipline is administered in consistent with child's human dignity and in conformity with the CRC. This provision intended to guarantee child's right in education. The words "in conformity with the CRC" refer to article 19 and 37(a). Thus, school

²¹⁴ . Ibid

²¹⁵ . E.g. CRC Committee, Concluding Observations: Benin (CRC/C/BEN/CO/2, 2006) and Nigeria (CRC/C/NGA/CO/3-4, 2010)

²¹⁶ . E.g. CRC Committee, Concluding Observations: Burkina Faso (CRC/C/15/Add.193, 2002), Burundi (CRC/C/BDI/CO/2, 2010) and Angola (CRC/C/AGO/CO/2-4, 2010)

²¹⁷ . For example, CRC Committee, Concluding observation: Burundi ((CRC/C/BDI/CO/2, 2010) and Bosnia Herzegovina (CRC/C/15/Add.260, 2005)

disciplinary measures in no way subject a child to violent treatments²¹⁸ or torture or inhumane or degrading treatments²¹⁹. That is why the CRC committee emphatically noted that children do not lose their human rights by virtue of passing through the school gate.²²⁰ Article 28(2) emphasize that education should be provided in the way that promote and reinforce the human dignity of children. The committee in its general comment one has remarked:

Education must be also be provided in a way that respect the strict limits on discipline reflected in article 28(2) and promotes non-violence in school. The committee has repeatedly made clear that in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline.

Education, therefore, should be child friendly, and school should foster a humane atmosphere. The findings of the CRC Committee revealed that both excessive and moderate forms of corporal punishment are prohibited.²²¹ Moreover, the Committee is of view of that any other treatment which is cruel, inhuman or degrading, such as bullying and verbal aggregation, is incompatible with article 28(2), 37(a) and even 29.²²²

State parties must take measures to address such problems de facto and de jure. In light of this, the CRC Committee often recommends State parties to adopt a range of measures such as legislative measures, repressive measure like punishing the perpetrator, and awareness raising campaigns.²²³ In general, article 28(2) along with article 29 of the CRC guarantee the right to education which is acceptable to the child.

Article 28(3) calls upon state parties to cooperate in matters relating to education. The cooperation should aim at attaining eradication of illiteracy, facilitating scientific and

²¹⁸ . Article 19 of the CRC provides that “state parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardian, or any other person who has the care of the child.”

²¹⁹ . Article 37 of the CRC states that “ No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.....”.

²²⁰ . General comment No 1, supra note 92, para. 8

²²¹ . E.g. CRC Committee, Concluding Observations: Nigeria (CRC/C/NGA/CO/3-4, 2010) and Botswana (CRC/C/15/Add.242, 2004)

²²² . *Child Rights Committee*, Recommendation on Violence against Children within the Family and Schools, CRC/C/111/28th Session, 28 September 2001.

²²³ . CRC Committee, Concluding Observation: Burundi(CRC/C/BDI/CO/2, 2010)

technical knowledge and modern teachings, with special focus on developing countries. This stipulation suggests that the right to education embodies third generation right.²²⁴ According to some authors, beneficiaries in developing countries entitled to solidarity right while governments of industrial nation have corresponding obligations.²²⁵

Article 28 does not spell out the nature and specific content of education which should be imparted at various levels of educational institutions. Nevertheless, it has been firmly established that standards enlisted under article 29 of the CRC is indispensable in formulating the content of education. Article 29 provides the most detailed objectives of the right to education. The committee has pointed out article 29 has far-reaching importance, thus, it promotes, reinforce, integrate and contemplates the four core principles of the CRC, article 28 and other rights of children enshrined under the Convention.²²⁶ By doing so, article 29 describes interconnected and interdependent nature of the convention's provisions. The CRC Committee is of view of that not only the content of curriculum but also the whole educational process, the pedagogical methods and the environment within which education take place should manifest the values provided in article 29.²²⁷

On the other hand, Article 29(2) protects individuals and bodies freedom to establish and direct educational institution given education provided at such institutions observe aim of education envisaged under paragraph one of the same provision. Unlike article 13 of the ICESCR, the CRC educational standards do not guarantee parental freedom to choose education for their children. This approach affirms that the CRC firmly advocates education right law which is child-friendly and child centered both in protective and empowerment sense. Therefore, the text of article 28 should be read with complementary provision of article 29, in order to understand the notion of the right to education under the CRC.

²²⁴ . Verheyde M, supra note 182

²²⁵ . Beiter (2006), supra note 88

²²⁶ . General comment No 1, supra note 92, para 6.

²²⁷ . Ibid, para 18-22

Furthermore, given the holistic nature of the CRC, article 28 should not only be read with article 29 but also with other relevant provisions of the convention. In this regard, the CRC Committee is often assesses how the four general principles are applied in the education system. In number of concluding observations, regarding non-discrimination principle of article 2, the committee monitors, among other things, gender discrimination within education, or access to education for children from disadvantaged groups or vulnerable group of the society, children with disability, children in rural areas and detention center.²²⁸ Furthermore, the Committee has consistently expressed its concern, inter alia, over implementation of the respect for the views of the child within school environment.²²⁹ This trend of the Committee has reconfirmed the view that “education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life.”²³⁰ By doing so, education serves the aim of education enunciated under article 29 of CRC.

Apart from this, in light of article 19, the Committee frequently recommends state parties to ensure and promote violent-free school environment. In light of this, state parties are required to ban all forms of violent school disciplinary measures such as corporal punishments, unreasonable physical restraint, and obligation to wear distinctive clothing. States parties are also under obligation to take measures to eradicate violence or threats of violence, by children against children, referred to as ‘bullying’ or ‘mobbing’.²³¹ In conclusion, Article 28 and 29 of the CRC do not simply repeats education right provisions enshrined in international instruments. Rather it introduces additional values, thereby, broadens binding international provisions on the right to education.

²²⁸ . David P, supra note 210, pp 41-42

²²⁹ . Ibid

²³⁰ . General comment No.1, supra note 89, par. 8

²³¹ . Hodgkin R & Newell P, supra note 169, pp 249-276

3.2.4 UNESCO Convention against Discrimination in Education /CDE/

Despite the universal recognition of the right to education, education remained a pipedream for millions of children and young people around the globe. The works of human rights monitoring body has identified many forms of discrimination and inequality which affects the enjoyment of the right to education.²³² Undoubtedly, proscribing any forms of discrimination is an important step in full realization of education. The UNESCO Convention against Discrimination in Education is the first international instrument which entirely dedicated to address discrimination within educational sphere. It was adopted by the General Conference of UNESECO meeting in Paris from 14 November to 15 December 1960, as its eleventh session.²³³

In the preamble section of the convention, it has been stated that “the United Nation Educational, Scientific, and Cultural Organization, while respecting the diversity of national educational system, has the duty not only to proscribe any form of discrimination in education also to promote equality of opportunity and treatment but also to promote equality of opportunity and treatment for all in education”. Thus, the purpose of the convention is twofold, firstly, it seeks to eliminate and prevent discrimination and, secondly, to realize equality in education. Nevertheless, the convention goes beyond these, to guarantee equality of opportunity to education at all level and form, and parental freedom to choose education for their children.²³⁴

According to Ammoun, the former special Rapporteur, the convention enjoins state parties to take measures against active as well as static discrimination.²³⁵ “Active” discrimination implies to state instigated discrimination in education.²³⁶ For instance, if

²³² . The Promotion of Equality of Opportunity in Education, Report of the Special Rapporteur, K Singh, submitted in accordance with Human Rights Council Resolution 8/4 HRC 17th Session, A/HRC/17/29 (2011).”

²³³ . *UNESCO Convention against Discrimination in Education*, adopted in 14 Dec. 1960, UNESCO, G.C, 11th Secc, (hereinafter, CDE)

²³⁴ . See CDE, Article 4 & 5.

²³⁵ . Beiter (2006), supra note 88, p.245

²³⁶ . Ibid.

there is statutory provision which discriminates in admission of pupil to educational institution. Regarding 'active' discrimination, state parties are expected to abrogate discriminatory legislations or administrative procedures, and adopt legislative measures to prohibit any of such discriminations in education. This is implied by article 3 of CDE, which establishes state parties' obligation to take steps against active discrimination.

"Static" discrimination, on the other hand, refers to situation of inequality which affects vulnerable groups in the society, and it is the product of economic, social and geographical factors.²³⁷ Static discrimination is much more widespread than active discrimination. It is often difficult to deal with such discrimination with mere adoption of non-discriminatory legislation. Article 4 of CDE directed against static discrimination. To this end, State parties are required to formulate, develop and apply a national educational policy aimed at promoting equality of opportunity and treatment in education at all level and form. State parties are also expected to devote resources so as to eliminate static discrimination.

In general, CDE affords protection against any forms of discrimination within education. Here, Article 1 of the convention defined discrimination as "any distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education...". Unlike other non-discrimination provisions enshrined in international instruments, "other status" ground is absent from article 1 of CDE. The drafting history revealed that the omission of the phrase is deliberate.²³⁸ Accordingly, the list of grounds intended to be exhaustive. However, this does not suggest that discrimination based on any other grounds than the enlisted one is permitted under this convention. In the first place, the Vienna Convention on the Law of Treaties²³⁹ state that a treaty should be interpreted "in accordance with ordinary meaning to be given to the term of treaty in their context and in the light of its

²³⁷ . Ibid

²³⁸ . Beiter, supra note 88, p. 247

²³⁹ . *Vienna Convention on the Law of Treaties*, adopted in May 23 , 1969, G.A. Res 2166(xxxii), (enter into force Jan.27, 1980) [hereinafter, VCLT]

object and purpose”.²⁴⁰ Therefore, the wordings of article 1 of CDE put in their relation to other provisions in the convention and the preamble should be given primary consideration.

In second place, equivalent provisions in other international legal instruments should be taken into account. Justification for this reliance follows from the preamble of the CDE and Article 31(3)(c) of the Vienna Convention. The preamble of CDE recalls non-discrimination principle and right to education of provisions of the UDHR (the preamble section of CDE). Furthermore, Article 10 of the CDE has stipulated that the convention shall not have the effect of diminishing the rights enjoyed by groups or individuals by virtue of other international instruments. Protection granted by article 1 of CDE, therefore, extends to other grounds of discrimination in addition to the enlisted one.

After all, it makes a limited sense to talk about prohibition of discrimination unless every ground of discriminations is addressed under article 1 of CDE. From this it follows that, children and young people living with podoconiosis benefits from the fundamental safeguard provided by the CDE. Thus, they are entitled to protection against discrimination in exercising their right to education. Beside this, the CDE guarantees equality of opportunity and treatment in education. This entails state obligation to take measures against obstacles that hinder enjoyment of the right to education of children and young people living with podoconiosis.

3.2.5. UN Convention on the Rights of Persons with Disabilities

Besides the aforementioned core international human rights instruments, the UN Convention on the Rights of Persons with Disabilities (CRPD) has specifically dealt with the right to education of persons with disabilities under Article 24 of the Convention. Accordingly, State Parties are bound to ensure that persons with disability have access to educational opportunities on equal basis with others.²⁴¹ In this regard, State parties are required to adopt a range of measures such as making education accessible, this includes accessibility of physical environment and the education system, provision of reasonable

²⁴⁰ . Ibid, Article 31(1).

²⁴¹ . UN Convention on the Rights of Persons with Disabilities, Article 25.

accommodation, hence, persons with disability can enjoy their right to education on equal basis with others. This stipulation has a profound implication for protection of the right to education of children and young people living with podocniosis. Apart from this, the Convention promotes inclusive education, which is an issue in the case of education of children and young people living with podocniosis. In conclusion, the rights guaranteed under CRPD can be invoked to protect the right to education of children and young people living with podocniosis, since the disease has disabling effect.²⁴²

3.3 The Right to Education under Regional Human Right System

The right to education is abundantly recognized in several regional human rights instruments. The paramount importance attached to the right to education is evident from the position the right occupies in the core regional human rights instruments, and subsequent case laws of the regional human rights commissions and courts.²⁴³ The right to education has been specifically protected by Article 2 of Protocol No.1 to the European Convention on Human Rights²⁴⁴ as well as Article 13 of the Additional

²⁴² . See the discussion under Chapter two, section 2.1, p.

²⁴³ . European Court of Human Rights (ECtHR) generated a good deal of case laws which affirmed the right to education. In this respect, the *Belgian Linguistic Case*, is living example, where the Court decided on the content of right and corresponding state obligations. Accordingly, the Court pointed out that the right to education under paragraph one article 2 of Protocol No.1 gives raise to the right of equal access to educational institutions existing at given time, and the right to draw benefit from the education received. Of course, the Court noted that the right to education as it is provided under article 2 of Protocol No.1 does not entails obligation to establish educational institutions or to subsidize, education of any particular type. Rather it guarantee right to non-discriminatory access to existing educational institutions. Similarly, the Inter-American Court of Human rights as well as the Inter-American Commission has entertained a number of cases which involves violation of the right to education.

²⁴⁴ . Though ECHR is traditionally meant to protect civil and political rights, Article 2 of *Protocol No. 1 to the European Convention for protection of Human Rights and Fundamental Freedoms*, adopted in 1952, ETS No.9, (entered into force May 18, 1954) guarantee the right to education of individuals. Article 2 of Protocol No.1 comprises two main components: the right to education which accrues to individuals in one hand, and parental liberty to decide on education of their children in the other. It has been argued that the negative formulation of the provision suggests the right to education implies individuals' freedom to choose, and avail them of educational institutions existing at given time.

Protocol of San Salvador to the American Convention on Human Rights.²⁴⁵ Apart from these, both the European Court of Human Rights and the Inter-American Court of Human Rights played a pivotal role in elaborating the content of the right and corresponding state obligation.²⁴⁶ Most importantly they contributed advancing concept for effective protection of vulnerable group's right to education. Nonetheless, it is the African Regional Human Right System which will be given considerable attention in this section since it is highly relevant to discussions in the upcoming sections.

3.3.1.The Right to Education under African Human Right System

The African Human rights system embedded in the African Charter on Human and Peoples' Rights (Banjul Charter).²⁴⁷ In contrast to the prevailing trend, the ACHPR is the first international instrument to provide three 'generations' of human rights in one binding document. The African Charter explicitly provided the right to education under article 17(1), which states that "every individual shall have the right to education". Unlike education right provisions provided in international and regional instruments, Article 17 of the African Charter does not elaborate on the content of the right to education. For that reason, it has been contended that the general character of the provision leaves more question than answer.²⁴⁸

Though the Charter does not provide exhaustive list or content of socioeconomic rights, the authorization of the African Commission to draw inspiration from international human rights laws and practices is meant to help to close the normative gaps.²⁴⁹ The African commission on human and peoples' rights is a quasi judicial regional body

²⁴⁵ . *Additional Protocol to the American Convention on Human Rights*, adopted in 1988, OAS Treaty Series No.69, (entered into force Nov. 1999).

