

**ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
FACULTY OF LAW**

**IMPLEMENTATION OF THE SOCIO-ECONOMIC
RIGHTS OF THE CHILD IN ETHIOPIA: WITH
PARTICULAR EMPHASIS ON THE RIGHT TO
HEALTH AND EDUCATION**

BY: ABDULJEBAR ABDULAH

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT FOR
THE REQUIREMENTS OF THE DEGREE OF MASTER OF
LAWS (LLM) IN HUMAN RIGHTS LAW
ADDIS ABABA UNIVERSITY, FACULTY OF LAW**

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APPROVAL SHEET

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CHAPTER ONE: INTRODUCTION

1.1 Background of the Study

The enjoyment of all human rights by all human beings irrespective of age, sex, language, race or any other contingent circumstances is a universal human rights principle and hence, children, as much as adults, are covered by the existing human rights treaties, by the mere fact that they are human beings. The socio-economic rights also called economic and social rights (ESR) as fundamental human rights are recognized in numerous international human rights instruments. For instance, the Universal Declaration of Human Rights (UDHR) of 1948 states under Article 15 that every one has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services. The International Covenant on Economic Social and Cultural Rights (ICESCR) of 1966 provides in Article 13, the right of every one to education. Moreover, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 1979 also provides various socio-economic rights and requires States Parties to eliminate discrimination in the enjoyment of the rights included in the convention.

Moreover, in these treaties there are special provisions relating to children's rights. For example, ICESCR recognizes that primary education shall be compulsory and available to all. With respect to health it provides that government should take steps to reduce infant mortality and also provides for the health environment of the child. Article 10(3) also states protection against economic exploitation including child labour. The CEDAW provides under Article 10(f) that States Parties should take measures to reduce female dropout rates in school.

Furthermore, because of the growing international concern about the vulnerability of the children separate human rights treaty that address the specific human rights of children was adopted in 1989. This is due to the fact that, the child due to his physical and mental immaturity needs special safeguards and care, including appropriate legal protections, before as well as after birth. Thus, the international community are concerned with the

rights of the children realizing these needs and the importance of giving them comprehensive care as major ethical principles as well as due to the fact that children represent a category which cannot and does not have the ability to protect it self.

Besides international protection, since domestic systems are the primary fora for the effective protection and implementation of all human rights, the Ethiopian government has ratified the core international human rights instruments mentioned above: the Convention on the Rights of the Child, and the African Charter on the Rights and Welfare of the Child. Further, the FDRE constitution provides that all international agreements ratified by Ethiopia are an integral part of the law of the land. In addition, pursuant to Article 13(2), the fundamental rights and freedoms (among which rights of children is one) specified in chapter three shall be interpreted in a manner conforming to the principles of the UDHR, International instruments adopted by Ethiopia. Moreover, the Constitution carries a provision on child rights and recognizes the rights of children to special measures of protection under article 36.

By doing so, the Ethiopian Government has taken up on itself the obligation to implement all facets of children's rights. An important obligation incumbent up on States Parties is their duty to take appropriate legislative, judicial, administrative, policy and other measures for the implementation of the rights of the child recognized in those instruments. Therefore, this all brings to the forefront the business of exploring what has been achieved so far, the plans and tasks a head, the constraints met or are likely to be met and possible options for averting them for effective implementation the socio-economic rights of the child.

Beyond that, in Ethiopia, children constitute about 50% of the Ethiopia population. This makes it mandatory to examine the extent to which the Ethiopian government has lived up to its expectations on the road towards realizing the children's socio-economic rights. It is not the purpose to simply adopt standards and establish the relevant institutions and programs. What counts, in the end, is whether human rights of the child in general and the socio-economic rights in particular are realized in practice; whether the standards, law reforms and policies and institutions serve to bring about the changes which are required

in order to make it possible for the children in Ethiopia to fully enjoy all such human rights.

Thus, this study is an attempt to explore possible answers to these and related questions to find, gaps and problems appreciating the good practices or achievements made so far in order to indicate important areas for future interventions by all involved in works geared towards the realization of the economic and social rights of children in Ethiopia.

1.2 Statement of the Problem

The international community has accepted that the child, by reason of his physical and mental immaturity needs special safeguards and care including appropriate protections before as well as after birth. However there are millions of children living in difficult conditions and hence, such children need special consideration is unquestionable.

At national level, the optimum system for protecting economic and social rights of the child requires the range of mechanisms, which include, the entrenchment of these rights as fundamental norms in the legal system, preferably in the country's supreme law (in our case FDRE Constitution). The most far-reaching constitutional provisions relating to economic and social rights may amount to no more than paper promises. Thus, there is a need for the existence of comprehensive legislations and policies that give concrete effect to the rights. accessible and effective judicial remedies for redressing violations of the rights and appropriate administrative measures as well as national institutions vested with legal mandate to monitor and follow up proper implementations of the socio-economic rights of the child.

Therefore, some of the statement of the problem to be investigated in this research work or thesis in the first place is whether the FDRE constitution guarantees all facets of socio-economic rights of the child like the right to education and its core elements such as the right to free and compulsory primary education and the aims of education. In other words, whether the Ethiopian Bill of Rights gives due recognition to ESR of the child or leave them at the mercy of policy and lawmakers because the existence of constitutional guarantee is a significant marker of the extent to which countries consider ESR to be a

fundamental human right that should be protected. In addition, what is the place of relevant international human rights instruments that deal with the ESR of the child in the domestic legal systems and their status in the FDRE Constitution?

In the Second place, are there specific legislations intended to implement the ESR of the child. if any, are they comprehensive and adequate? Is it possible for children or their lawful representatives to directly invoke the provisions of the CRC related to socio-economic rights and/or other relevant international human rights instruments before national courts and seeks remedies whenever they feel that their rights are violated or threatened? What effective remedies do existing laws and regulations provide in this context?

The third issue is whether the socio-economic rights of the child are justiciable in Ethiopia and enforced by competent judicial organ or whether the ESR of the child in Ethiopia is being effectively, efficiently and predictably protected and implemented by our judiciary or other quasi- judicial organs.

The Fourth issue is whether there exist competent institutions (public institutions and other stakeholders) with adequate budget to monitor and follow up the implementation of the ESR of the child. For instance, whether the Ministry of Women's Affairs (MOWA), which is entrusted to follow the affairs of the child in Ethiopia since 2005, is competent enough (in terms of resources) to monitor and follow the proper implementation of the ESR of the child besides the multitude problems of the women in the country?

Fifth, the existence of policy framework, programs, strategies and action plans which identifies responsible organs and sets time frame for the implementation of each form of economic and social rights on the ground. Here, what matters is the existence of comprehensive child policy and not only its existence but whether it employs a human rights language. Because if the human rights prospective is lacking in the documents that do have significant consequences on the realization of the right of the child.

Finally, the realities on the ground will be explored to show the actual picture prevailing in the country and whether the state is doing its level best and following the appropriate direction, within the resources available, to progressively realize the ESR of the child. In so doing, the progresses or achievements so far made as well as the gaps, problems or constraints for the effective implementation of the ESR of the child, especially the right to education, the right to health and protection against child labour in Ethiopia, will be dealt with for future interventions.

1.3 Objectives of the Study

The main objective of the study is to explore the extent to which children's socio-economic rights are protected in Ethiopia. To this end, the main area of interest will be assessing the efforts or performances of the government, the obstacles encountered, the progress and challenges in the implementation of the social and economic aspects of children in particular the right to education, the right to health and protection against child labour. In doing so, a thorough examination and analysis of the relevant laws, policies, programs and practices pertaining to the right in question in Ethiopia will be carried out.

The specific objectives to be addressed are enumerated below:

1. To provide a critical overview of the scope and nature of the socio-economic rights in general and with respect to children in particular;
2. To examine the nature of State parties obligation in light of the issue of progressive realization of the rights;
3. To consider policy, legislative and administrative reforms undertaken for the purpose of implementing Socio-economic rights of children;
4. To critically examine education indicators such as access (Pre-primary, primary, secondary and TVET), efficiency, quality and equity of education
5. To examine the extent to which the major goals set towards reducing child mortality, improving maternal health and combating HIV/AIDS, malaria, TB and

other diseases with the ultimate aim of improving the health status of the child have been complied with.

6. To address the situation of child labour and child economic exploitation, one of the critical social problems of Ethiopia today, and to propose measures to be taken to mitigate the prevailing problems.
7. To reflect and draw conclusions and recommendations for future plan as well.

1.4 Research Methodology

The research methodology that has been employed for this study may generally be called legal research methodology that includes desk review and Internet based research. The study undertook a critical desk review of the available literature related to the topic to determine the conceptual and theoretical frame work. In general, documentary analysis is used. It involved collecting relevant laws, policies, programs and literature from international and domestic sources, and then elaborating and analyzing them. Internationally accepted standards are set and the laws and policies of the country, as well as the achievements and constraints in relation to ESR are evaluated against them. In particular, as the Ethiopian government concentrates primarily on the Millennium Development Goals (MDGs) commitments and targets set in the World Fit for Children, (include vital issues for children not covered by MDGs) the targets are evaluated. Beyond that, progresses and achievements in the areas targeted by these goals could have a dramatic effect on the lives and prospects of children. Further, they are related the subject matter of this research paper that is the ESR of the child in Ethiopia and are currently the focus of the world's development efforts.

In addition, owing to the diverse issues that needed to be addressed different approaches for collecting data have been taken. This study is also supported by opinion surveys that are made in relevant institution and by secondary data collection. With regard to opinion survey, an interview was arranged. Furthermore, open discussions were held with the relevant experts on queries that require additional explanations and colleagues.

In general, this research is based on an in-depth analysis of data from the Ministry of Health and the Ministry of Education, Ministry of Women's Affairs, Ministry of Labour and Social Affairs, Ministry of Finance and Economic Development, Reports of the concerned UN Agencies, UNICEF and UNDP and other stakeholders including Non-governmental organizations.

1.5 Significance of the Study

The study, as stated above, is to examine and assess whether human rights of the child (the socio-economic rights) are realized in practice; whether the standards, law reforms, policies, and institutions serve to bring about the changes, which are required in order to make it possible for the children in Ethiopia to fully enjoy all such human rights. In other words, it is to explore the obligations incumbent upon States Parties (Ethiopia) to take appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRC.

Therefore, the study is an attempt to explore and propose possible answers to these and related questions so as to indicate important areas for future intervention by all involved in works geared towards the realization of the rights and welfare of children in the country.

It is therefore vital that the key government authority, economic and social rights activists, child rights activists and scholars pay greater attention to how these rights can be more effectively advanced and enforced through domestic mechanisms. Taken together, the study has paramount significance for policy makers, activist and academicians.

1.6 Scope and Limitations of the Study

Rather than focusing, the overall ranges of issues that affect children education and health are identified and emphasized. In addition, as child labour affects education and health related rights of children, the right to protection against child labour is also considered. This is mainly because progresses and achievements in the areas of education and health

could have a dramatic effect on the lives and prospects of children, while the shortcoming in this respect is expected to have the greatest impact on children. In addition, child labour is highly related to education and health. It affects the child right to education, to a childhood protected from work detrimental to their development and to a human dignity.

Moreover, the study is limited to the elaboration and evaluation of the treaties, laws and policies pertaining to the rights to education, health and protection against child labour. While the research addresses as much relevant laws and policies governing or affecting the rights as possible, it does not claim to be exhaustive in the sense of dealing with all such instruments. In addition, the research is limited to laws and policies adopted by the federal government. It should, however be underscored that the study gives a reasonable and genuine picture of the protection of the rights to education, health and protection against child labour in the country.

1.7 Organization of the Thesis

In brief, this study has attempted to explore the implementation of various initiatives undertaken in the area of the socio-economic rights of the child, with the aim of assessing some good practices developed and their achievements as well as the remaining shortcomings in order to draw lessons learned aimed at informing key governmental and non governmental stakeholders' future interventions for strengthening and expanding some of these initiatives.

In doing so, it has aimed at approaching the subject in the following sequences. The study has been divided in to four chapters each of which has its own sections and sub sections.

Accordingly, the first chapter simply deals with general introduction to high light the statement of the problems, objectives of the study, scope as well as the significance of the study and related issues.

The second chapter deals with a brief explanation of conceptual understanding of the socio-economic rights. The chapter explores the meaning and nature of the socio-economic rights. It also deals with theories that justify the subject in general and from

child rights perspective in particular as well the development of the ESR in international human rights instruments of both universal and regional nature in general and from child perspective in particular.

The third chapter is all about normative framework or analysis of the CRC and ACRWC that addresses the issue of Socio-economic rights, in particular the right to education, health and protection against economic exploitation including child labour. In this respect, for determining the scope of the rights and related concepts, the ILO Instruments was also seen. A brief look is also made to examine the regulative mechanisms adopted at international level.

The fourth chapter evaluated the degree to which the national legal system has made available for the implementation of the socio-economic rights of the child. It also examines the measures taken in relation to legislative, administrative and others as well for the realization of the rights of the children in Ethiopia and the prevailing situation. The last part of the study by way of conclusion and recommendation, examines the various options available for the implementation of the socio-economic rights of the children.