²⁴⁶ . Morgan A, supra note ,107

²⁴⁷ . African Charter on Human and People's Rights(Banjul Charter), June 27, 1981, I.L.M 59 (1981) (entered into force Oct.21, 1986) [hereinafter ACHPR]

²⁴⁸ . Ssenyonjo M. "Analyzing the Economic, Social and Cultural Rights Jurisprudence of the African Commission: 30 years since the Adoption of the African Charter." *Netherlands Quarterly of Human Rights* 29, No.3(2011):358-397

²⁴⁹ . ACHPR, Article 60 cum 61.

charged with functions of promoting and protecting human rights in Africa.²⁵⁰ Under its protective mandate, the African commission is granted power to examine inter-state and individual communication.

Unfortunately, the African Commission has dealt with a few socioeconomic cases. Hence, the Commission has immature jurisprudence with regard to social, cultural and economic rights. In *Les Témoins de Jehova Vs Zaire*,²⁵¹ the African Commission stated that the closure of universities and secondary schools for two years constitutes violation of article 17,²⁵² The commission found violation of Article 17 of the African Charter without identifying the content of the right. Similarly, in *Kevin Mgwanga Gumme et al Vs Cameroon*, the Commission had another opportunity to clarify the scope of the right to education under article 13 but did not do that.²⁵³ The Commission's decisions have not yet addressed the content of the right to education under article 17(1) of the African Charter.

However, the scope of the right to education of Article 17 of the African Charter has been clarified by the African Commission in its *Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' rights*.²⁵⁴ Accordingly, the right to education under article 17 encompasses pre-school, free and compulsory primary education, generally available and accessible secondary education, and merit based higher education.²⁵⁵ It has been indicated that availability, accessibility, acceptability and adaptability of education can be read into article 17 of the African Charter.²⁵⁶ Moreover, the African Commission on Human and Peoples' Rights recommends that state party to the ACHPR should take special measure in order to ensure vulnerable and disadvantaged groups attend school.²⁵⁷

²⁵⁰ . Ibid

²⁵¹ . Free Legal Assistance Group, Lawyers Committee for Human Rights, *Union Interafricaine des Droit de l'homme, Les temoins de Jehovah V Zaire*, supra note 134

²⁵² . Ibid, para 48

²⁵³ . Ssenyonjo M, supra note 248

²⁵⁴ . African Commission on Human and People rights in *Principles and Guidelines on the Implementation of Economic, Social and Cultural rights in the African Charter on Human and People's Rights*

²⁵⁵ . Ibid, pp.34-36

²⁵⁶ . Ibid

²⁵⁷ . African Commission Principles and Guidelines on socioeconomic rights, supra note 254, p. 36

This protection is highly relevant to realize the right to education of children and young people living with podoconiosis who are vulnerable, and at greater risk of being discriminated due to their poor health status. Thus, their situation calls for adoption of special measures.

Furthermore, the right to education provision should be read with the general principle provided under article 2 of the ACHPR. Accordingly, every child shall be entitled to the enjoyment of education guaranteed under article 17 of the Charter without discrimination based on any ground. The phrase “*other status*” is interpreted to include grounds of discrimination not explicitly mentioned in Article 2.²⁵⁸ It has been noted that “*other status*” should include grounds such as marital status or family status, gender identity, health status and social situation.²⁵⁹ Hence, as per article 2 of ACHPR, children and young people living with podoconiosis are protected against any forms of discrimination in education. Notes should be taken of the African Commission’s Jurisprudence which took bold steps, by determining that Article 2 of the Charter obliges states parties not only to eliminate discrimination but also to take temporary special measures in favor of marginalized groups who suffer persistent prejudice.²⁶⁰ The provision extends its protection beyond prohibiting discrimination to include promoting equality of opportunity in education for all. Hence, the vulnerable status of children and young people living with Podoconiosis should be taken into account while adopting and implementing policies, programs and strategies which give effect to the right to education.

In addition to this, the right to education is comprehensively dealt with by the African Charter on Rights and Welfare of the Child (ACRWC).²⁶¹ Article 11 of the Children’s Charter provides one of the most detailed provisions on the right to education. The provision set forth the aim of education, the state obligations with regard to various levels of education, parental freedom, and private entities freedom to establish educational

²⁵⁸ . Ssenyonjo M, supra note 248

²⁵⁹ . Ibid

²⁶⁰ . Free Legal Assistance Group, Lawyers Committee for Human Rights, Union Interfricaine des Droit de l’homme, Les temoins de Jehovah V Zaire, supra note 134

²⁶¹ . *African Charter on the Rights and welfare of the child*, was adopted in 1990, OAIU Doc.CAB/LEG/24.9/49, 1990 (entered into force Nov. 29 1999) [hereinafter ACRWC]

institutions.²⁶² Apart from this, it explicitly provided that “every child has the right to education”.²⁶³ So, children with podoconiosis as being member of the child group have the right to education.

For the most part, Article 11 of the ACRWC resembles article 28 of the CRC. Nonetheless, the African Children’s Charter inserts new provisions which stipulate that state parties must take measures in respect of female, gifted, disadvantaged children and pregnant student education.²⁶⁴ The ACRWC is innovative in stipulating that states are under a responsibility to take special measures to ensure equal access to education to girls and disadvantaged children coming from “all sectors of the community”. Moreover, this stipulation sounds vital given the fact that most African children are at critical situation to the unique factors of their socioeconomic, cultural, traditional and developmental circumstance, natural disaster, hunger, exploitation and armed conflict.²⁶⁵ This situation gets worse in the case of children and young people with podoconiosis who suffer from enormous socioeconomic burden of the disease. Hence, such provision has a vital importance for realization of the right to education of children and young people with podoconiosis as they constitute hard-to-reach section of the society.

In addition to the aforementioned provisions, the right to education is protected by other regional human right instruments such as the African Women’s Rights Protocol and the African Youth Charter. It may be concluded that the African protection system recognizes the importance of the right to education, and strongly support and promote the equitable inclusion of vulnerable groups, which defined to include children and young people living with podoconiosis.

²⁶² . see the text of Article 11 of ACRWC, sub-article 1 guarantee every child’s right to education, sub-article 2 enunciated the aim of education, sub-article 3 is about state parties obligations toward education at various level and form, sub-article 4 deals with parental freedom to decide on education of their children, sub-article 5 states about humane school discipline, sub-article six is about education of pregnant school-age children and sub-article 7 deals with individual bodies freedom to establish their own education system

²⁶³ . ACRWC, Article 11(1).

²⁶⁴ . ACHRWC, Article 11(3)(e) .

²⁶⁵ . Preamble section of the ACRWC.

3.4 The Right to Education of Children and Young People Living with Podoconiosis under the Ethiopian Laws, Policies and Programs

Ethiopia has a long tradition of education, and a century old history of modern schooling.²⁶⁶ The era of modern education goes back to the period of imperial regime. Despite a long history of modern education in Ethiopia, the education system remained backward and far behind the expectations.²⁶⁷ The education system is characterized by low quality and inefficiency, high repetition and dropout rates, low completion rate, poor quality of teachers, low enrollment rates at all level of education and high illiteracy rates.²⁶⁸

Although the children and young people in Ethiopia have various rights recognized, and protected under different laws and regulations, large numbers of children in Ethiopia suffer from the ills of poverty and illiteracy. The situation gets worse in the case of children and young people living with podoconiosis. In disease endemic communities children and young patients are victims of rampant stigma and discrimination. The main reasons are attributed to misconceptions regarding the cause of the disease. As in the case of other vulnerable children, children and young people living with podoconiosis find themselves at difficult situations that preclude enjoyment of the rights. Like other groups of vulnerable children, they are also likely to find access to education more difficult.

In recent years, the government of Ethiopia has made remarkable progress so as to achieve universal primary educations. The Government has also taken a variety of measures in order to address educational needs of vulnerable groups. With this

²⁶⁶ . Seboka B “school choice and Policy Response: A Comparative Context Between Private and Public Schools In Urban Ethiopia” paper presented at: the 2nd International Symposium on Contemporary Development Issues In Ethiopia, P. 5

²⁶⁷ . Negash T. *Education in Ethiopia: From Crisis to Brink of Collapse*. Stockholm : ElandersGotab AB, 2006

²⁶⁸ . Telila L. “Review of some recent literature: Identifying Factors that Affect Ethiopia’s Education Crisis” *Ee-JRIF* 2, no.2(2010): 55-68

background, the next section will examine the domestic guarantees for the right to education, and explore their relevance to the case of children and young people with podoconiosis. By doing this, it will address one of the research questions that whether the Ethiopian laws, national policies or programs guarantee equal protection of the right to education of children and young people living with podoconiosis.²⁶⁹

3.4.1. Constitutional Provision on the Right to Education

The FDRE Constitution accords pride of place to human rights (chapter three of the FDRE constitution). Needless to say, all human rights granted under the Constitution are equally applicable to children. Apart from this, Article 36 of the Constitution is dedicated to deal with the rights of children. Regrettably, the only provision that exclusively devoted to deal with the rights of children does not make reference to the right to education. Rather it makes indirect reference to it.

Article 36(1) (d) of the Constitution states that every child has the right “not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education...”. At first glance, this seems to provide protection against exploitative practices particularly child labor. On the other hand, this stipulation has also a bearing on the right to education of children. The provision highlights that children should be protected against hazardous or harmful work which interfere with their education. From this, it can safely be contended that the right to education of children is also protected by the same provision. In a similar vein, Article 36 (1) (e) entitles every child to be free from corporal punishment or cruel and inhumane treatment in schools. Indirectly the provision guarantees a child’s right to learn in violent free school environment. These formulations of the Constitution provide essential safeguards for children and young people living with podoconiosis who are more likely to be exposed to abuse due to their vulnerability, and lower status in the society.

Article 41 of the Constitution incorporates some socioeconomic ‘rights’. Sub-article 3 stipulates that “every Ethiopian national has the right to equal access to publicly funded social services”. As can be discerned from sub-article (4) education is one of the publicly

²⁶⁹ . See Chapter one, Research Question section, P.5

funded social services. This provision establishes the constitutional right to education. Accordingly, every Ethiopian has the right to equal access to education. Hence, children and young people living with podoconiosis have the right to get access to education on an equal basis with their peers. In addition to this, Article 25 of the Constitution guarantees equality of treatment, and protection against discrimination. In light of this, children and young people with the disease are entitled to enjoy their right to education without any discrimination based on their status.

In the way that resonates with international obligations under the ICESCR, the Constitution imposes obligation on the state to allocate ever-increasing resources, among other things, to education.²⁷⁰ Further, under the social objective heading, the FDRE Constitution reiterated that the state is under obligation to adopt policies that aim to provide all Ethiopians access to education.²⁷¹ It is implicit from this provision that every Ethiopian is guaranteed access to education in a manner that is free from religious influence, political partisanship and cultural prejudice.

Besides giving constitutional recognition to various rights of children provided in major human rights instruments, Article 13(2) aims at making international conventions on human rights the standards for interpretation of chapter three of the constitution. In other words, the standards of protection of the human rights guaranteed in the constitution have to be tested against the international standards set by universal declaration of human rights (UDHR) and conventions ratified by Ethiopia.²⁷² As one of the human rights conventions ratified by Ethiopia, both CRC and ACRWC therefore are not only part and parcel of the domestic law of Ethiopia,²⁷³ but also authoritative guidelines for the interpretation of rights of children guaranteed by the constitution. Hence, Article 36 of the Constitution on the right of children should be interpreted in consistent with CRC and ACRWC. Perhaps it is plausible to argue that, despite absence of explicit reference to the right to education, education right can still be read into article 36 of the Constitution.

²⁷⁰ . FDRE Constitution, Article 41(3).

²⁷¹ . Ibid, Article 90

²⁷² . The Ethiopian Government accessed ICESCR in 1993 and CRC in 1991 without reservation, ratified ACHPR in 1991 and ratified the ACRWC on June 2000.

²⁷³ . FDRE Constitution, Article 9(4).

Furthermore, note should be taken of Article 9(4) of the Constitution which makes international treaties ratified by Ethiopia part and parcel of the law of the land. Thus, the Government of Ethiopia has duty to observe rights of children enshrined under UDHR, ICESCR, CRC and ACRWC. On the other hand, every child in Ethiopia is entitled to enjoy rights guaranteed under those instruments. .

Since Ethiopia is a signatory to international instruments which guaranteed right to education, recognizes education right which encompasses free and compulsory primary education, generally accessible and available secondary education, and merit-based higher education. Moreover, all levels of education should exhibit availability, accessibility, acceptability and adaptability.

However, the question that to what extent these obligations are met in the case of education of children and young people with podoconiosis will be left to the next chapter discussion.

In conclusion, it can be asserted that, despite the absence of explicit constitutional provision on the right to education, the FDRE Constitution has incorporated the right to education in solid way. Because it has integrated human rights standards on the right to education into domestic laws of Ethiopia, it has elevated them to the status of interpretation guideline, and has embodied some of the normative contents of education in text of the constitution itself. Having said this, the next section deals with the education policy and programs which are in place to give effect to the norms embodied in the international instruments and the FDRE Constitution.

3.4.2. The Education and Training Policy (1994)

Previously, the education system has encountered challenges of relevance, access, quality and content. To rectify this, the government has introduced new education and training policy.²⁷⁴ In its preamble the policy stressed the role of education in individual as well as societal development. Hence, the National Education and Training policy states that one of the main objectives of the education system is to “develop the physical and mental

²⁷⁴ . *The Education and Training Policy*, Ministry of Education, (Addis Ababa: Ethiopia) (1994)

potential and the problem-solving capacity of individual by expanding education and in particular by providing basic education for all”.²⁷⁵ To this end, the policy has ascertained that no tuition of any kind will be charged in the general education.²⁷⁶ This formulation has a bearing in full realization of right to education as it guarantees access to primary and secondary education.

Moreover, the policy placed emphasis on reaching out to out of school children, reducing gender disparity in educational opportunities and targeting enrollment gaps between regions and population in Ethiopia.²⁷⁷ Accordingly, the National Education and Training Policy stressed the need to provide special assistance and targeted support to out of school children, vulnerable groups and disadvantaged group. With regard to education support inputs, it has been mentioned that “special attention will be given to women and those students who did not get educational opportunity.....”.²⁷⁸ The policy recognizes the challenges faced by girls and children from vulnerable section of the society in accessing educational opportunities. As discussed earlier, the stigma and discrimination surrounding podoconiosis disease lead to rejection and exclusion of patients by the rest of the community.²⁷⁹

Furthermore, the policy ascertained that “special financial assistance will be given to those who have been deprived of education.....”. The Government commits itself to take special measure regarding education of children who do not have access to education. It is clear that the national education and training policy strongly promote and support the equitable inclusion of social groups, such as children and young people living with podoconiosis, in access to education. Therefore, equality of opportunity as regards education enunciated by Article 28 of the CRC and Article 3 of the ACRWC is integrated in the national education and training policy. However, it is yet to be seen how far the government gone regarding education of children and young people living with podoconiosis in reality.

²⁷⁵ . Ibid, Educational structure No. 2.1.1.

²⁷⁶ . Ibid, 3.9.1

²⁷⁷ . Preamble section of the policy

²⁷⁸ . Educational structure No. 3.7.7.

²⁷⁹ . See the discussion under Chapter two, subtopic 2.2, pp 15-16

3.4.3. The Education Sector Development Program/ESDP IV/

Realizing the positive role that education plays in development of society, reducing poverty and inequality, improving health and social well-being, the government has introduced education sector development program²⁸⁰- a comprehensive intervention package which aims to translate the national educational and training policy into action. The government launched a series of education sector development programs: ESDP I, ESDP II, ESDP III and ESDP IV. These programs intended to improve educational access, relevance, quality and equity with special emphasis on achieving universal primary education over 20 years.

ESDP I and ESDP II have substantially increased enrollment in primary education, minimized gender disparity, reduced level of school dropout and repetition.²⁸¹ They also improved school enrollment rate in rural and under-served areas. Similarly, ESDP III has made significant progress in improving access to education at all level. Though there were important improvements with regard to availability of educational institutions and trained teacher, poor quality of education coupled with limited educational opportunities of vulnerable section of the society remained to be the biggest challenges of the education sector.²⁸²

It is against this background that the Government adopted ESDP IV (2010/11-2014/15) which focuses on equity, quality and access challenges facing out of school children, vulnerable and disadvantaged children.²⁸³ The main thrust of EDSP IV is to improve quality of education with special emphasis on general education which includes pre-primary education, primary education and secondary education; to address equity and access issues by narrowing the gap between male and female, regional as well as rural-

²⁸⁰ . *Ethiopian Education Sector Development Programs I-IV* , Ministry of Education, (Addis Ababa: Ethiopia) (1997-2014/15)

²⁸¹ . ESDP I & ESDP II

²⁸² . *Social Assessment of the General Quality Education Quality Improvement Program Phase 2*, Ministry of Education, (Ethiopia) (2013)

²⁸³ . The FDRE Education Sector Development Program IV (ESDP IV), Ministry of Education, Program Action Plan, (Addis Ababa: Ethiopia), (2010/11-2014/15)

urban disparity; to enhance adult literacy through Functional Adult Literacy (FAL); to strengthen TVET and to further develop tertiary education.

Under ESDP IV, the Government committed itself to give increased attention to education of children who are still out of school, and children with special needs and vulnerabilities. In this regard, two major strategies have been identified.²⁸⁴ The first set of strategies aimed at further expansion of access to general education through construction of more schools and class rooms with special emphasis on reducing the distance between schools and pupils. This indirectly address the educational needs of children and young people living with podoconiosis, as they face enormous challenges in taking long walk to schools.

The second set of strategies focused on improving educational participation of vulnerable and disadvantaged children by providing special supports such as scholarship, financial and material supports. ESDP IV specifically targets children who are still out of school, most of whom are in emerging regions or belong to specific groups: the pastoralist, semi-pastoralist and indigenous groups, children with special needs and vulnerabilities. This in turn, supposed to help children and young people living with podoconiosis, who most of the times are unable to access educational services, due their situation.

Moreover, the document (ESDP IV) has addressed school health and nutrition issues.²⁸⁵ It has been indicated that poor health and nutrition adversely affects children's ability to participate in education, educational qualities and achievements. In response to this, the government in its ESDP IV, gives due consideration to school health and nutrition programmes which aimed to ensure that children are healthy and better nourished and able to take full advantage of educational opportunities. School health and nutrition programmes sought to promote learning, and simultaneously reduces repetition and absenteeism. This program is highly relevant to the case of children and young people living with podoconiosis, and achievement of those amounts to the best guarantee of their right to education. However, the plain reality remains to be that large number of children

²⁸⁴ . Ibid, p.15

²⁸⁵ . Ibid, pp.85-86

and young people living with podoconiosis are often dropout school due to disease related acute pains.

It has been indicated that vulnerability and lack of access to education are highly related issues.²⁸⁶ Thus, children who are vulnerable are less likely to have access to education. Neither ESDP IV nor complementary programmes define ‘vulnerable child’. However, according to the Ministry of Women, Children and Youth Affairs (MoCYA), vulnerable child is one “*whose survival, care, protection and development might have been jeopardized due to a particular condition, and who is found in a situation that precludes the fulfillment of his or her rights*”.²⁸⁷ Precisely, children and young people living with podoconiosis belong to the group of children with vulnerabilities. Hence, they are entitled to benefit from safeguards provided to children with vulnerabilities under ESDP IV or elsewhere.

3.4.4. National School Health and Nutrition Strategy (2012)

Only healthier and better nourished children can stay long in school, learn more and become productive adults. Studies found that large number of school-age children in Ethiopia suffer ill-health, nutrition deficiency and morbidity.²⁸⁸ The same studies indicated that the main reasons behind repetition or drop-out, and leaving schools among school-age children are found to be disease, malnourishment and harmful traditional practices.²⁸⁹ The National School Health and Nutrition Strategy revealed poor health and nutrition is a major constraint on children’s ability to learn, on their school attendance and concentration. Obviously, children who had disease or nutrition related problems cannot enjoy their right to education on equal basis with their healthy peers. This is so much true in the case of children and young people living with podoconiosis, who often lag behind their peers as result of disease related complications.

²⁸⁶ . Social Assessment of GEQP2, supra note 282

²⁸⁷ . UNICEF Ethiopia 2006 document

²⁸⁸ . ESDP IV, supra note 285, p.85

²⁸⁹ . ESDP IV, supra note 285

It is against this background, the Ministry of Education adopted National School Health and Nutrition strategy (SHN)²⁹⁰ in 2012. SHN strategy is recognized as one component of ESDP IV. The strategy urges adoption of school curricula which addresses relevant health challenges in the country. Accordingly, educational institutions shall provide health information, and school-based health services regarding a disease which has an adverse impact on learning. By doing this, the SHN strategy aims to improve access and educational achievements of learners.

On the other hand, this means that educational programmes or curriculum should respond to podoconiosis issues, since the disease is one of the major factors that keep children and young people out of school, and reduce educational opportunities. Therefore, in disease endemic areas like Wolaita zone, schools should address ‘podoconiosis’ related problems through giving health information, school-based health services, and human right education etc. Thus, giving full effect to SHN strategy enhances protection and full realization of the right to education of children and young people living with podoconiosis.

One of the main objectives and area of priority of the strategy is ensuring development of child friendly school environments. Here, the strategy recommends that all learning institutions shall provide safe and accessible physical environment and positive psychosocial environment which is free from harassment, violence and bullying. This is highly relevant to educational needs of children and young people living with podoconiosis, who more likely to be victims of violence and bullying.

Moreover, the SHN strategy set out four main strategic components: school health and nutrition related policies and guidelines should be put in place in order to ensure safe physical and psychosocial environments; safe and sanitary school environment that reinforce the health and hygiene message; skill-based health and nutrition education; school-based health and nutrition services. These components are essential to address social barriers that hinder children and young persons living with podoconiosis from exercising their rights including their right to education. For instance, skill-based health

²⁹⁰ . *The FDRE National School Health and Nutrition Strategy*, Ministry of Education, (Addis Ababa: Ethiopia), 2012.

education includes provision of factual information that promote attitude toward a certain disease..

Further, the SHN strategy gives due emphasis to prevention and control of diseases which affect learning, and may result in repeated absenteeism and even complete drop-out. In this regard, the strategy recommends that school should put in place measures aimed at preventing disease through health education, and implementing control mechanisms. Here, the strategy stressed the need to involve schools in national programmes aimed at addressing neglected diseases and disease targeted for elimination. Very recently, Podoconiosis has been designated Neglected Tropical disease status.²⁹¹ Hence, addressing Podoconiosis related problems is one of the major focus areas of the National School Health and Nutrition strategy (2012). However, how far this commitment accomplished is doubtful. Because, there is still a big gap between what is stated in the strategy and the actual practice.

The SHN strategy has also underlined equality, equity and non-discrimination as guiding principle. It has been noted that educational establishments shall adopt SHN programmes in order to address the needs of girls, children with disabilities, orphans and other vulnerable children. Here, children and young people with podoconiosis are one of the vulnerable groups of children as they have worst health status. Poor health status, meager economic condition and rampant negative attitudes toward them hamper their ability to thrive and to benefit from education. In response to this, the SHN strategy guarantees them protection against discrimination based on their poor health status. Nevertheless, how far the commitments are put in to effect is questionable and will be discussed in the next chapter.

In addition, Ethiopia has also committed itself to the achievement of Millennium Development Goals, Dakar Framework for Action and education for all (EFA) goals and targets.²⁹² These expand educational opportunities of children and young people living with podoconiosis. Furthermore, the 2010/11-2015 Growth and Transformation Plan has

²⁹¹ . National Mater plan on NTDs, supra note 26, p.14

²⁹² . Dufera D “Prospects and Challenges of Achieving the Millennium Development Educational Goals in Ethiopia: where does Ethiopia stands on EFA Goals,” *The Ethiopian Journal of Education*, Vol XXVI, No.2 (2006), p.25

also outlined a clear direction on education sector, including a heightened focus on assurance of citizen's right to education and achievement of Millennium Development Goals.²⁹³ If these commitments are put in practice, it means that children and young people living with podoconiosis can effectively exercise their right to education recognized under the Ethiopian law and different international treaties.

Therefore, from the foregoing discussions it can safely be concluded that the country set out compelling, convincing and feasible policy, programmes and strategies which strongly support and promote equitable inclusion of every member of the society in accessing educational opportunities. Nevertheless, how far the commitments are put in to effect and the extent to which they address specific educational needs of children and young people with podoconiosis is questionable, and will be discussed in the next chapter.

²⁹³ . *The FDRE Growth and Transformation Plan (GTP)*, Ministry of Finance and Economic Development (MoFED), (Addis Ababa: Ethiopia), (2010/11-2014/15)

CHAPTER FOUR

4. REALIZING THE RIGHT TO EDUCATION OF CHILDREN AND YOUNG PEOPLE LIVING WITH PODOCONIOSIS: THE GAP BETWEEN COMMITMENT AND PERFORMANCE

4.1. The Status of the Right to Education in Practice: the Case of Children and Young People Living with Podoconiosis

From the foregoing discussions,²⁹⁴ it has been seen that international instruments as well as national legal system of Ethiopia gives due recognition to the right to education of children and young people living with podoconiosis. However, the cruel reality is that attending school appears to be a luxury rather than a basic right for children and young people living with podoconiosis. The next section will assess to what extent the domestic laws, policies, programs and international human rights instruments pertinent to the right to education are implemented in the case of children and young people living with podoconiosis.

4.1.1. *The Disease Interferes with the Enjoyment of the Right to Education*

Children and young people living with podoconiosis are among those left behind and excluded from education. They suffer from disease related acute pains and increased swelling of the legs which caused by infections, physical injury and strenuous activity. During such illness they may become bedridden for days and even weeks. Complications arising from the disease have an immense impact on school enrollment, completion, attendance and performance.

²⁹⁴ . See the discussion in Chapter three, particular emphasis to section 3.2,3 and 4

4.1.1.1. *Recurrent illness prevents regular school attendance*

Majority of the students with the disease reported that the disease interfere with their education.

I could not attend schools regularly because of frequent pains associated with the disease. I often miss classes and even exams. When I feel sick I ask permission to miss classes. Some of my teachers understand my problem but other not. I lag behind my friends as result of my situation. I know that friends of my age have already done with schooling, and begun working in government office. This year, I am 12th Grade, everyone in my class talk about their future in college but I am not even certain about it. I am scared and I feel hopeless sometimes. I don't know how to make college having this disease (In-depth interview informant, 23 years old female patient)

I often struggle to attend schooling at afternoon session because taking long walk to school coupled with sitting for long hours in class in sunny and hot days worsen my situation. When I walk, my foot immediately develops wounds. So I prefer to stay at home than going school and suffer acute pains of the disease which may lasts for days or weeks (in-depth interview informant, 14 year old female patient)

If it was not been for the disease, by this time, I should have been at 9th grade. Now, I am two grade levels behind my peers. I experienced a host of health challenges related with the disease. I remember it was at 3rd grade my foot begun to trouble me. I was absent from class for several weeks following treatments. I repeated class as result of my situation. When I was at 5th grade, I suffered from serious illness related with the disease, and stayed on bed for weeks. I could not go school. I was forced to drop out school once again. Today my situation is improved, thanks to the Mossy foot organization. But I still somehow feel not at ease. Sometimes the disease brings headache and shivering. At that time, I cannot study or involve with my friends. They don't understand my problem. I lie to them that I had malaria so that I cannot do groups works. I don't want them to recognize my situation. Because I feared that they may dump me (In-depth interview informant, 15 years old male patient)

Evidences have showed that children and young people with the disease are at enormous risk of missing out an education. A 17 year old in-depth interview informant indicated why he quit schooling.

I developed podoconiosis while I was 4th grade. My family did everything to cure me using modern and traditional medications. Despite all efforts, my legs get bigger and bigger. Let alone going school, I could not stand and walk. I became bedridden. I stayed on bed for solid 2 years. Since that moment onward, I never went school. I feel sad when I see children from my

neighborhood go school. For me, there is no chance of getting back to school. Sometimes I was upset and want to die. I am worthless burden to my family (in-depth interview, 17 years old patient

Overwhelming majority of informants (33 out of 48) indicated that the disease hampers their chance of school enrollment, attendance and completion. This further confirmed by some FGD participants from Mossy Foot Treatment and Prevention Association (international NGO working on treatment and prevention of podoconiosis in Wolaita Zone) social workers whose duty is to make home to home visit. According to one FGD participant

I have served as social worker for more than 5 years in the Mossy Foot Association. In this role, I came to realize that there are a number of children and young persons who never enrolled in school or unable to pursue their education because of the disease. Very recently, I met with 13 year old girl who is living with podoconiosis. This year, She is 6th grade student. But this time around she couldn't do final exam because her health situation gets worsened. Her legs increased swelling and developed wounds. You know what is the saddest part is the disease does not only devastate their education but also their future. (FGD participant, social worker of Mossy Foot)

Data collected from the study participants have showed that children and young people living with podoconiosis have limited educational opportunity. Being a patient appears to at least double the chance of never enrolling and significantly increases the chance of dropping out. On the other hand, Ethiopia as signatory of ICESCR, CRC and ACRWC is obliged to “take measures to encourage regular attendance at school and the reduction of dropout rate”.²⁹⁵ However, the practice is not compatible with this obligation Ethiopia entered with.