CHAPTER TWO

GENERAL OVERVIEW OF THE COCEPTS AND DEVELOPMENT OF THE SOCIO-ECONOMIC RIGHTS

The enjoyment of all human rights by all human beings irrespective of age, sex, language, race or any other contingent circumstances is a universal human rights principle. Socio-economic (also called economic and social rights) rights as fundamental human rights are recognized in numerous international human rights instruments at universal and regional level. The grouping of rights as socio-economic rights is usually seen in contradistinction with civil and political rights. As a result, most people reject state action, which violates civil and political rights directly though they are much more tolerant, however, when human misery is the result of preventable denials of the basic necessities of life, such as essential food stuffs, primary health care, shelter or basic forms of education.¹ In general, there are philosophical, political and practical challenges to the concepts of the socio-economic rights, which need to be considered.

Accordingly, in this chapter, first, in order to determine what constitute socio-economic rights, conceptual analysis will be made. This is followed by an examination of the arguments traditionally raised (both the justifications and criticisms) against economic and social rights. In addition, a brief account of the historical development of economic and social rights in its general context will be given. Furthermore, since the paper is about socio-economic rights from child perspective, in the later case, emphasis is given to the socio-economic rights of the child under the existing International Human Rights Instruments. In this respect, emphasis will be given to analysis of the socio-economic rights of the child under the International covenant on Economic, Social and Cultural Rights (ICESCR) to determine the general scope of the rights and related obligations of States. Finally, developments in the specific human rights instruments related to children will be dealt with.

¹Klaus D. Beiter, *The Protection of the Right to Education by International Law, Including a Systematic Analysis of Article 13 of the ICESCR*. (2006), p58

2.1 Socio-Economic Rights: Concepts, Justifications and Criticisms

The sources of socio-economic rights (SER), also called economic and social rights (ESR), in international law can be found in numerous declarations and conventions. While the Universal Declaration of Human Rights (UDHR) is the initial foundation and the International Covenant on Economic, Social and Cultural Rights (ICESCR) constitutes a more elaborate framework for these rights, they are also contained in numerous other instruments adopted by the United Nations General Assembly (UNGA), Specialized Agencies of the UN and Regional Organizations.

However, the ICESCR does not make explicit any distinction between economic, social and cultural rights. Scholars differ on their characterization of one or the other of the detailed rights, or ignore the distinction. Consequently, some philosophers concluded that the main socio-economic right is “subsistence.” For instance, Shue defines “subsistence” as “unpolluted air, unpolluted water, adequate food, adequate clothing, adequate shelter, and minimal preventative health care.”² Orend states “Material Subsistence means having secure access to those resources one requires to meet one’s biological needs- notably a minimal level of nutritious food, clean water, fresh air, some clothing and shelter, and basic preventative health care.”³ Rawls interprets “subsistence” as including “minimum economic security” or “having general all-purpose economic means.”⁴

However, for other writer the idea of subsistence alone offers too minimal a conception of social rights, because it neglects education, gives a minimal account to health services. Generally it gives too little attention to people’s ability to be *active* participants and contributors, to be producers as well as consumers, hence, covers the requirements of having a life but neglects the conditions of being able to lead one’s life.⁵

Moreover, others call the ESR “Vance Conception” because it conforms to the list advocated by former US Secretary of State Cyrus Vance in his 1977 Law Day speech at

² James W. Nickel, *Making Sense of Human Rights* (2nd Ed., 2007), cited from, Shue, H., “Basic Rights” (1996) p. 139

³ Ibid, cited from Orend, B. “Human Rights: Concept and Context” (2001)

⁴ Ibid, cited from Rawls, J. “The Law of the People” (1999)

⁵ Id, p. 140

the University of Georgia. In the speech, Vance set out a view of human rights that included “the right to the fulfillment of such vital needs as food, shelter, health care and education.”⁶ Thus, the right to subsistence used in this conception includes health services and health-related concerns such as safe air, adequate food and safe drinking water, shelter and clothing, and covers services related to pregnancy and birth. Further, it includes the right to basic education, access to economic opportunities and thus incorporates some aspects of the right to work as well.

Finally, one scholar comments the rights listed under ICESCR stating that:

Though most rights evidence both economic and social concerns, in some, the economic and work place character is dominant- for example, rights to work and to favorable conditions of work such as wages necessary for a ‘decent living’, or rights to form and advocate through trade unions (Art 6-8). On the other hand, Articles 11-14 of the covenant have a different character. They range from rights to ‘the highest attainable standard of physical and mental health’, to rights to education and to ‘an adequate standard of living’ (includes adequate food, clothing and housing) and called them ‘social rights’, even though they have important economic consequences.⁷ (Emphasis added)

Generally, it follows from the above conception that socio-economic rights are human rights governing the economic and social aspects of the life of human beings, as exemplified by the rights to health, education, adequate standard of living including food, shelter, housing, and the right to social security and the right to work.

Besides such conceptual analysis, there are justifications for the ESR from different perspectives or approaches. Some scholars emphasizing human agency assert that in a fully human life a person makes important decisions such as where to live, what to work, how to worship, whom to marry, on her own, in accordance with her own understanding of the elements of a good or worthy life. However, abject poverty, disease, illiteracy, and

⁶Id., p. 140-41, cited from Vance, C. “Human Rights and Foreign Policy” (1977), p 140

⁷ Henry Steiner, “Social Rights and Economic Development: Converging Discourse?” , in H. J. Steiner and P. Alston, *International Human Rights in Context, Law, Politics and Morals.*(2nd Ed. 2000), p. 248.

ignorance can so impair a person's ability to imagine and realize plans that her own human life fails, in an important way to be realized.⁸

Other scholars emphasize human dignity and point out that enjoying a healthy, vigorous life and being well educated are desirable in contemporary societies worldwide, while the denial of the same is tantamount to exclusion from modern society, with its attendant social and psychological consequences.⁹ Thus, the right to health care and education become elements in the *social bases of self respect*, which Rawls defines as the most important of his *primary goods* and Sen's notion of the *ability to appear in public without shame* and Feinberg's idea of *having rights enable us to stand up like men, to look others in the eye, and to feel in some fundamental way the equal of any one*.¹⁰

Moreover, other scholars justify ESR through linkage arguments. According to Henry Shue, no one can fully enjoy any rights that is supposedly protected by society if he or she lacks the essentials for a reasonable healthy and active life and thus, any form of malnutrition, or fever due to exposure, that causes severe and irreversible brain damage, for example, can effectively prevent the exercise of any right requiring clear thought.¹¹

Furthermore, there are also direct justifications to ESR. In other words, inadequate access to subsistence, basic health care and basic education is a major problem in many countries today as countries that do not have political programs to ensure the availability of these goods to all parts of the population have high rates of hunger, disease, and illiteracy.¹² The connection between the availability of food and basic health care and having a minimally good life is direct and obvious- something that is not always true of other human rights.¹³ In addition, the availability of basic education promotes knowledge of social, economic and political options. Thus, they show that effectively implanting