4.1.1.2. *Disease negatively affects educational outcomes*

Frequent pains related with podoconiosis have an impact on the school performance of affected student. Missing class or exams is almost common thing among student with the disease. Children and young persons with the disease don't follow lectures attentively especially at the time of illness. Some of the informants shared their experience in this regard as follows

²⁹⁵ . CRC, Article 28(1)(e) and ACRWC, Article 11(3)(d).

There was a time I missed classes for consecutive days or weeks. When things look normal, I begin attending schools again. Taking a sit for long hour brings me pain. It increases swelling and block movement. At that time, I struggle to concentrate on lectures if my legs begun giving me pain. I hardly listen to what the teachersteach, rather is all I think is about the pain I am feeling at the moment. As result, I miss lectures. (In-depth interview informant, 14 year old male patient)

I was 13 when podoconiosis affected me. My foot was getting worse from time to time. As result, I was forced to drop out of school on several occasions. You know I really want to be a good student. But I could not do well at school, partly because of my health situation. Even if I didn't miss classes, I was not been actually learning. For most part, only my body present, but my mind was absent. I could not pay attention to the lectures if I were feeling sick. (In-depth interview informant, 18 year old female)

A student whose life is blighted by disease is clearly not equipped for realizing their full potential in school. This is much true in the case of children and young people living with podoconiosis who hindered from taking full advantage of educational opportunities. Podoconiosis has an immense impact on children's ability to learn, on their school attendance and on concentration. It has been showed that the disease is the main reason behind loss of considerable number of school days, lack of concentration and poor educational outcome. Conversely, the government of Ethiopia has committed itself "to address diseases negatively affect learning and may result in repeated absenteeism and even complete dropout of school".²⁹⁶ One of way of addressing such problems is that educational institutions shall put in place measures aimed at preventing disease through health education and implementation of preventative and control interventions. Furthermore, one of the main strategic components of the SHN strategy is "to ensure that skill-based health and nutrition education is provided in school".²⁹⁷ In the context of education of children and young people living with podoconiosis, this means that schools shall provide health information about podoconiosis, health education on how to prevent and control the disease, for instance, promoting the benefit of foot hygiene and shoe wearing for preventing the disease, etc.

²⁹⁶ . National School Health and Nutrition Strategy (2012), supra note 290

²⁹⁷ . Ibid

However, in this case what the majority of the interviewees mentioned and with the researcher's personal inspection too, none of the schools in Wolaita Zone provide health information or education regarding podoconiosis. Despite high prevalence of the disease, majority of the school community do not have information about the seriousness or cause of the disease.

I have seen so many people suffer from 'gedekita'(local term for podoconiosis) in my area. A long time ago, I myself had a housemaid who is living with the disease. Honestly, I don't know the cause of the disease but I know 'gedekita' is one of the major problems in this community. I don't think it is such a big deal in learning environment since it is an adult disease. Here, we do not have children or young persons living with the disease. So, I don't see any reason to adopt or implement any programme with regard to the disease(In-depth interview informant, primary school director)

Of course, podoconiosis has been a serious public health issue within this community. I know that there is NGO which provide treatment and care for patients with the disease. I think, now, the disease is no more public health problem since there has been a lot done by the NGO. If there are students living with the disease, I am sure that they are being helped by the NGO. (In-depth interview informant, secondary school director)

This shows that school community is not ready to address the problems associated with the disease in the context of education. This in turn, will likely affect the enjoyment of the right to education of pupil living with the disease.

In contrast, some of the informants held the view that the issue needs urgent action on the part of the government.

I know that podoconiosis is prevalent disease within this community. I came to recognize that large number of our community affected by the disease. There are also students who might be the victim of the disease. I think that despite great efforts put by Mossy Foot Project, there remains a lot to be done, especially in educational institution or schools. Podoconiosis is not only a health matter but also involves education right issue. This means that schools are stakeholder. The government body or the NGO should work in cooperation with schools. it is only when schools put in place measures aimed at podoconiosis it would be possible to know the prevalence rate of the disease at

school level, its impact on the education of students affected by the disease and most importantly how to manage the impact of the disease. For instance, our school has a range of programmes which aimed at preventing and controlling malaria, HIV/AIDS and eye disease such as Trachoma. I think the same approach should be adopted regarding podoconiosis since it is prevalent and recognized health problem within the community. (In-depth interview informant, primary school director)

Similarly, the National School Health and Nutrition Strategy recognized the need for coordinated effort by relevant ministries, communities and stakeholders. The Strategy reiterated that “*given the multi-dimensional nature of health and nutrition issues, there shall be a multi-sectoral approach mainly among the Ministries of Education; Health; Agriculture; water resource; women, children and youth Affairs; Labour and Social Affairs; and a range of development partners; the private sector; civil society organization and the community*”.

In our case, realizing the right to education of children and young people living with disease requires coordinated and organized efforts, among others, by Ministry of Education and Health. In this respect, new and ongoing efforts to control and eliminate the adverse effect of the disease represent key elements for achieving the goal of SHN strategy, i.e. to improve access and educational achievement of schoolchildren living with podoconiosis. Here, it should also be recalled that the government of Ethiopia is under obligation to control, prevent and treat endemic diseases like podoconiosis in order to be in line with its commitment to ensure the enjoyment of the highest attainable standard of health under article 12 of ICESCR.²⁹⁸

Moreover, the researcher is of view of that the best way of protecting children and young people living with podoconiosis is treating podoconiosis as one of disability. Such an approach to podoconiosis would help to invoke rights, and corresponding state

²⁹⁸ . See also *Committee on Economic, Social and Cultural Rights (ESCR Committee)*, General Comment No. 14, The Right to the Highest Attainable Standard of Health, UN Doc. No. E/C.12/2000/4 (2000)., where the ESCR Committee reiterated that state obligation to take measure to prevent, treat and control endemic diseases is one of obligations of comparable priority under article 12 of the Covenant.

obligations under Convention on the Rights of Persons with Disability, to which Ethiopia is a member state. The Convention explicitly addresses awareness-raising, health, education, and accessibility issues which have a profound implication for full and effective realization of the right to education of children and young people living with podoconiosis. For instance, in accordance to article 25 of the Convention state parties shall “*provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disability including among other children and older persons*”.²⁹⁹

This stipulation has far-reaching importance, given the fact that one of the issues concerning people living with podoconiosis in general, and children and young people with the disease in particular, is that the government of Ethiopia failed to give considerable attention to the health rights of these groups.³⁰⁰

In this regard, the Disability Convention provides one of highest protection. First of all, it directs state parties to provide those health services specifically need by persons with disability, in our case, persons affected by podoconiosis. Second of all, article 25 does address the need to help prevent secondary (further) disability. Here, it should be recalled that lack of early interventions and treatment of podoconiosis may lead to life time disability.³⁰¹

Such provision has direct relevance to children and young people living with podoconiosis, because heightening emphasis on health issues of these groups enhances full realization of the right to education, as disease related complications keeps majority of children and young people with the disease out of school, result in drop-out and poor educational outcome. In conclusion, improving enjoyment of the right to health of these groups will pave the way, for children and young people living with podoconiosis, to fully and effectively exercise their right to education.³⁰² Nevertheless, the practices show

²⁹⁹ . CRPD, Article 25 (b).

³⁰⁰ . Ashine K.M., supra note 16

³⁰¹ . See the discussion under Chapter two, section 2.1 regarding the health impact of the disease, PP 22-23

³⁰² . This has been discussed in detail, and one of the major findings in earlier study, particularly Ashine K.M., supra note 16

that insignificant work is done in this area. Hence, the government of Ethiopia is expected to do something beyond adoption of legislative measures if it has to realize the right to education of children and young people living with podoconiosis at any point in time.

4.1.2. Availability, Accessibility, Acceptability and Adaptability of Educational institutions to Children and Young People Living with Podoconiosis

4.1.2.1 Lack of Educational institutions in nearby villages, and remoteness of schools from pupil's home

According to the ESCR Committee, functioning educational institutions and programmes have to be available in sufficient quantity within state party.³⁰³ For instance, school buildings and infrastructures with sanitation facilities, safe drinking water and trained teachers should be available. People living with podoconiosis predominantly reside in rural areas where educational institutions are inadequate or hardly available. As result, children and young persons with disease should make a long walks to school or stay at their relative's home which is nearby school. Most of the schools located in a place far away from pupil's home. Distance of the schools from pupil's home, coupled with physical difficulty associated with the disease, poses real challenges for children and young persons living with podoconiosis in exercising their right to education.

The school I am enrolling in is far from my home. It took me one hour and thirty minute on foot to get there. I have to walk slowly so as to avoid any pains. As result, I always arrive late and miss lectures. By the time I reach school, I feel so tired, sick and cannot follow the remaining lessons well. Some students move to urban areas, and rent house which is nearby schools. But I don't have such options. Because my parents are destitute who don't afford spending costs for my education. (In-depth interview informant, 14 year old female patient)

My girl is podoconiosis victim since she is 12 year old. She has been attending school which is about 3 kilometer away from our home. She found it difficult to walk long distance to school, especially in hot seasons. In those times, her leg increases swelling whenever she make long walk on foot. As result, she is often forced to miss some classes. One day she told me she doesn't want to go school

³⁰³ . General Comment No. 13, supra note 91, para.6.

anymore. She asked me 'dad, do you think I can make it, having this problem?' she was upset and said 'maybe I am not destined to be educated women'. I would love if I can educate her. I know the benefit of education for our girls. But I don't want her to suffer from the disease. Next year, she will move to other town where she can pursue her education without trouble. (FGD participant, father of 14 year podoconiosis patient)

Some FGD participants further explained why distance is a major hindrance to exercise right to education.

For those school-age children who live in remote rural areas, making a long distance to school is not as such a difficult task. But students with podoconiosis suffer a lot by taking long walk to school. Because walking long distance, and sitting for long hours in classroom brings swelling and pains. Podoconiosis victim children and young persons who live in rural remote areas are often forced to walk long distance on foot due to lack of secondary schools nearby their village. Most of them face challenges of completing secondary schools. They are not even as effective as their healthy peers. Because their foot condition coupled with the distance negatively interferes with their education. That is why most of them lag behind their peers in term of grade level and literacy rate. (FGD participant, social worker from Mossy Foot Association)

Participants at all the study sites repeatedly stated that educational institutions are not available for children and young people with podoconiosis who reside in rural areas. As result they are forced to walk long distance on foot, making regular school attendance very difficult. This clearly shows that existing educational institutions are not physically accessible for them. This is not compatible with the commitments Ethiopia entered under different international instruments to make schools physically accessible. For instance, General Comment 13 obliges state parities to create a convenient situation for children and young people living with podoconiosis and provide education within safe physical reach. Further, one of the missions of the ESDP IV *is expansion of access to general education through construction of more schools and class rooms with special emphasis on reducing the distance between schools and pupils*. However, a lot is expected from the ESDP IV to accomplish its mission.

4.1.2.2. Discrimination and isolation

In addition to this, the other dimension of accessibility that is education must be available to all without discrimination is not yet met in the case of children and young people

living with podoconiosis. Although, according to the FDRE Constitution and other international instruments adopted by Ethiopia such as UDHR, ICESCR, CRC, ACHPR and ACRWC, children and young people living with podoconiosis have to be treated equally with that of healthy peers in exercising all rights guaranteed in those instruments. However, the practices suggest the opposite.

My classmates don't like to sit beside me because of my swollen feet. Even if I always keep myself neat, and my feet don't have bad smell, they feel uncomfortable while approaching me. They don't allow me to participate in group assignments or class activities. They hesitate to lend me their materials like text books, books. No one wants to make me a friend. At break times, I am always alone because there is no one to talk with. Other students stare at me, and then say 'look, she is gedekita (a local term for mossy foot)'. It is so painful experience. You know people don't want to cooperate with a person like me. Of course, my teachers are nice to me. They express their sympathy, and always encourage me. (In-depth interview informant, 15 year old female patient)

My friends knew that I was a healthy child like them before my foot became like this. But they don't even feel comfortable to be with me. Most of them rejected me. Some bad students insulted and belittled me to the ground. Being podoconiosis patient is not my choice. Rather it is destiny. But no one understands that. I don't know why people treat me differently. I see the hatred some students felt for me from their action. They don't want to touch whatever I touched. Even junior students make fun of me. Because of these experiences I wanted to die than live like this. But I had no options except crying (in-depth interview informant, 16 year old female patient)

I am not feel free to play together with other students because they may insult me badly if I do something wrong. They call me bad names like 'tobiyawu' (derogatory name for 'swollen man'). So, I prefer to be alone. (In-depth interview informant, 13 year old male patient)

Several in-depth interview informants indicated that they don't want to report to their teachers or class representatives when other students insult or treat them badly; thinking that reporting exacerbates the problem. As result, students living with podoconiosis are at extra risk of being maltreated and abused by their peers. This further confirmed by FGD participant who shared his experience in the following manner

I have served as a guard in the local primary school before joining mossy foot project. During that time, I came to realize that children and young persons living with podoconiosis cannot exercise their right to education on equal basis with their peers. Because, beside health problem associated with the disease,

they face enormous challenges in schools such as healthy students snatches their educational material, beat, insult and make fun of them. Some others are victim of humiliation by their teacher who sends them out if their leg develops odd smell. You know what is sad, senior student with the disease are target of bullying and abuse by junior students who are healthy. Some students with the disease hide themselves even to extent that they feel ashamed when they are observed by other people. As result, they become shy and lonely. I don't think students with the disease will be successful unless those problems are addressed. (FGD participant, network group of Mossy Foot Association)

The above information indicates that the education system is not safe and protective for children and young people living with podoconiosis. They face various problems such as being isolated, insulted, discriminated and harassed by other students. This contradicts the CRC committee assertion that “*children do not lose their human rights by virtue of passing through the school gates*”. Being insulted, beaten and snatched of their educational material clearly interfere with their right to self-respect, dignity, bodily integrity and privacy which are guaranteed under the FDRE Constitution and international instruments adopted by Ethiopia. For instance, the CRC under Article 16 “No Child shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation, provided.....the child has the right to the protection of the law against such interference or attacks.” Similar obligation found under article 10 of the ACRWC, Article 17 of the FDRE constitution. Thus, the government has duty of protecting its citizen from attacks which interfere with their privacy, human dignity, reputation and respect; in practice children and young people living with podoconiosis encountering such violation of their right in their day to day activity.

Moreover, the national SHN strategy directed to improve “the quality of education by ensuring the development of child-friendly school environments”. Giving effect to this commitment requires that “all learning institutions shall provide safe psychosocial environment, where there is no tolerance of bullying, abuse and other forms of exploitation”. Despite all those promises, students with podoconiosis are still suffering a lot within learning environments. Therefore, the government has to work strongly in safeguarding the rights of children and young persons living with the disease since as result of their vulnerability they are highly exposed to such violations. In this researcher’s

view the government has to take all appropriate measures to change discriminatory behaviors. This in turn requires giving full effect to its obligation under international instruments such as Article 25 of ACHPR, Article 2(2) of ICESCR and its general comment No 20, Article 19 of CRC. Accordingly, state parties are obligated to adopt a range of measures in order to address discrimination. This includes legislative measures, awareness raising campaigns, human rights education which intended to address discrimination, and disciplining those students who insult and harass students with the disease etc.

4.1.2.3. School system is not acceptable and adaptable to educational needs of children and young people with podoconiosis

The CESCR has noted that education has to be flexible so that it can adapt to the needs of many different groups of pupil.³⁰⁴ In opposite to this, children and young persons living with the disease are often expected to fit into school system in term of course outline, teaching methodology and facilities. Most of children and young persons who are living with the disease indicated that taking part in strenuous sport activities or sitting in classrooms for long hours is really challenging for them because such things worsen their situation. On the other hand, the school community, particularly teachers don't understand the problem or hesitate to help student with those problems. For instance, sport teachers often enforce children with the disease to take part in sport activities just like normal peers.

While I was 9th grade student, my leg developed swelling and inflammation. As result, I could not take part in any sport activities. Having informed my problem to my sport teacher, I stopped attending sport class. I thought my teacher will help me. But, at end of the day, I got no-grade in healthy physical education subject. As result, I am forced to repeat class. (In-depth interview informant, 17 year female patient)

People don't understand my problem. Look, now my foot looks normal. But whenever I take long walk on foot or do strenuous activities, my foot gets bigger and develops wounds. Doing sport activities like running or push-up brings pain and wounds. One day, I approached my sport teacher and explained my problem. He replied 'you have to bring medical evidence'. I was really disappointed. Since that time, I often miss sport class when there is one.

³⁰⁴ . General Comment No 13, supra note 91, par. 6

I know this affects my grade. But I don't have other options. (In-depth interview informant, 15 year old male patient). Beside these, students living with the disease reported that they cannot cope up with school schedules because of the physical impairment associated with the disease.

One high school student who is a victim of podoconiosis shared his experience in the following manner:

I always wake up early in the morning to go to school so as to be on time but it takes me more than 3 hours to reach to my school. In the contrary the healthy students from my neighborhood only take 30-50 minutes to reach the same school. Always I arrive late for school and the teachers don't let me in to class. No one understands my problem. (In-depth interview informant, 16 year old male patient)

The other informant put in the following manner

I cannot walk as normal person because of the physical difficulty associated with the disease. I have been punished on several occasions for being latecomer. In one of the day, I am made to repair our school fences as punishment for being late. The other day I was ordered to bring building materials, which was unaffordable for me. From these moments onward, I don't want be late and punished but I could not stop it from happening. I have to walk slowly so as to avoid any pains.(In-depth interview informant, 13 year old male patient)

These demonstrate that education is not adaptable and acceptable for children and young people living with podoconiosis. Addressing and responding to the diverse needs of children might involve changes and modification in content, course syllabus, approaches, structure and strategies with a common vision that covers all groups of children. On the other hand, students who are victim of podoconiosis are forced to adapt to the schooling system put in place. Thus, they are forced to do sport activities which are not suitable for their health situation. Some others are victims of corporal and other forms of punishments for being latecomers. This is clearly against the commitments Ethiopia entered under different international instruments to ban all forms of punishments which are inconsistent with child's human dignity. It also proves violation of one facet of the acceptability of

education i.e. all aspects of school discipline must be consonant with the individual's dignity.³⁰⁵

In addition to this, most in-depth interview informants have revealed that school teachers send them out when their affected feet develops bad smell. In this researcher's view, this approach has the potential of discriminating, and excluding children and young persons from education. Perhaps one might argue that protecting the safety of a teacher and other healthy children in classrooms deserves equal attention.

However, one should bear in mind, that inclusive education cannot be realized without having inclusive schools and education systems. In this regard, it has been noted that "inclusive education is about putting the right to education into action by including all learners, respecting their diverse needs, abilities and characteristics and eliminating all forms of discrimination in the learning environments".³⁰⁶ Thus, the schools and education system at all should include, and respect the characteristics of children and young people living with podocniosis. Making education a reality for children and young people living with podocniosis necessitates adoption of an approach that gives them equal opportunity, facilitate access to, retention in and completion of education. In this researcher view invoking the concept of "reasonable accommodation"³⁰⁷ in the context of education of children and young people living with podocniosis would enable them enjoy their right in equal footing with their peers. Here 'reasonable accommodation' means any action that helps to alleviate a substantial disadvantage due to disease related conditions without imposing undue burden. For instance, schools can adopt arrangements like providing hygiene education for students with disease, giving them additional break times since the odd smells may relate to sitting for long hours in over-crowded classrooms. So, according to the researcher view, it is possible to accommodate the needs

³⁰⁵ . Beiter, supra note 88. See also Tomasevski K, supra note 98, p.14. Here, the former special Rapporteur argued that making education acceptable requires freedom from corporal punishment and all other forms of treatments which are inhumane or do not respect the dignity of learners.

³⁰⁶ . UNESCO document on Law and Policy Review Guideline, 2014

³⁰⁷ . The concept of 'reasonable accommodation' is explicitly dealt within the Convention on the Rights of Persons with Disability. The Convention directs state parties to ensure reasonable accommodation of individual requirements in provided in realizing the right to education. Similarly, the same concept shall be applied in order to promote equality and eliminate discrimination against persons with disability.

of children and young persons living with podocniosis, and educate them in integrated settings in mainstream educational institutions.

A bold step, which could serve as a blueprint for similar efforts in other contexts, has been taken by German Federal Constitutional Court in *Integrated schooling case*,³⁰⁸ where the court held the view that “disadvantages would, however, exist not only where the pupil is excluded from ordinary school although his education at the school concerned is possible without this placing a special burden on financial and human resources, but also where he is denied the opportunity to learn although his education at an ordinary school could be assured by taking additional measures, considered reasonable in the circumstance”. Thus, ensuring inclusive education obviously requires schools to take substantial measures to adapt to the needs of different groups of children. This is also the area the government has to work on for giving full effect to the right to education of children and young people living with podocniosis.

Another issue worth discussing at this point is that sending a student home because his podocniosis affected leg or foot developed odd smell worsens the prevailing problems like societal stigma against children and young people living with podocniosis. Such practice constitutes systematic discrimination, which is prohibited under article 2 sub-articles 2 of the ICESCR. Here, notes should be taken of the ESCR Committee concluding observations on the initial, second and third periodic report of the government of Ethiopia.³⁰⁹ The Committee recommended that the state party take steps to combat and prevent discrimination and societal stigma against persons belonging to marginalized and disadvantaged groups and ensure their enjoyment of the rights enshrined in the covenant, particularly, access to social services, health care and education.³¹⁰ Undoubtedly, children and young people living with podocniosis belong to marginalized or disadvantaged groups. Hence, discrimination against these groups within education sphere needs urgent action on the part of the government.

³⁰⁸ . Baitey, supra note 88, pp

³⁰⁹ . ESCR Committee, Concluding observations: on Ethiopia (E/C.12/ETH/CO/1-3)

³¹⁰ . Ibid, par 8

In this respect, the government should adopt measures like awareness raising campaigns and human right education which address discrimination issues. In most recent concluding observation,³¹¹ the CRC Committee recommended the reinforcement of adequate and systematic training of all professional categories working for and with children, in particular targeting law enforcing officials so that the provisions of the CRC convention is widely known by service providers. Teachers, including those in rural and remote areas are among the professionals who should be trained. Precisely, compliance with this recommendation will make a significant contribution in redressing the issues of children and young people with podocniosis. Nonetheless, practices suggest that this part of commitment is not yet turned into reality.

From the aforementioned discussions, it can be safely deduced that children and young persons living with podocniosis are not enjoying their right to education on equal basis with their peers. Despite government's commitment to ensure education which is available, accessible, acceptable and adaptable, in practice it is far from being discharged in the case of education of children and young persons living with podocniosis.

4.2. Barriers to the Enjoyment of the Right to Education of Children and Young Persons living with Podocniosis

As it has been discussed in the previous chapter, countries have obligation under various international instruments to respect, protect, fulfill and promote all human rights including the right to education. These in turn, call upon government to deal with legal, political, economic, social and cultural constraints that hinders the realization of the rights. Dealing with these obstacles is also very clearly a part of realizing the right to education in respect of availability, accessibility, acceptability and adaptability under General Comment NO. 13. Children and young people living with podocniosis are still confronting blatant educational exclusions. Thus, an educational opportunity is a pipedream for large number of children and young people living with disease. This section, therefore, devoted to discover in and out-of school barriers which children and

³¹¹ . CRC Committee, Concluding Observations: Ethiopia (CRC/C/129/Add.8, 2006)

young people living with podoconiosis faces in exercising their right to education. By doing this, the section answers one of the research questions regarding what the barriers are to the enjoyment of the right to education. Data on the study under this section was obtained mainly from in-depth interview with children and young persons with the disease who are not enrolling in schools and focus group discussion with parents and social workers.

4.2.1. Widespread Stigma and Discrimination against Children and Young People living with Podoconiosis

As the famous African Proverb goes “it takes a village to raise a child” and indeed the community in rural villages plays a significant role in the life of every child. Thus, the attitude and reaction of family, relative, neighbors and community in general strongly influence the life and development of the child. The same goes true for children and young people living with podoconiosis. Stigmatizing attitudes and discrimination against these groups of people often starts from family and neighborhood sphere. Community members overemphasize the limitations that the disease brings along and don't see the possibilities that every child has. Children and young persons with advanced stage of the disease are often assumed to be useless burdens to the family and the society in general. They are not treated well by the member of the community. Instead, they are subjected to different prejudices and meanings in all aspects of their lives.

Children from my neighborhood and people around my village do not treat me well. Some called me bad names. The other days, I have been insulted and beaten by children when I was fetching water. Sometimes I thought nobody was interested in me anymore. I never enrolled in school. I don't think I will go to school at any point in time. My mom prevented me from going to school because she feared that children may mistreat me there. I am sacred too. No one treats me like a human being even in my village. I am useless person. I don't even have the privilege of sick person. (In-depth interview informant, 12 year old male patient)

Children and young people who are victims of podoconiosis suffer a lot from rampant stigma and discrimination. Some of them cannot even undertake their daily life activities, let alone going school. They are victims of prejudice and stigmatization in their village. Children insults and make fun of them. Most children and young persons who are living with disease avoid public appearance including going school, fearing further stigma and discrimination. In some

circumstance, even their own parents' favors their healthy siblings because they are seen as better performing. People think that podoconiosis patient children cannot succeed in their education. So they consider educating them is only waste. This view discourages parents of the affected children from sending their children to school. (FGD participants, social worker in mossy foot)

Response from the study subject indicates that children and young people living with podoconiosis avoid schooling, fearing further stigmatization and prejudices. This is so true in the case of children and young patients with advanced stage of the disease. They cannot easily hide their situation from the public; therefore, they are victims of stigmatizing attitudes. The above situations notify that the widespread stigma and discrimination against people with the disease has a potential to undermine the enjoyment of the right to education. On the other hand, the FDRE constitution ensures “every Ethiopian national the right to equal access to publically funded social services”. Obviously, education is one of the publically funded social services which children and young persons living with podoconiosis have the right to get equal access like normal peers.

However, in practice majority of them are not getting access to education due to stigma and discrimination. This is not compatible with the commitment Ethiopia entered under different international instruments to prohibit discrimination in every context. As it has been discussed under the previous chapter, obligation of non-discrimination requires state parties to remove not only legal barriers but also factual barriers to the enjoyment of human rights.

Moreover, structural equality demands particular attention are given to vulnerable groups like children and young persons living with podoconiosis so as to realize equal enjoyment of human rights. In contrast to this, stigmatizing attitude and discrimination remains to be one of the most intractable constraints to the enjoyment of the right to education. This clearly transgresses the obligation that “States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination”.³¹² By the same token,

³¹² . General Comment No 20, supra note 174, para.8

in the recent concluding observations,³¹³ the ESCR Committee has expressed its deep concern about lack of anti-discrimination bill which helps to combat discrimination and stigma against disadvantaged groups like children and young people living with podoconiosis. To this end, the Committee has drawn the state party attention to its General Comment No. 20 on Non-discrimination in economic, social and cultural rights.³¹⁴

Therefore, the government of Ethiopia has to work hard in eliminating community-based stigmatizing attitudes and discriminatory practices which impedes the enjoyment of the right to education of children and young people living with podoconiosis. In this respect, besides adopting anti-discrimination bill, the government is under obligation to adopt additional measures³¹⁵ such as launching awareness creation campaigns intended to bring attitudinal changes among community members, promoting human rights education, and raising awareness about provisions of CRC convention among parents, children themselves and the community in general, especially in disease endemic rural areas. Otherwise the battle against discrimination would hardly be won.

4.2.2. Misconception about the Disease among the School Community

Widespread misconceptions held about the cause, communicability, prevention and treatment of the disease have been well-described in earlier studies. Consistent with the findings of the previous studies, majority of the school community held erroneous beliefs about the cause, communicability and effect of the disease. The current study revealed that teachers and the school community have limited knowledge about the disease.

Other children don't want to play with me. They don't want to touch whatever I touched. Even my best friends don't share me their pens or textbooks. They fear that the disease is contagious. That is why they hesitate to help me (In-depth interview informant, 14 year old male patient)

³¹³ . ESCR Committee Concluding observation, supra note 309

³¹⁴ . Ibid, para.8

³¹⁵ . ICESCR, Article 2 of ICESCR and General Comment No.3; CRC, Article 4 and Article 42 ; ACHPR, Article 25

I have seen many people who are 'gediyakita' (local term for the disease). I think the cause of the disease is parasites that enters barefoot and causes swelling of the foot and legs. I don't think it is a problem of school-age children. Because I never seen a school children who had the disease. Even if there is one, I don't think the disease affects learning as disability does. So, for me, podoconiosis is not as such as issue within learning environment. (In-depth interview informant, secondary school director)

I don't know the cause of the disease but I know that it is communicable disease. We don't exactly know the number of students living with disease in this school. But I think we have to identify them. This will be critical for the sake of protecting the healthy students and the rest of the school community. (In-depth interview informant, primary school director)

Data obtained from the informants indicated that the majority among the school community has limited knowledge or has no knowledge about podoconiosis disease and its impact on the enjoyment of education rights. Most of the respondents had misconception about the cause, communicability and consequence of the disease. This in turn, has the consequences of discriminating children and young persons living with podoconiosis from their peers. Previous studies have established that misconceptions are often accompanied by stigmatizing and unfavorable attitudes.