⁸Varun Gauri, "Social Rights and Economics: Claims to Health Care and Education in Developing Countries", in Philip Alston and Mary Robinson, *Human Rights and Development, Towards Mutual Reinforcement*, (1st Indian ed., 2006), P. 69-70

⁹ Ibid

¹⁰ Ibid. cited from, Rawls, "A Theory of Justice". (1971); Rawls, "Justice as fairness", (2001); A. K. Sen, "Development as Freedom", (1999) and J Feinberg, *Rights, "Justice, and the Bounds of Liberty": Essays in Social Philosophy*, (1997)

¹¹ James W. Nickel, cited above at note 2, p.144-145 cited from Shue, H., "Basic Rights"(1996) p.24-5

¹² Ibid

¹³ Ibid

other human rights for all is difficult or impossible in situation where many people's basic socio-economic rights are unprotected and insecure.¹⁴

Nevertheless, there are political and philosophical challenges to ESR. To begin with, Marc Bossuyt argues that Civil and Political Rights (CPR) and ESR differ because the realization of the latter requires a financial effort on the part of the state while this is not the case in respect of the former.¹⁵ Therefore, such arguments have motivated the theoretical effort to distinguish 'negative rights', which set constraints on other actors (CPR) from 'positive rights' which entail intervention or resource support from others (ESR).¹⁶ However, this view was subject to objection as both CPR and ESR imply abstention and involvement of the state.¹⁷ For example, the right to life, a CPR, may require criminalization of abortion and euthanasia in certain circumstances that is positive state action. Conversely, the right to form and join trade unions, an ESR, demand of the state not only positive steps, but also require that the state does not unduly interfere with individual freedom that is a negative duty.¹⁸

Sometimes it is alleged that economic and social rights do not have the importance that civil and political rights have. According to Cranston, CPR are "morally compelling", whereas ESR are mere "utopian aspirations", and further states that to conceive ESR as human rights is "to push all talk of human rights out of the clear realm of the morally compelling into the twilight world of utopian aspiration."¹⁹ However, one way of showing the importance of ESR has already been provided, namely the arguments given above that is effectively implementing other human rights for all is difficult or impossible in situation where many people's basic ESR are unprotected and insecure.

In addition to these theoretical difficulties, a practical objection concerns judicial enforcement. E.Vierdag argues that international law calls for a judicial remedy as precondition for the existence of rights, and hence only enforceable rights (can) be

¹⁴ Ibid

¹⁵ K.D.Beiter, cited above at note 1, p.57-58, cited from Bossuyt (1993), p 47-55

¹⁶ Varun Gauri, cited above at note 8, cited from: M. Ignatieff, "Human Rights as Politics and Idolatry" (2001), p70

¹⁷ K. D. Beiter, cited above at note 1, p58

¹⁸ Ibid

¹⁹ Id. P. 56, cited from. Cranston (1973), p. 67. See also James W. Nickel, cited above at note. 2, p. 145

considered as 'real', legal rights and further holds that CPR give rise to legal rights, while those of the ESR do not. He concludes that, in view of these realities, it has not been possible to formulate ESR as legal, i.e. judicially enforceable rights.²⁰ The realization of ESR, however, requires the state to enact elaborating legislations, which, in turn, necessitates decisions on how to utilize limited available resources to be made.²¹ These decisions should be entrusted to political and administrative bodies, which could be subjected to a mechanism of administrative control.²²

Moreover, for others judicial remedies for social inequalities would be even more difficult in developing countries, where legal systems are often weak and less than impartial.²³ Given that legal systems in most developing countries are inequitable and underdeveloped and that enforcement mechanisms are weak, allowing citizens to make legal claims of inadequate service provision will further politicize courts, weaken their capacity to adjudicate existing rights and possibly increase government spending even where it is inequitable or inefficient.²⁴

However, despite these criticisms, it does not mean that ESR is vague, impractical or self-defeating particularly, in developing countries, as these rights exist as justified international norms and majority of countries can implement them.²⁵ Because, international agreements are *per se* intended to create legally binding obligations for states parties thereto as provided under Article 26 of the Vienna Convention on the Law of Treaties, which reiterates the principle of *pacta sunt servanda*.²⁶ Thus, ESR must be accepted to impose legally binding obligations on the state and the justiciability of its provisions and the preciseness of their definition cannot have a bearing on this conclusion.

²⁰ K. D. Beiter, cited above at note 1, p. 61-63, cited from, Vierdag (1978), p 69-105

²¹ Id., P.60

²² Id., P.61

²³ Varun Gauri, cited above at note 8, p70, cited from L. Pritchett and M. Woolcock, "Solutions when the Solution is the problem: Arraying the Disarrays in Development", (2002).

²⁴ Ibid

²⁵ Ibid

²⁶ K. D. Beiter, cited above at note 1, P.63-64, see also, Article 26 of the Vienna Convention on the Law of Treaties, which states that treaties are binding upon the parties to them and must be performed by them in good faith.

Moreover, it is important to note the notion of the interdependence and indivisibility of all human rights, which constitutes a fundamental principle in the protection of human rights within the framework of the UN.²⁷ The notion of interdependence and indivisibility of human rights has been reflected in numerous international documents, notably, the Vienna Declaration and Programme of Action, which states: *All human rights are universal, indivisible, interdependent, and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.*²⁸

In general, ESR is now widely recognized as enforceable in the courts (justiciable) under both national and international law. At national level, the Constitutional Court of South Africa has upheld ESR included in the 1996 Constitution. It has developed an understanding of the state's duty to act "reasonably" to progressively ensure access to essential medicines and adequate housing, in particular through prioritizing the most vulnerable people.²⁹ Similarly, the African Commission on Human and Peoples' Rights has found Nigeria in violation of several rights, including to health, housing and life, through failing to take sufficient measures to protect the Ogoni people from adverse impacts of oil exploration in the Niger Delta.³⁰

Finally, in relation to the justiciability of economic, social and cultural rights in the ICESCR, the Committee on Economic, Social and Cultural Rights in its General Comment suggests, "there is no Covenant rights, which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions. It is

²⁷ K. D. Beiter, cited above at note 1, p. 67; see also The UDHR which contains both CPR and ESCR, the former in articles 1 to 21, the latter in article 22 to 27. The principle of Interdependence and Indivisibility of all human rights is inherent in the UDHR. In the Preamble, reference is made to "a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want."