Podoconiosis is prevalent and well-known among the Wolaita community. However, very little known about podoconiosis and it's implication on student's academic life. One of the FGD participants has described the reason why in the following manner.

People think that the issue is not serious affair in the educational circle. Because podoconiosis is often thought be 'an adult disease' which affects only older people. But there is still good number of school-age children who suffer from the disease. Students living with disease often hide themselves from the school community. They do different things to prevent other people from recognizing their situation. For instance, they often wear wide and long trousers. I think this party the reason why it not common to see children with the disease in school. Nowadays, everyone knows about the impact of disability on exercising education rights. The school community understands their problems well and tries to help them. Even their peers respect them and show them sympathy. That is not the case for students living with podoconiosis. They are rarely understood by the school community. Other children and even school teachers perceive that podoconiosis is communicable disease. Moreover, most of the school communities have no knowledge about the burden of the disease, including its impact on the enjoyment of educational rights. Undoubtedly, this affects them greatly. (FGD participant, social worker from Mossy Foot Association)

This clearly demonstrates that the government of Ethiopia failed to be in compliance with its obligation under Article 12 of the ICESCR, particularly duty to provide education and access to information concerning the main health problems in the community including method of preventing and controlling them.³¹⁶ Low level of knowledge about the disease means that schools have limited potential in addressing the education need of children and young people living with podoconiosis. School teachers who have limited knowledge about the disease will less likely understand, and support students with disease. By the same token, misconceptions about the cause and communicability of the disease could cause exclusion and isolation of children and young persons living with the disease from educational activities. Thus, limited knowledge and misconception about the disease by the school community may act as barrier to the enjoyment of the right to education of children and young people living with podoconiosis.

In fact, this should have been worked on by government as it is obligated under international instruments³¹⁷ to promote health education and information campaigns regarding podoconiosis. Furthermore, state parties to ACHPR has obligation to promote rights and freedoms enshrined in the charter.³¹⁸ This requires the government to take steps such as awareness raising and education campaigns and human right education in order to address misconceptions accompanied by discrimination. Evidences suggest that the government is not discharging its obligation in the case of children and young people living with podoconiosis. Therefore, the researcher recommends that any intervention program must target this knowledge gap through education and awareness raising campaigns directed to the whole school community.

³¹⁶ . See General Comment No.14 supra note 298, para. 44

³¹⁷ . Ibid, par 36

³¹⁸ . ACHPR, Article 25. See also discussion on the State parties' obligation under Chapter 3, page 27-31. Similarly, CRC, Article 42 and 4 directs state parties to undertake measures of disseminating principles and provisions of the convention. Here, measures include incorporating human right education in school curriculum. This in turn has a paramount importance for protection of rights of children living with podoconiosis.

4.2.3. Financial Constraints

Podoconiosis is the disease of the poorest of the poor. Because the disease mainly affects poor and powerless people who don't afford buying shoes. Most of children and young people who are victim of the disease come from impoverished family. Subjects of the study unanimously indicated that poverty as a major hindrance to the enjoyment of the right to education.

My father died when I was a little girl. My mother is very poor woman. She doesn't afford buying books and pen for me. I was forced to drop out school at 4th grade because my mom couldn't pay the monthly school fee which was about 30 birr. I really want to go school but I don't have anyone who covers school related expenses. So, I decided to remain at home (in-depth interview informant, 12 year old female patient)

I stopped attending school because there is no one who supports me. My family is destitute. My father, who is also podoconiosis patient, doesn't make good money as result of disease related complications. He is not able to contribute to my education. He cannot buy me books and pen. Sometimes schools requests school maintenance levies, which is too costly for poor students like me. As result, I preferred to support my poor family than going school. This time around, I make little money by serving in neighborhood farmland. (In-depth interview informant, 14 year old male patient)

I have been bedridden because of podoconiosis. The disease affected my family, my life and my income. I don't afford sending my children to school. I am illiterate person but I know that education is good. But nowadays, education is too costly for needy people like us. I am supposed to buy not only books or pens but also shoes for my boy. Otherwise other students make fun over him because he has swollen foot. But all such stuffs are unaffordable for me. I am sad that my boy will be impoverished adult since he doesn't have educational opportunity. People living with podoconiosis including child patients are destined to be poor. You know we are not capable of farming, and do good money due to the disease. Most of us are struggling to survive. everyone here know the benefit of education and we are willing to send our children to school but our inability to afford sending our children to school is depriving them education. (FGD participant, father of podoconiosis victim child)

Most informants have indicated that they don't afford buying books or pens, paying school related expenses like registration fee, school maintenance levies and others. As result, a good number of children and young persons living with podoconiosis are denied access to education based on cost. On the other hand, the government of Ethiopia assumed obligation to remove financial obstacles to the enjoyment of the right to

education. In CRC committee's concluding observation on Ethiopia;³¹⁹ the committee expressed its deep concern about the charging of fees in primary education and recommended the government to ensure that primary education is free and compulsory. ESCR Committee took similar stand, and recommended primary education shall be free and compulsory for all children, in line with article 13 and 14 of the Covenant.³²⁰ However, podoconiosis patients who are in compulsory age range remained out of school due to educational costs. Thus, the government failed to discharge its obligation "*to introduce, as matter of priority, primary education which is compulsory and available free to all*". This also shows that the government failed to be in compliance with the national Education and Training Policy term which guarantees "*no tuition of any kind will be charged in general education (which includes both primary and secondary education)*".³²¹

According to the study subjects, and the researcher personal observation too, majority of children and young people living with the disease come from poor family or destitute who themselves are victims of podoconiosis. Thus, the majority of the families don't afford sending their children to school. Conversely, the ACRWC in its Article 11(3) (e) obliges member states to take special measures in respects of female, gifted and disadvantaged children, to ensure equal access to education for all section of the community. In this case too Ethiopia is under the obligation of taking special measure to make education accessible to disadvantaged children including children with podoconiosis. The measures might include making education available and accessible, eliminating any financial barriers that hinder this group of children from attending school, etc. Moreover, the government has also committed itself to give special attention to women and those who did not get educational opportunities in term of education support inputs in its national Education and Training Policy (Educational Structure No 3.7.7). Similarly, one of the areas of priority of ESDP IV is, improving educational participation of vulnerable or disadvantaged groups like children and young people living

³¹⁹ . CRC Committee, Concluding Observations, supra note 310

³²⁰ . ESCR Committee, Concluding Observations, supra note 309, par 26

³²¹ . See the discussion under 3.6.2 in chapter 3, page 62-63

with podoconiosis by providing special support such scholarship, financial and material. However, the practice shows that Ethiopia is far beyond reaching this goal.

Furthermore, the researcher noticed that a great number of children and young persons living with the disease, who remained out of school, are subjects of exploitation either by their parent or the community around them. Majority of them spend most of their time working in farmlands in order to support their poor family. This proves the assertion that “children who are not going schools are the victim of labor exploitation”. This is not compatible with the state obligation to ensure that communities and families are not dependent on child labor.³²²

4.2.4. Unfavorable School Environment

4.2.4.1 *Non-inclusive Learning Process*

Children and young people living with podoconiosis have the same right to education as all other children and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in international instruments adopted by Ethiopia. For this purpose, effective access of children and young people with podoconiosis to friendly school environment has to be ensured. Learning institutions should provide safe physical and psychosocial environment. Moreover, education should be participatory. In spite of this, children and young persons living with podoconiosis face enormous challenges in school which has the potential of denying the right to education. the students with the disease interviewed stated that the class room atmosphere is not friendly to learn.

I often sit at backside because it is a good place to hide myself from other students. I don't ask questions even if I don't understand what the teacher said. I rarely participate in any of class activities because I am afraid of being identified as podoconiosis patient. I fear the insults and harassments that may come after frequent exposure to the class. So, I don't feel comfortable in taking part in class activities. (In-depth interview informant, 16 year old male patient)

No one interested in me because I am a patient. My class mates don't allow me to join them in activities like class group works. I really find it difficult to be active student in class. I don't feel relaxed to ask questions, participate in class activities or do whatever the teacher orders to do due to my situation. I don't

³²² . General Comment No.13, supra note 91, para 55.

even have the freedom other students have. I cannot take part in school activities like club. You know other students think that I am not capable of participating in school life. There is no spontaneous invitation for me to join such activities. (In-depth interview informant, 14 year old male patient)

Data obtained from the subjects of the study revealed that students living with podoconiosis are not participating in education on equal basis with their peers. Majority of the informants (9 out of 11) mentioned that they don't take part in class activities such as asking questions, doing class works or doing what their teacher ordered to do, fearing further stigma. Some others stated that they are prevented from being active participant in class room activities as well as school life as result of enacted stigmas. Thus, students with podoconiosis don't participate in educational activities on equal basis with their peers without the disease. This is not compatible with the obligation of fulfilling the minimum core of right to education Ethiopia entered under ICESCR. Since, the ESCR Committee in its commentary No. 13, paragraph 57, stated that core obligation includes obligation to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis.

Furthermore, Ethiopia as signatory of CRC is obliged, under article 28 to make education available and accessible on 'the basis of equal opportunities'. Compliance with this commitment requires state parties to ensure equal treatment and prohibition of discrimination in education, which include the condition under which it is given. The CRC committee has further noted that failure to remove 'unsafe or unfriendly environment which discourage girl's participation' violates not only article 28 but also article 29 of the convention.³²³ The same thing can be said about limited participation of children and young persons living with podoconiosis in education. The school environment which discourages equal participation of students affected by podoconiosis has the effect of impeding access to educational opportunities. It also undermines the capacity of the child to benefit from educational opportunities. In fact, education makes possible "*the development of child's personality, talent and mental and physical abilities to their fullest potential*"³²⁴ when children are able to take full part in school life and achieve desired outcome from their experience. Therefore, in the researcher's belief,

³²³ . General Comment No.1, supra note 92, para.10

³²⁴ . CRC, Article 29(1)(a)

Education Bureau and school administrations of the zone are expected to work hard on this area if educational needs of children and young people living with podoconiosis are to be met at any point in time.

4.2.4.2. Adverse Physical Environment

Availability of water supply and sanitation facilities has profound implication on the enjoyment of the right to education of children and young people living with podoconiosis. Schools which has adequate water service would enable those students to remain at school without trouble because whenever their affected foot or leg develop odd smells, they can wash themselves and continue class. However, in this case from what the study participants indicated and with the researcher's personal observation too, these facilities are not available in most of the schools in the zone. This should have been worked on by the government as stated under ESDP IV that one of the objectives of the government is to increase water supply coverage in learning environments, construction of more sanitation facilities and integrating hygiene education in the curriculum. Furthermore, the government committed itself under SHN strategy to promote safe water and sanitation facilities in school and hygiene education. However, the practice shows that insignificant work is done on this area.

4.2.4.3. Widespread Bullying, Harassments and Abuse within School Settings

Data from study participants indicated that the negative psychosocial environment in educational settings is the major obstacle to the enjoyment of the right to education of children and young people living with podoconiosis. It has been seen that children and young people living with podoconiosis are at extra risk of being maltreated and abused by their peers due to their poor health status. These in turn, result in poor class room performance, repeated absenteeism and even complete drop out of school.

Sometimes I think I should give up learning because of the bullying and harassments I often experience in school. I don't feel free attending classes. Even children who are younger than me insult and make fun of me. Once, one of the students said 'I will put you to death striking your swollen foot'. That day I cried almost the whole day. It is so unbearable. I have already lost hope. I don't how I pursue my education this way. (In-depth interview informant, 14 year old girl)

I don't think our children have equal right to education like normal children. They are always targets of bullying and abuse as result of attending school. My little girl is suffering a lot in school. Once, she said 'why you gave birth to me'. I was shocked to hear that. You know she thinks it is a big mistake to have patient girl. But I cannot hate my girl. I cannot throw her away. The other day she told me that she don't want to go school because she couldn't stand the hatred and mistreatments anymore. I was discouraged to send her school. I want to educate her but I see it is really difficult and impossible at time. I don't have a power to stop other students from harassing her. All I can do is feeling sad. (FGD participant, mother of podoconiosis victim girl)

I know many podoconiosis victim children who stopped attending schools because of bullying and verbal aggression by their peers. Other students call them bad names like 'tobiyawu' (local term for swollen man). Students with the disease are often shy and afraid to be with other students. Most of them wear long and wide clothes in order to avoid being identified as patient. It is really difficult to learn in such hostile environment. You know the problem is the school administrations don't take any measure against bad students who insults and mistreats students with the disease. (FGD participant, social worker of Mossy Foot Association)

This explains that the negative psychosocial environment has an immense impact on the enjoyment of the right to education of children and young persons living with podoconiosis. Students with the disease are targets of bullying, verbal aggression and mistreatment in school settings.

Conversely, the government of Ethiopia is obliged, under article 19(1) of the CRC, to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect and negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardians or any other person who has the care of the child. By same token, the Committee in its recommendation³²⁵ devoted to violence against children in school, stressed that the state is responsible for prevention of all forms of violence against children, whether perpetrated by state officials, teachers or other children.³²⁶

Moreover, it has been conceded that such treatment could deny children their right to education as set out in article 28 and 29 of the convention. Thus, bullying, verbal

³²⁵ . CRC Committee recommendation on violence against children within family and school, supra note 222

³²⁶ . Ibid

aggression and harassment suffered by children and young persons living with podocniosis at the hands of other students give rise to infringement of various rights enshrined in CRC.³²⁷ In this regard, the government should have taken various measures such as adoption of legislative measures, awareness raising and education campaigns, human right education and repressive measures, like disciplining the perpetrator and reporting incident of violent acts. If these obligations were effectively discharged it is obvious that other students will not mistreat students living with podocniosis so that the latter will enjoy their right to education without any trouble.

4.3. Efforts toward Improving the Right to Education of Children and Young People living with Podocniosis

Ethiopia is a member state of various international human rights instruments which recognize the right to education of children and young persons living with podocniosis. Besides this, the government has adopted policies, strategies and programs which give effect to the international commitments toward the right to education. Undoubtedly, effective implementation of ESDP IV and SHN strategy has critical importance for full realization of the right to education of children and young persons living with podocniosis.

When asked about the current efforts of the government toward education of children and young people living with podocniosis, one of the key informants from Wolaita Zone, Education Bureau said that as the guiding conviction of the current education policy is “Education for All” and the education abstract shows that school enrollment rate at all level of education is increasing, primary education is free, the government has adopted the policy of constructing schools in each of Kebele in order to reduce the distance of school from pupil’s house, etc it is good to realize the right to education of all including children and young people living with podocniosis. The key informant is of view of that though the government is not taking special measures regarding education of children and young persons living with podocniosis, the overall efforts of the zonal government in

³²⁷ . The same act may constitute violation of CRC, Article 16 (1)(2), Article 19 (1), 37(1), and 28 & 29

achieving the ESDPIV will likely to attain educational needs of children and young people living with podoconiosis.

The same view is shared by the other key informant from the Wolaita zone, Women, Children and Youth affair Bureau:

Personally, I know that there are a number of people living with podoconiosis in this zone. Though there is not specific program undertaken regarding this segment of the society, the policy and programs put in place address the issues of these people indirectly, if not directly. For instance, our bureau has OVG (Orphans and Vulnerable Groups) division which works on the issue of children and young people who cannot attend schools or realizes socioeconomic needs due to their status of being orphan or vulnerable groups. Currently, the Zone is dealing with 50,000 OVC. Obviously, the issues of children and young people with podoconiosis disease will be addressed under this division since they are vulnerable because of their health situation. The zonal government provides assistance to the most destitute family who don't afford sending their children to school through giving learning materials, like books and pens and giving scholarships. I hope children and young people will benefit from these programs on equal basis with other citizen. (Key Informant Interview, children and youth affair division of Wolaita zone Women, Children and Youth Bureau)

These arguments seems convincing to certain extent, however it should be noted that realizing or achieving equal enjoyment of human rights of certain groups of the population requires additional efforts or special treatment.³²⁸ This view has a solid base in international human right instruments which direct state parties to accord special attention or adopt additional measures with regard to vulnerable groups like children and young people living with podoconiosis. For instance, as per Article 2(2) of ICESCR, effective enjoyment of Covenant rights may require *paying sufficient attention to groups of individual which suffer persistent prejudice*.³²⁹ The ESCR Committee repeated this view in its General Comment No 13, by inferring that state parties are expected to take temporary special measures so as to bring about de facto equality for disadvantaged

³²⁸ . In human right sense, certain population groups often encounter discriminatory treatment, hence, need special attention to avoid potential exploitation. That is why adoption of additional human rights instruments other than instruments of universal nature is found to be critical. For e.g. CRC, CPRD, CEDAW intended to address specific needs of subjects of each instrument.

³²⁹ . General Comment No 20, supra note 174, para.8

groups with regard to the right to education.³³⁰ Thus, actual enjoyment of human rights of vulnerable or disadvantaged groups often calls for additional efforts on the part of state parties. This is clearly evident from the case of children and young people living with podoconiosis who are not effectively benefiting from education system of Ethiopia, hence, make up one of the disadvantaged groups. Here, it should be recalled that the government is obliged to take special measures in respect of disadvantaged children including children with podoconiosis to ensure equal access to education for all section of the community.³³¹ However, the reality suggests that children living with podoconiosis are still facing difficulties of access to schooling due to lack of specific action regarding their education.

In fact, as it is mentioned by interviewees from concerned government bodies, the overall efforts and achievements regarding the educational policy such as increasing enrollment rate, the building of more new schools in all kebeles in Wolaita Zone enhances and expands educational opportunities of all including children and young people living with podoconiosis. Nevertheless, in the researcher's opinion, these efforts are not enough, and the government has to observe its obligation of taking additional measures regarding education of children and young people living with podoconiosis otherwise actual enjoyment of the right remains a pipedream.

In contrast, evidences revealed that education of children and young people living with podoconiosis has received little attention on the part of Wolaita zone administration, education bureau and other stakeholders. The same view shared by the key informant interviewee.

It is true that education of children and young people living with podoconiosis has got very little attention on the part of the government. This may be related to lack of reliable data on the prevalence rate and socioeconomic impact of the disease in the zone. Most of us in government office have little information about the disease. Personally, I thought that podoconiosis is contiguous disease. I remember few years ago I had a friend who is affected by the disease. I didn't know that he had the disease for years. But in one of the day, I came to realize that the guy had swollen legs. Honestly, since that moment

³³⁰ . General Comment No.13, supra note 91, para. 32

³³¹ . ACRWC, Article 11(3)(e)

onward, I didn't want to share anything with him. I don't like to touch whatever he touched because I feared that the disease is communicable. You see how the stigmatizing attitude develops. I think that a lot of people held stigmatizing attitudes like I do. Obviously, the belief that the disease is contagious could make the communities avoid people living with the disease. In this regard, I think that a lot remains to be done. I know that there is NGO working on this area. But we should bear in mind that the government has not totally ignored podocniosis and persons living with the disease. I believe that our current policy and programs on education sector will address the issues of children and young persons living with podocniosis. For me, what is left is that the NGO deals with the issues of people living with the disease should work in cooperation with government bodies and stakeholders. The NGO should give information on the prevalence rate and socioeconomic impact of the disease including its impact on the enjoyment of education. Therefore, it would be possible to identify the area of intervention on the part of government bodies including out bureau. (Key informant interview, child and youth affair division of the Wolaita Zone Women, Children and Youth affair)

Response from the study subject revealed despite the fact that the disease is more prevalent than infectious diseases such as HIV/AIDS and malaria, there is still lack of reliable data on the prevalence rate of the disease among school-age children, and socioeconomic impact of the disease, particularly in relation with enjoyment of human rights. This is not compatible with the state obligation under article 25 of the ACHPR, which requires state parties to promote the rights enshrined under the charter. State party's obligation under this provision includes teaching, education and publications regarding enjoyment of rights including the right to education which is provided in article 17 of the Banjul Charter. Obviously, collection and dissemination of data on the state of the right is part of promotion. Furthermore, collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation within the context of article 4 of the CRC. Accordingly, the government has to collect sufficient and reliable data on children living with podocniosis, and enjoyment of their rights especially the right to education.

In conclusion, in order to fully ensure that children and young people living with podocniosis are enjoying their basic right to education, the government should have worked much more than what is done so far. Thus, the government should make

additional efforts such as awareness raising campaigns and human right education which address discrimination of these groups in education, accessing health education and information regarding podoconiosis to communities and schools in endemic areas of the zone. Further, special measures like adoption of school anti-discrimination guideline which address podoconiosis related issues and disciplining of perpetrator etc would play a pivotal role in efforts to improve the right to education. This means, what is inked on papers should be converted to the ground in concrete and tangible manner allowing children and young people living with podoconiosis realize their education right.

To further strengthen the above discussion and balance the information gathered, key informant interview is also made with two concerned persons from the NGO actively participating on the issue of people living with podoconiosis. This is Mossy Foot Treatment and Prevention Association. In this regard the key informant interviewees from the association mentioned that:

For the last ten years, the problem facing people living with podoconiosis is left to Mossy Foot association only. I don't know why the government thinks it is only our issue. The disease affecting the health, education and social aspects of great number of individuals should have been the issue of government. But that is not the case for podoconiosis, which is yet to be seen seriously. (Key Informant Interview, Mossy Foot Association Project manager).

Moreover, the Mossy Foot Association social worker head told this researcher that:

I think there is a lot remains to be done on the part of the government in order to ensure that children and young people living with podoconiosis exercise their right to education on equal basis with their peers without the disease. Students with disease still face enormous challenges in the school environment including bullying and discrimination. The association is not able to achieve its goal of preventing the disease through shoe wearing promotions. When we give shoes to those children and young people who are at great risk of being afflicted by disease or at early stage of the disease, most of them don't wear the shoes, rather throw them away. You know what the reason. They cannot wear 'Mossy foot shoes' at schools due rampant stigmas and discrimination in school environment. Other children make fun over or mistreat children and young people who wear those shoes. But, the government even could not take measures against stigmatizing attitudes. I don't why the government is so negligent in the podoconiosis case. (Key Informant interview, Mossy Foot Association)

The key informant interviewees have revealed that the government has not engaged actively on issues concerning people living with podoconiosis. Thus, addressing podoconiosis related issues is mainly remained to be NGOs affair. This is clearly against human right sense, and international human right instruments³³² which proclaim that states have principal obligations regarding implementation of the commitments entered in those instruments. Moreover, Article 13 of the FDRE Constitution has clearly stipulated that all federal and state legislative, executive and judiciary organs at all levels shall have the responsibility and duty to respect and enforce the provisions in chapter three, which includes article 36 (Rights of Children). Dealing with the issues of people living with podoconiosis in general, and children and young people with the disease in particular, is primarily government business. In our case, the government has to observe its obligations emanates from UDHR, ICESCR, CRC, ACHPR and ACRWC provisions pertinent to right to education. Accordingly, the government has four level of obligation, i.e. obligation to respect, to protect, to fulfill and promote availability, accessibility, acceptability and adaptability of education. Nevertheless, data collected from the study subjects has made it clear that the government has put a little effort with regard to education of children and young people living with podoconiosis. Therefore, the government has to do more to be line with its international obligations.

Though implementation of rights enshrined in international instruments is principally obligation of member states, NGOs and civil societies have responsibility in realizing rights. In light of this, the CRC Committee in its General Comment No.5 on the nature of state party's obligation under the CRC reiterated that state parties to the CRC have duty to facilitate environment which enable NGOs and Civil Societies to engage in realization of CRC rights.³³³ Accordingly, MFTPA engaged in activities which contribute to improvement of the human rights situation of children and young people living with

³³² . In almost all international instruments such as UDHR, ICESCR, CRC, ACHPR member state are chief provider of the rights guaranteed in respective documents. For e.g. ICESCR, Article 2, CRC, Article 4 , ACHPR, Article 1, all talk about state obligation

³³³ . General Comment No 5, supra note 181, para.56. See also General Comment No.14 where ESCR Committee noted that “While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities regarding the realization of the right to health”.

podoconiosis. When asked about the role of their organization plays toward realizing the right to education MFTPA project manager and social worker head stated that they are working on awareness creation and education campaigns which targets people living with the disease. The organization plays pivotal role in promoting health educations and awareness creations which likely eliminate fear of further stigmatization among podoconiosis patients. As it has been seen from the data collected from study participants, fear of further stigmatization among children and young people living with the disease has been found to be barrier to the enjoyment of the right to education.³³⁴

More recently, the Association took bold steps by committing itself to conduct awareness-raising and education campaigns about podoconiosis at community level. Accordingly, it intended to work in cooperation with government institutions such as Zonal Administration Bureau, Zonal Agricultural Bureau and Wolaita zone Education Bureau. In this regard, awareness raising and education campaigns will be launched about the cause, prevention and prevalence rate of the disease, in schools of disease endemic areas of the zone. This in turn, has a profound implication for realization of the right to education of children and young people living with podoconiosis, since one of the major challenges in realizing the right to education is lack of awareness among most of the community of Wolaita. Thus, the organization stressed the need for awareness creation campaigns in order to prevent the disease and disease related socioeconomic burdens.

By the same token, the National School Health and Nutrition Strategy (2012) also recommend that promotion of skill-based health and nutrition education in schools. Here, it has been conceded that provision of skill-based and factual information to promote attitudes, values and skills with regard to physical and mental health in school environment is more effective and plays pivotal role in preventing diseases such as podoconiosis, since such education has spill-over effects on the children's families and the surrounding communities with regard to knowledge, attitude and practice about the disease.³³⁵ In the context of podoconiosis, this means that educations campaigns which

³³⁴ . See the discussions under section 4.2 of this chapter, pp 82-92

³³⁵ . School Health and Nutrition Strategy, *supra* note 290, p 15

will be conducted in school environment have a great potential of changing stigmatizing and unfavorable attitudes prevalent in the general community.

Beside this, currently, there is a move to recognize podocniosis as one of disability. This has significant role in protection and promotion of the rights of people living with podocniosis. The researcher fully concurs with the argument that podocniosis should be treated as disability. First and for most, the most relevant international instrument in the case of disability, Convention on the Rights of Persons with Disability (CRPD), submits that “*disability is evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others*”. Hence, there is no reason why podocniosis which is often associated with physical impairment and attitudinal problems, treated as disability. By now, disability has got considerable attention on the part of the government and policy makers. Thus, including podocniosis in disability list will heighten the focus on issues of people living with the disease. For instance, adequate attention will be devoted to the health, education and social causes of people living with the disease. Among other things, they will benefit from international as well as national protections granted for people living with disability in general. CRPD set out provisions which are well-suited to realize the right to education of children and young people living with podocniosis. For instance, Article 9 which deal with accessibility issues and article 24 (2) (c) on provision of reasonable accommodation in the context of education will make significant contribution to address in and out-of-school barriers which impede children and young people from enjoying their right to education. Furthermore, Article 8 (awareness-raising) is highly important to address stigma and discrimination, and misconception about the disease. In addition to these, Article 25 (health) has fundamental importance in addressing podocniosis related complications. Treating podocniosis as one of disability, therefore, would enable children and young people living with podocniosis, to fully and effectively realize their right to education.

In general, it may be concluded that the government has put little efforts in realizing the right to education of children and young people living with podocniosis. As result,

children and young people living with podocniosis are among those learners who are still out of school or who attend school but who are excluded from actual learning, who may not complete the full cycle of primary education. The main reasons behind are lack of awareness of most of the society about podocniosis, lack of reliable data about the status of children and young people living with podocniosis and their educational needs, inaccessible and inadequate number of schools.

Finally, the study participants were asked to suggest any possible solutions to improve enjoyment of the right to education, majority of them said that the government should give sufficient attention to children and young people living with podocniosis, awareness raising and education campaigns should be made, and school infrastructures should be made accessible to children and young persons with the disease. Furthermore, the parents considered that the role of the school community will be paramount in encouraging parents to send their children and young who are victims of podocniosis. Thus, they suggest that school environment should be friendly, and school administration and teachers should support students with the disease. In the researcher's view too, realizing the right to education of children and young people living with podocniosis requires something beyond putting laws, policies or programs in place. Otherwise the guiding principle '**Education for All**' will hardly be achieved.

CHAPTR FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

This chapter exclusively focuses on summarizing major findings, drawing of conclusions and feasible recommendations.

5.1 Summary of major findings

The purpose of this research is to assess the realization of the right to education of children and young people living with podoconiosis in Wolaita Zone. To this end, as indicated in Methodology section, the study is entirely qualitative and employed multiple methods such as Focus Group Discussions (FGD), In-depth Interview (IDI) and Key Informant Interview (KII). Whereby responses are interpreted and analyzed accordingly.