²⁸ K. D. Beiter, cited above at note 1, p. 70; see Vienna Declaration, adopted by the World Conference on Human Rights, held at Vienna, Austria from 14 to 25 June 1993, p. 5; see also the Preamble to the ICESCR, which states the indivisibility of human rights, acknowledging that all human rights are interlinked and of equal importance and recognizes that human beings can only enjoy freedom from fear and want provided that every one is able to enjoy economic, social and cultural rights as well as civil and political rights

²⁹ Government of the Republic of South Africa and Others v Grootboom and Others (also called the Grootboom Case), 2000 (11) BCLR 1169 (CC), para 26 – 33

³⁰ African Commission on Human and Peoples' Rights, Social and Economic Rights Action Center and Center for Economic and Social Rights V Nigeria. Communication No.155/96, October 2001

sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters, which have important resource implications.” The Committee further stated, the adoption of a rigid classification of ESR, which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.³¹

2.2 The Origin and Developments of the Socio-Economic Rights

The historical origins of the recognition of ESR are diffuse. Genealogically, the concept of human rights is related to Locke’s notion of the *natural rights to ones labour*, Rousseau’s and Kant’s ideas of *innate liberty*, and before that to Stoic and Christian conceptions of natural law, or the divinely inspired respect that is owed to human beings.³²

Besides this variety of philosophical foundations, it is generally recognized that the cradle of discourse on rights properly speaking can be found in British, French and American thinking in the 17th c. Among the great landmarks in the development of human rights in the late 17th and 18th century is the “British Bill of Rights” (1690-91), the “American Declaration of Independence” (1776) and the “French Declaration on the Rights of Man and the Citizen” (1779).³³ Accordingly, the French and American Declarations included concepts such as “the pursuit of happiness” and “égalité et

³¹General Comment 9, Domestic Application of the Covenant, Committee on Economic, Social and Cultural Rights, para58-62, 1998, UN Doc.E/1999/22, reprinted in Asbjorn Eide, et al (ed.), Economic, Social and Cultural Rights, A Text book, (2nd Rev. Ed 2001), p. 651

The General Comment also emphasizes the importance of courts applying the principles of the Covenant, either directly or as interpretive standards.

³² Varun Gauri, cited above at note 8, p. 68

³³ Asbjorn Eide, “Economic, Social and Cultural Rights: A Universal Challenge”, in Asbjorn Eide, et al (ed), Economic, Social and Cultural Rights, A Textbook, (2nd Rev. ed. 2001), p. 12

fraternité" (equality and brotherhood), and the rights to form trade unions, to collective bargaining and to safe labour conditions.³⁴

Moreover, the political programmes of the 19thc: the Chancellor Bismarck in Germany, who introduced social insurance schemes in the 1880s and the New Dealers of the United States and the constitutional precedents such as: the "Mexican Constitution" (1917), the first and subsequent "Soviet Constitution" (1919).³⁵ are other sources of the ESR.

Besides such philosophical and political concerns, ESR found acceptance at the international level from the later part of the nineteenth century onwards. For instance, the first global human rights institution, the International Labour Organization (ILO), has protected workers' rights and a broader compass of human rights since 1919. Its Constitution recognizes that "universal and lasting peace can be established only if it is based upon social justice."³⁶

In the 1930s and 40s the advancement of welfare rights received support from the United Kingdom and the United States of America. In the United Kingdom, the later Prime Minister Harold MacMillan argued in 1933 for social reconstruction and the elimination of poverty, and published in 1938, his 'The Middle Way' on the subject.³⁷ Likewise, in the United States of America, President Franklin Roosevelt, in his 1941 address, introduced the notion of *four freedoms, freedom of speech, freedom of belief, freedom from fear and freedom from want*, which referred to the individual's right that his welfare needs be addressed by the state.³⁸ In addition, in his 1944 address, Roosevelt advocated the adoption of an "Economic Bill of Rights" stating that: *We have come to the clear realization of the fact that true individual freedom cannot exist without economic security*

³⁴Reclaiming economic social and cultural rights: Human Rights for Human Dignity <http://www.amnestyusa.org/demand-dignity/report>, visited last on 12 December, 2009

³⁵ Asbjorn Eide, cited above at note no. 33, p 12

³⁶Preamble to the Constitution of the International Labour Organization, 1919, <http://www.ilo.org/public/english/about/iloconst.htm#pre> visited last on 12 December, 2009

³⁷ Klaus D. Beiter, cited above at note 1, p. 48

³⁸ Ibid

*and independence. Necessitous men are not free men. People who are hungry and out of job are the stuff of which dictatorships are made.*³⁹

Furthermore, Roosevelt proposed the inclusion of many of the ESR, which subsequently included in the UDHR,⁴⁰ adopted in 1948. From 1948 to 1966, the international community struggled to agree an international covenant on human rights to turn this declaration into binding international law. In the end, the intense ideological cleavages of the time led to the adoption of two separate covenants, one on economic, social and cultural rights and the other on civil and political rights.⁴¹ The ICESCR, adopted in 1966, enshrines the economic, social and cultural rights contained in the UDHR in more developed and legally binding form.

However, international standards developed at around the same time in specialized agencies, such as the ILO and the UN Educational, Scientific and Cultural Organization (UNESCO), detailed specific human rights within their mandates.⁴² In addition, since 1965 the international community has developed standards on rights relating to specific groups within society, for example, racial and ethnic groups, women, indigenous peoples and children, which contain relevant provisions on the application of ESR to these groups.⁴³ Likewise, Regional human rights treaties in Africa, the America and Europe also provide protection for certain ESR, as does a revised Arab Charter on Human Rights.⁴⁴

³⁹ Id., p.49

⁴⁰ Asbjorn Eide, cited above at note 33, p. 15, Quoted in R. Russell, "A History of the United Nations Charter" (1958), p. 975. The Universal Declaration of Human Rights reiterated recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and includes a number of ESR.

⁴¹ H. J. Steiner and P. Alston, cited above at note 7, p. 244-245

⁴² For instance, the ILO adopted international minimum standards in relation to a wide range of matters, which included, inter alia, conventions dealing with freedom of association and the right to organize trade unions, forced labour, minimum working age, hours of work, weekly rest, sickness protection, accident insurance, invalidity and old-age insurance, and freedom from discrimination in employment.

⁴³ For example, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) of 1965, the International Convention on Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990 include express references to the right to equal enjoyment of economic and social rights as well as to civil and political right

⁴⁴ See for example, the Revised European Social Charter of 1996, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights of 1988 and the African

The late 1980s also saw the establishment by the UN of an independent committee to monitor states' compliance with the ICESCR and analyses states' reports, makes recommendations for change, and issues General Comments on the scope of rights and obligations under the treaty.⁴⁵

Finally, yet importantly, the UN Commission on Human Rights has appointed a series of independent experts as Special Rapporteurs on the rights to education, adequate housing, adequate food and health, who report each year on the realization of these rights and carry out country visits. In addition, new mechanisms have been developed to allow victims of violations to enforce their economic, social and cultural rights. For instance, an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which would allow an international remedy for victims who are denied remedies at the national level, is the case in point.⁴⁶

In general, throughout the evolutionary history of human rights, the ESR has passed various stages of development and has matured over time, starting from initial, idealistic assertions of vague principles to the adoption of the comprehensive international normative system now in existence.⁴⁷ The existing system contains a wide range of specific rights and the corresponding obligation of states, though the latter aspect is still underdeveloped.⁴⁸ However, the work done so far has to a great extent laid the misperceptions (that the scope and contents of the ESR is unclear and that (unlike CPR) it is often not possible to identify a clear violation, a violator and a remedy) to rest.⁴⁹

Charter on Human and Peoples Rights of 1981 and the African Charter on the Rights and Welfare of the Child of 1990. These instruments will be discussed below

⁴⁵Reclaiming economic social and cultural rights: Human Rights for Human Dignity <http://www.amnestyusa.org/demand-dignity/report>, visited last on 12 December 2009; General Comment aid international understanding of the nature of these rights and the obligations of states that have agreed to be bound by the Covenant.

⁴⁶The General Assembly adopted resolution A/RES/63/117, on 10 December 2008, <http://www.ohchr.org/english/issues/escr/group.htm>, visited last on 12 December, 2009. Article 2 provides that Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party.

⁴⁷ Asbjorn Eide, cited above at note 33, p. 12

⁴⁸ Ibid

⁴⁹Reclaiming economic social and cultural rights: Human Rights for Human Dignity <http://www.amnestyusa.org/demand-dignity/report>, visited last on 12 December, 2009

2.3 The Protection of Socio-Economic Rights of the Child under the Existing International Human Rights Instruments

Children, as much as adults, are covered by the existing human rights treaties, because the enjoyment of all human rights by all human beings irrespective of age, sex, language, race or any other contingent circumstances is a universal human rights principle. Thus, the SER of the child as fundamental human rights are recognized in numerous international human rights instruments at universal and regional level. There are also special provisions in these treaties relating to children. In what follows, a brief analysis of these instruments will be made.

2.3.1 General Overview

The Charter of the United Nations (UN) mentions the protection of human rights as one of the objectives of the UN and imposes certain obligations on UN members in this regard.⁵⁰ In pursuance of this commitment to human rights, the UN, subsequently, set out to lay down the human rights and has adopted the Universal Declaration of Human Rights (UDHR), which proclaims a catalogue of human rights, which apply to all human beings.⁵¹ It contains articles, which explicitly refer to the ESR of children such as:

the right to work, to just and fair conditions of employment, and to protection against unemployment; the right to a standard of living adequate for health and well-being, including food, clothing, housing, medical care; Motherhood and childhood are entitled to special care and assistance; and the right to education, which shall be free and compulsory in its elementary and fundamental stages.⁵² It also provides aims of education that education shall be directed to the full development of the human personality; for the strengthening of respect

⁵⁰Art.1(3) UN Charter mentions as one of the purposes of the UN as international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms. Art 55 (c) obligates the UN to promote universal respect for and the observance of human rights and fundamental freedoms. Article 56, enjoins member states to take joint and separate action in cooperation with the UN for the achievement of such respect and observance.

⁵¹ The Universal Declaration of Human Rights, adopted on Dec. 10,1948 by the General Assembly of the UN, Resolution 217 (III), 1948

⁵² UDHR, Art.23, 25 and 26 (1) respectively

for human rights and fundamental freedoms: the promotion of understanding tolerance and friendship among all nations.⁵³

Generally, despite conflicting opinions on the precise status among scholars,⁵⁴ the UDHR has a fundamental importance especially in maintaining the principle of indivisibility and interdependence of all categories of human rights and the protection of the ESR of the child.

In addition, the International Covenant on Civil and Political Rights (ICCPR) provides specific provisions relating children that address the freedom aspect of the right to education.⁵⁵ The *travaux preparatoires* of the ICCPR show that the purpose of article 18(4) is to provide parents with a means of protecting their children against indoctrination by the state in public schools.⁵⁶ Moreover, the right of parents to ensure the education of their children in conformity with their own convictions is so fundamentally important that article 18(4) may not be derogated from in times of emergency.⁵⁷

Moreover, at international level standards on rights relating to specific groups within society has developed. For instance, the International Convention on the Elimination of All forms of Racial Discrimination (CERD) pursuant to Art. 5(e) obliges States Parties to prohibit and to eliminate racial discrimination as to race, in particular, with regard to the enjoyment of various rights, which includes the right to education and training.

⁵³ UDHR, Art. 26(2)(3)

⁵⁴ Geraldine Van Bueren, *International Law on the Rights of the Child* (1998), P.19. For some the Declaration is simply a non-binding resolution of the UN GA and hence has no any impact. While some argue that the declaration represents an authoritative interpretation by the GA of the human rights provisions of the UN Charter. Moreover, others allege that the Declaration becomes part of customary international law due to its use for determining gross violations of human rights by UN Human Rights Commission and practice of states. Even there are also those who advance the proposition that the declaration now possesses the characteristics of *jus cogens*, peremptory norms from which no derogation is permitted. See further,

⁵⁵ International Covenant on Civil and Political Rights. Adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, Art.18 (4) and 23(4). Accordingly, States Parties are obliged to respect the liberty of parents to ensure the religious and moral education of children in accordance with their convictions and in the event of dissolution of the marriage: provisions should be made for the protection of any children. This provision 18(4) corresponds or verbatim copy of the latter part of Art 13(3) ICESCR.

⁵⁶ K. D. Beiter, cited at note 1, p. 103

⁵⁷ ICCPR, Art.4 (2), See also Art. 2(3) provides States Parties is obliged to ensure to persons, whose rights recognized in the covenant have been violated, an effective remedy and to ensure to persons claiming such a remedy that their rights are determined by competent judicial, administrative or legislative authorities.

Furthermore, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵⁸ prohibits any grounds of discrimination based on sex in the economic, social or any other field.⁵⁹ It ensures States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education, which shall be ensured in pre-school, technical, professional and higher technical education, as well as in all types of vocational training.⁶⁰ The reduction of female student dropout rates and the organization of programmes for girls and women who have left school prematurely⁶¹; access to specific educational information to help to ensure the health and well-being of families including information and advice on family planning,⁶² are guaranteed.

On the other hand, legal instruments, adopted at the regional level, also protect the SER of the child. The Council of Europe has adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, which mainly guarantees civil and political rights. However, protocol No.1 to this convention guarantees *no person shall be denied the right to education and in relation to education and to teaching, the States shall respect the right of persons to ensure such education and teaching in conformity with their own religious and philosophical convictions.*⁶³

Moreover, the Revised European Social Charter of 1996 incorporates the rights of children and young persons to protection and obliges States Parties to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education.⁶⁴ It provides that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education.