The findings of the study attained from the data are as follows:

- The study reveals that disease related illness and complications are the cause of absenteeism, poor educational performance, repetition and complete drop-out of school.
- The study discloses that schools in Wolaita zone are not physically accessible for the great majority of children and young persons living with podoconiosis. And schools are not available for the majority of them residing in rural areas.
- The study finds out schools in Wolaita zone are not acceptable, and adaptable to the needs of children and young people living with podoconiosis.
- The study indicates that most of students with disease don't have access to safe and sanitary school environment.
- The study reveals that majority of students living with podoconiosis are victims of abuse and maltreatment at the hand of other students within educational settings.
- The study discloses the fact that students with the disease are not taking part in educational and school activities
- The study comes up with the finding that school environments are not friendly to children and young persons living with the disease

- The study reveals that widespread stigma and discrimination and financial constraints are major challenges to the enjoyment of the right to education
- The study comes up with the result that majority of the school community have misconception about the disease and unfavorable attitude towards children and young persons with the disease.
- The study indicates that there is favorable legal and policy environment for realization of the right to education of children and young people living with podoconiosis

5.2. Conclusion

Education is a fundamental human right, and the foundation for a more just and equal society. It gives individuals a better chance for full, healthy and secure future. Education holds important place in international as well as domestic laws. Ethiopia has put in place Education Policy, Programs and Strategies which are relevant to realization of the right to education of children and young people living with podoconiosis. Moreover, Ethiopia is a member state of numerous international instruments that recognize the right to education as a fundamental right. Accordingly, children and young people living with podoconiosis have a right to education, which include available, accessible, acceptable and adaptable educational services.

However, it is one thing to have a human right enshrined in legal instruments and protected by policy framework, yet another to have it realized by the intended beneficiaries. Consequently, children and young people living with podoconiosis have been deprived enjoyment of their right to education on various fronts. The government failed to take adequate measures toward podoconiosis disease which is negatively affecting learning and educational outcomes. Disease related complications interfere with education of children and young people living with podoconiosis. As result, the vast majority of them forced to loss considerable number of school days, repeat or drop-out of school. Moreover, most of the schools in endemic areas of Wolaita zone are not physically accessible to children and young people living with podoconiosis. These schools are not even acceptable, and adaptable to educational needs of children and

young people living with podoconiosis. Students with the disease continue to experience subtle, if not overt, discrimination in the form of limited educational participation.

In addition, many factors, including financial constraints, stigma and discrimination associated with the disease, widespread misconception about the disease among the school community and unfriendly school environment, all exacerbate the problem of the realization of the right to education of children and young people living with podoconiosis. Though there are overall improvements in the education sector of Ethiopia in term of increasing enrollment rate, infrastructural developments etc, it comes to nothing in the context of realizing education rights of children and young people living with podoconiosis in Wolaita Zone. Because children and young people with podoconiosis are still among a majority of those left behind and excluded from education. Hence, making education reality for these groups requires government to adopt additional efforts, including giving full effect to the obligation emanates from the right to highest attainable standard of health, awareness-raising campaigns and human right education which address widespread discrimination and societal stigma against these groups. Apart from this, treating ‘podoconiosis’ as one of disability, and invoking rights and corresponding state obligations enshrined in CRPD would enable children and young people living with the disease, to fully and effectively enjoy their human rights including the right to education.

Though there are positive efforts undertaken by non-governmental organization, the government has put insignificant efforts in realizing the right to education of children and young people living with podoconiosis. As result, they are denied access to education on equal basis with others. This is against the minimum core obligations on the right to education, i.e. to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis and availability, accessibility, acceptability and adaptability of primary education. Furthermore, it indicates the scope of the challenges lying ahead in attaining ‘**Education for All**’ commitments. Therefore, the government has still a long way to go with regard to full and effective realization of the right to education of children and young people living with podoconiosis who have endured marginalization for a long time.

5.3. Recommendation

In order to address the issues discussed in this study and for effective implementation of right to education of children and young people living with podocooniosis in Wolaita zone, the following recommendations are made:

- Recalling that the state has duty to provide education and access to information concerning the main health problem in the community, including methods of preventing and controlling them under article 12 of ICESCR, the government shall promote health education and information about the cause, communicability, prevention of podocooniosis in Wolaita zone.
- Cognizant of the fact that SHN strategy directs concerned government bodies to ensure school curriculum integrates major health challenges, the Ministry of Education (MOE) in collaboration with Ministry of Health (MOH) should ensure the school curricula address podocooniosis related challenges of school-age children. In light of this, schools in the disease-endemic areas of Wolaita Zone should adopt measures which aimed at preventing podocooniosis. This includes providing health information about the cause, communicability, prevention of the disease. Students with the disease and the entire school community shall be taught on foot hygiene, and encouraged to wear shoes for preventing the disease. Moreover, schools should deliver simple school-based health services with regard to podocooniosis, such as providing counseling services to students with the disease who suffer from stigma induced stress, visit by health workers (MFTPA site health workers) and creating anti-podocooniosis clubs in every school of endemic areas. To this end, linkage shall be promoted among the health sector with school activities. Especially, schools in endemic areas of Wolaita Zone should work in cooperation with MFTPA site workers.
- Recognizing that the state obligation of making education available includes provisions of safe drinking water and sanitation system, the Ministry of Education (MOE) in collaboration with Ministry of Health and Water Resources should work toward ensuring schools which equipped with improved water services, and hygiene facilities.

- Bearing in mind that the government has obligation to take appropriate measures to protect the child from all forms of mental and physical violence, maltreatment and abuse, School guidelines and strategies shall be put in place to ensure safe and secured physical environment and positive psychosocial environment. This should be made possible by adopting repressive measures like disciplinary measures against students who mistreats students with the disease. Students with the disease should be empowered, so that the capacities can be used as an effective response against maltreatments and abuses.
- Recalling that Children and young people living with podoconiosis have right to accessible and available education, the government should make schools physically accessible and available i.e. the number schools should increase in rural remote areas.
- Recalling that the state is under obligation to encourage regular school attendance, and reduce drop-out, government should work on increasing the school enrollment rate of children and young persons living with podoconiosis.
- Cognizant of the fact that hostile school environment threatens equal access and opportunity to education, government has to ensure development of friendly school environment for children and young people living with podoconiosis by making schools convenient and comfortable in order to enable those groups attain the best advantage from education.
- Recognizing that the state has duty to address discriminatory practices through adopting a range of mechanisms, the Government, NGOs, and stakeholder should work on awareness creation campaign which targets the school community as whole, parents of children and young people with the disease (so that they send their children and young people to school), the society at large to tackle discrimination and stigma against children and young people living with podoconiosis in exercising their right to education. Here, any successful response to stigma and discrimination needs to target the knowledge gap among the school community and the society at large. This includes making sure that the community clearly understands what podoconiosis is, how it is not transmitted, how it is prevented and how it is treated.

- Considering the role of mass media in relation to actual implementation of rights, the government should encourage mass media involvement in awareness-raising and education programs about the disease, such as radio programs on the disease, preparing pamphlets, brochures about the disease, which will be made available in schools of disease endemic areas of the zone.
- Bearing in mind the state obligation flows from article 4 of the CRC, the zonal government should come up with reliable, detailed and researched data about the status of children and young people living with podoconiosis in Wolaita zone and their educational needs. Hence, it is possible to provide the best service for children and young people with podoconiosis with respect to “right to education”.

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Interviews

Interview made with *Ato Mathiwos Hilla* , head of Social Worker, , Mossy Foot Treatment and Prevention Association (MFTPA) 10 Jan, 2015, Wolaita Sodo.

Interview with *Ato Yoseph Mana*, Director, Mossy Foot Treatment and Prevention Association (MFTPA) 13 Jan, 2015, Wolaita Sodo.

Interview with *Ato Demise Demeke*, Head of Child and Youth affair, Wolaita Zone Women, Children and Youth Affair 16 Dec, 2014, Wolaita Sodo.

Interview with *Ato Bogale Buchee*, Head, Woliata Zone Education Bureau, 14 Dec, 2014,Wolaita Sodo.

Appendix 1- Interview Guide One: In-depth Interview Guide with Children and Young People Living with Podoconiosis: Enrolling in schools

Purpose of this interview is to find out to what extent the right to education realized in the case of children and young people living with podoconiosis in Wolaita Zone. It is used for a partial fulfillment of LLM. Thus, your contribution has paramount importance for the quality of the paper.

Confidentiality is guaranteed, so please answer questions openly and freely.

I thank you in advance for your cooperation

Sex.....

Age.....

Grade.....

1. Do you regularly attend school or class?
2. How did you find the school environment? Is it friendly to learn or not?
3. Do you actively participate in educational activities like classroom activities, asking question you don't understand, class works, group discussion etc?
4. Do you take part in the school activities such as clubs, parents day celebration, etc same like your friends?
5. Do you face any problem at school? If yes, what are these problems and the causes?
6. How does your school community perceive you?
7. How is your relationship with other peers without the disease?
8. Are school services accessible for you? For instance, latrine, water?
9. Is the school far from your home? How do you travel to school? In the way to school do you face any problems? If yes, please mention some?
10. What changes do you think should be made in the future, at your school, to improve quality and accessibility of education for you?

Appendix 2- Interview Guide Two: In-depth Interview Guide with Children and Young People Living with Podoconiosis: Out of School

Purpose of this interview is to find out to what extent the right to education realized in the case of children and young people living with podoconiosis in Wolaita Zone. It is used for a partial fulfillment of LLM. Thus, your contribution has paramount importance for the quality of the paper.

Confidentiality is guaranteed, so please answer questions openly and honestly.

I thank you in advance for your cooperation

Sex.....

Age.....

1. Do you know that you have the right to education on equal basis with your peers?
2. Is the school available, accessible to you?
3. What are the challenges that made it difficult for you to access schooling?
4. How the disease does affect your life?
5. How does the community treat you?
6. What possible changes do you suggest in order to enable you enjoy the right to education?

Appendix 3- Interview Guide Three: In-depth Interview Guide with School Directors

Purpose of this interview is to find out to what extent the right to education realized in the case of children and young people living with podocniosis in Wolaita Zone. It is used for a partial fulfillment of LLM. Thus, your contribution has paramount importance for the quality of the paper.

Confidentiality is guaranteed, so please answer questions openly and honestly.

I thank you in advance for your cooperation

School level..... Age..... Sex.....Educational level.....

1. What is your understanding about podocniosis?
2. How many students living with the disease are enrolled in the school?
3. Do you think children and young people living with the disease are exercising their right to education on equal basis with their peers?
4. Do students with the disease get adequate access to school services such as library, water, clinics etc? If no, what is the problem?
5. Do students with the disease participate in school activities such as clubs, games, sports etc?
6. Do they take part in educational activities on same base with their peers?
7. Do you think education is acceptable and adaptable to children and young people living with podocniosis? For instance, in term of teaching methodology, course syllabus, schedule or school program?
8. What problems do students with the disease face in school domain?
9. How do you describe the relationship of students with the disease with their peers, teachers, school administration and the school community as whole?
10. How do you support children and young people living with the disease in realizing their right to education?
11. What solutions do your recommend to make the school more accessible and friendly to children and young people living with podocniosis?

Appendix 4- Interview Guide Four: Key Informant Interview with Concerned Government Body

Purpose of this interview is to find out to what extent the right to education realized in the case of children and young people living with podoconiosis in Wolaita Zone. It is used for a partial fulfillment of LLM. Thus, your contribution has paramount importance for the quality of the paper.

Confidentiality is guaranteed, so please answer questions openly and honestly.

I thank you in advance for your cooperation

1. What do you know about podoconiosis and its impact on education?
2. Do you think that the Education and Training policy and other strategic programs of Ethiopia effectively address the issue of right to education of children and young people living with podoconiosis?
3. How do you evaluate the implementation of the right to education of children and young people living with podoconiosis?
4. What do you think are the major challenges in realizing the right to education of those groups?
5. Is there any work done in collaboration with schools or stakeholders in improving the implementation of the right to education of children and young persons living with podoconiosis in the zone?
6. Is there any plan in future for effective realization of the right to education of children and young people living with podoconiosis?

Appendix 5- Interview Guide Five: Key Informant Interview with Concerned NGO

Purpose of this interview is to find out to what extent the domestic laws and international treaties pertinent to the right to education realized in the case of children and young people living with podoconiosis in Wolaita Zone. It is used for a partial fulfillment of LLM. Thus, your contribution has paramount importance for the quality of the paper.

Confidentiality is guaranteed, so please answer questions openly and honestly.

I thank you in advance for your cooperation

1. Do think that education of children and young people living with podoconiosis has given adequate attention on the part of the government or policy makers?
2. What do you think are the major challenges children and young people living with the disease face in exercising their right to education on equal basis with their peers?
3. What is the role of your organization in realizing the right to education of this segment of the society?
4. What possible recommendation your organizations suggest in order to realize the right to education of children and young persons living with podoconiosis?

Appendix 6- Focus Group Discussion: Families of Children and Young People Living with Podoconiosis

Purpose of this discussion is to find out to what extent the right to education realized in the case of children and young people living with podoconiosis in Wolaita Zone. It is used for a partial fulfillment of LLM. Thus, your contribution has paramount importance for the quality of the paper. Confidentiality is guaranteed, so please discuss openly and freely.

The FGD discusses on the following main topics

1. Do you know that your children and young people living with the disease have the right to enjoy education rights on equal basis with other health children?
2. Do you think that learning will benefits children and young people with the disease?
3. Are there any problems children and young people living with podoconiosis face while exercising their right to education?
4. What are the major factors that impede the children and young people from accessing education?
5. What changes should be made in order to make children and young living with the disease enjoy their right to education on equal basis with their peers?

Appendix 7- Focus Group Discussion: Social Worker and Network group of Mossy Foot Association (mixed)

Purpose of this discussion is to find out to what extent the right to education realized in the case of children and young people living with podoconiosis in Wolaita Zone. It is used for a partial fulfillment of LLM. Thus, your contribution has paramount importance for the quality of the paper. Confidentiality is guaranteed, so please discuss openly and freely.

The FGD discusses on the following main topics

1. Do you think that education right issue of children and young people living with podoconiosis has got adequate attention?
2. How the disease does affect daily life and enjoyment of the right to education?
3. How does the community perceive children and young people living with podoconiosis? What is its implication on the enjoyment of their right to education?
4. What problems do children and young people living with podoconiosis are encountering in realizing their right to education?
5. What possible improvements should be made so as realize the right to education of children and young people living with podoconiosis fully and effectively?

Annex- I

Photos of Children and Young Persons living with Podoconiosis



1.1 a picture of 16 year old boy with advanced stage of the disease



1.2 A picture of 12 year old boy with early stage of the disease.