⁵⁸Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Adopted by the UN General Assembly in 1979

⁵⁹ Id., Art.1

⁶⁰ Id., Art.10(a)

⁶¹ Id., Art.10(f)

⁶² Id., Art 10(h)

⁶³Protocol No.1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2

⁶⁴ Revised European Social Charter, 1996, Art.7(3) and 7(4)

Likewise, in 1948, the Organization of American States adopted the Declaration of the Rights and Duties of man, which guarantees the rights of the child to special protection, care and aid,⁶⁵ as well as the duties of parents towards their minor children and vice versa.⁶⁶ The additional protocol to the American Convention on Human Rights (the Protocol of San Salvador of 1988) incorporates various ESR of the child. For instance, it prohibits night work and unhealthy, dangerous work and working conditions of those under 18 and provides that for those under 16 years of age work should not constitute an impediment to school.⁶⁷

In addition, Article 16 of the protocol guarantees the right to free and compulsory education in the elementary stage, adequate nutrition for children at nursing age and during school attendance years. It places a duty on states parties to undertake special programmes of family training so to create a stable and positive environment in which children are able to receive and develop values of understanding, solidarity, respect and responsibility.⁶⁸ Furthermore, Art 13(2) proceeds to set out the aims of education which are almost identical to article 13 (1) of ICESCR.

Finally, the Organization of African Unity (now African Union) adopted African Charter on Human and Peoples Rights in 1981, also called Banjul Charter, which contains among others socio-economic rights. This charter under article 17(1) guarantees the right of every one to education and provides that States Parties shall ensure the elimination of discrimination against women and ensure the protection of the rights of women and the child as stipulated in international Declarations and Conventions, under Article 18. In addition, the African Charter on the Rights and Welfare of the Child (ACRWC), which was adopted in 1990, protects various socio-economic rights of child.⁶⁹

⁶⁵ Declaration of the Rights and Duties of Man, 1948, Art.7

⁶⁶Id., Art.30, Pursuant to Article 30, it is the duty of every person to aid, support, educate and protection his minor children and it is the duty of children to honour their parents always and to aid support and protect them when they need.

⁶⁷ Protocol of San Salvador Protocol, 1988, Arts.7(1)

⁶⁸ Id., Arts.15(3)(b) and (d)

⁶⁹ This part will be dealt in the following chapter of this paper.

2.3.2 The Socio- Economic Rights of the Child under the ICESCR: General Scope and Related Obligations of States'

This section deals with the socio-economic rights of the child guaranteed under the ICESCR to determine the scope of the rights and related States' obligation, emphasizing the right to health, education and protection against child labour.

2.3.2.1 The Right to Health

The ICESCR provides for the most comprehensive provisions on the rights to health. It requires States Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (article 12) and further requires States Parties to take steps for the provision for the reduction of the still birth rate and infant mortality and for the healthy development of the child.⁷⁰

Health is a very broad and subjective concept and is influenced by various factors including geographic, cultural and socio-economic ones.⁷¹ However, the elements that make up the right to health can be divided into two categories: one containing elements related 'health care' (including curative as well as preventive health care), another one encompassing elements related a number of 'underlying preconditions for health', which include safe drinking water, adequate sanitation, adequate nutrition, health-related information, environmental health and occupational health.⁷²

Similarly, the Committee on Economic, Social and Cultural Rights interprets the right to health as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health related education and

⁷⁰International Covenant on Economic, Social and Cultural Rights Adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, Art 12 (2) (a)

⁷¹ Brigit Toebes, "The Right to Health" in Asborn Eide, et al (ed.), cited above at note no. 33, p. 174

⁷² Ibid

information, including sexual and reproductive health as well as public participation in all health related decision making at community, national and international level.⁷³

In addition, in its General Comment No.14 on the right to health the Committee on Economic, Social and Cultural Rights has stated that health contains the following interrelated and essential elements: availability, accessibility, acceptability, and quality of health facilities, goods and services as well as programs.⁷⁴

i. Availability: means that functioning public health and health-care facilities, goods and services, as well as programs, have to be available in sufficient quantity within the State. While the precise nature of the facilities, goods and services will vary depending on the State's developmental level, they will include the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs.⁷⁵

ii. Accessibility: has four overlapping dimensions: health facilities, goods and services must be non-discriminatory (accessible without discrimination on any of the prohibited grounds), physically accessible (within safe physical reach for all sections of the population), economically accessible (affordable for all), and information accessibility (the right to seek, receive and impart information and ideas concerning health issues).⁷⁶

iii. Acceptability: requires that all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.⁷⁷

⁷³General Comment 14, The Rights to the Highest Standard of Health, Committee on Economic, Social and Cultural Rights, par. 11, UN Doc. E/12/2000/4(2000), reprinted in Asborn Eide, et al (ed.), Economic, Social and Cultural Rights. A Text book, (2nd Rev. Ed 2001), p. 679

⁷⁴ General Comment No.14. para. 12

⁷⁵ Id., par.12 (a)

⁷⁶ Id., par. 12(b)

⁷⁷ Id., par. 12(c)

iv. Quality: means health facilities, goods and services must be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipments, safe and potable water, and adequate sanitation.⁷⁸

Finally, with respect to the health related States Parties' obligations, while the covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties immediate obligations relating to the right to health, such as the guarantee that the right will be exercised without discrimination of any kind and the obligation to take deliberate, concrete and targeted steps towards the full realization of the right to health.⁷⁹

Consequently, the core obligations in relation to the right to health include the following: ensuring non-discriminatory access to health facilities, goods and services; minimum essential food; basic shelter, housing and sanitation, and an adequate supply of safe and potable water; essential drugs; and adopting and implementing a national public health policy/strategy and plan of action.⁸⁰ Ensuring reproductive, maternal and child health care; immunization against the major infectious diseases; preventing, treating and controlling epidemic and endemic diseases; and providing health education and training are also obligations of comparable priority.⁸¹

2.3.2.2 The Right to Education

The UNESCO Convention against Discrimination in Education of 1960 defines *education as all types and levels of education (including) access to education, the standard and quality of education and the conditions under which it is given.*⁸² Education refers to 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.⁸³ Education

⁷⁸ Id., par. 12(d)

⁷⁹ Id., par. 30, See also ICRSCR, Arts. 2(1)(2)

⁸⁰ Id., par. 43(a-f)

⁸¹ Id., par. 44(a-e)

⁸² UNESCO Convention against Discrimination in Education of 1960, Art. 1(2)

⁸³ K. D. Beiter, cited above at note 1, p. 18

also means instruction imparted within a national, provincial or local education system, whether public or private.⁸⁴ Thus, from the definitions it is clear that education refers to the whole process whereby, in any society, adults endeavor to transmit their beliefs, culture and other values to the young, or the formal teaching or instruction comprising primary, secondary and higher education.

In terms of importance, education is also a precondition for the exercise of human rights by citizens.⁸⁵ In other words, in addition to the other socio-economic rights, the category of human rights where it belongs, the enjoyment of so many rights such as freedom of information, expression, assembly and association, the right to vote and to be elected or the right of equal access to public services are dependent upon at least a minimum level of education.⁸⁶ Beyond strengthening other human rights, education is both a source of dignity and an essential part of the development of the human personality (educated human being having both characteristics of tolerance and respect for human rights) and effective economic development.⁸⁷ The role education plays in empowering and protecting children from hazardous work and economic exploitation, is so vital, and thus, education is one of the bases for the development of societies.⁸⁸ That is why various international and regional human rights instruments⁸⁹ have recognized education as fundamental human rights, recognizing education as both human rights in itself and an indispensable means of realizing other human rights.

Accordingly, the ICESCR devotes two articles to the right to education, article 13 and 14. Article 13 of the ICESCR guarantees the right to education, which provides the most important formulation. It set out the aims of education that is education shall be directed to the full development of human personality and the sense of its dignity- education must make the individual aware of his own inherent worth and of the human rights, which

⁸⁴ Ibid

⁸⁵ General Comment 13, 1999, The Right to education, Committee on Economic, Social and Cultural Rights, para.1. UN Doc. E/12/2000/4(1999), reprinted in Asbjorn Eide, et al (ed.), cited above at note no. 33, p. 665

⁸⁶ Manfred Nowak, "The Right to Education" in Asbjorn Eide, et al (ed.), cited above at note no. 33, p. 245. Those rights the enjoyment of which, in one way or another, is dependent on this right include the right to choose work, to receive equal pay for equal work, the right to form trade unions, to take part in cultural life, to enjoy the benefits of scientific progress and to receive higher education based on capacity communities.

⁸⁷ General Comment No 13, para.4

⁸⁸ Ibid

⁸⁹ See the discussions made above under section 1.3 of this chapter

accrue to him on this basis. Provides education should enable all persons to participate effectively in a free society so that education must not solely be theoretically oriented but that it must also teach students how to satisfy their practical needs in life.⁹⁰

The other important point set out in the covenant is that primary education be compulsory and free to all, that secondary education be made generally available and accessible to all and that higher education be made equally accessible to all, based on capacity.⁹¹ Further Article 13(2) (d) requires that fundamental education be encouraged or intensified as far as possible. Pursuant to Article 13(2) (e), a system of schools at all levels must be developed, a fellowship system be established and the material conditions of teaching staff be improved. Finally, article 13(3) and (4) obligates States parties to have respect for the liberty of parents or legal guardians, to choose for their children non-state schools, which conform to such minimum educational standards, respect the liberty of parents or legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Furthermore, Art.14 ICESCR reinforces the urgent nature of the duty concerning primary education, which guides state action in respect of the realization of compulsory and free primary education. It effectively limits progressive realization to two years plus additionally a reasonable number of years which must be clearly specified and hence confirms that the legal obligations contained in article 13(2) (a) is stronger than the other obligations under article 13(2). To this end, one can say that the notion of progressiveness applies to primary education in a restrictive sense only, as evidenced from the wording of the provision that “primary education shall be compulsory and free.”⁹² This shows the duty of states parties concerning primary education is of an immediate rather than of a progressive nature. On the contrary, the duty of states in relation to secondary and higher

⁹⁰ ICESCR, Article 13(1)

⁹¹ *Id.*, Article 13(2) (a), (b) (c)

⁹² See for instance Article 2(1) of the ICESCR, which provides that State parties to the covenant must take steps “individually and through international assistance and cooperation, especially, economic and technical...to the maximum of their available resources, with a view to achieving progressively the full realization of the rights as compared to Art.13(2) ICESCR

education 'shall be made' available and accessible shows/ affirms the progressive nature of these provisions.⁹³

Moreover, in its General Comment No.13 on the right to education the Committee on Economic, Social and Cultural Rights has stated that education in all its forms and at all levels shall exhibit the following interrelated and essential features: availability, accessibility, acceptability and adaptability.⁹⁴ In other words, State obligations under article 13(2) of the ICESCR presented as obligations to make education:

i. Available: Availability of education requires that educational institutions and programmes have to be found in sufficient quantity. It requires existence of buildings, sanitation facilities, drinking water, and qualified teaching staff with domestically competitive salaries, adequate teaching materials, library and other elements that an educational institution requires to be in good working order.⁹⁵ Therefore, availability with respect to Schools shall mean schools must be established, schools must not be closed, the right to establish and direct private schools must be guaranteed, and states parties must not neglect the public education system (attention to issues concerning the rendering of public and private schools).⁹⁶ Regarding teachers, availability shall mean that teachers must be made available, properly qualified, the labor and trade union rights of teachers must be guaranteed, the right to strike, academic freedom and institutional autonomy must be ensured.⁹⁷

ii. Accessible: requires that educational institutions and programmes have to be accessible to every one, without discrimination, within the jurisdiction of the state party. Accessibility incorporates three overlapping dimensions:⁹⁸ *Non-discrimination:* This requires accessibility of education to all, especially the most vulnerable groups, in law or in fact, without discrimination on any prohibited grounds.⁹⁹ *Physical accessibility:*

⁹³ K.D. Beiter, cited above at note 1, P.477

⁹⁴ General Comment 13 para.6

⁹⁵ Ibid

⁹⁶ K. D. Beiter, cited Above at note 1, p. 99

⁹⁷ Ibid: See also Katarina Tomasevski, Education Denied, Costs and Remedies, (2003), p.53

⁹⁸ General Comment No.13 para.6(b)

⁹⁹ Id., para.6(b)(i)

education has to be within the physical reach of students.¹⁰⁰ In today's modern era, this is not limited to close proximity of geographic location but it also can be accomplished through various modes of distance learning or through the internet and other means of technologies. *Economic accessibility*: education has to be affordable to all. This dimension of accessibility is subject to the different definition for different levels of education. Whereas primary education shall be available 'free to all'. States Parties are required to progressively, introduce free secondary and higher education.¹⁰¹

iii. Acceptable: education has to be acceptable to students and parents. Acceptability implies that the state must set and enforce minimum standards in education concerning for example, quality, safety and health; the right of parents to ensure their children's religious and moral education in conformity with their own convictions must be respected; the opportunities for instruction in the mother tongue must be maximized.¹⁰² In addition, the methods of instruction, the contents of textbooks and teachers' conduct must respect human rights values; all aspects of school discipline must be consonant with the individual's dignity and his human rights and the learner/student must be recognized to be the bearer of rights.¹⁰³

iv. Adaptable: Adaptability means that education has to be flexible enough so that it can adapt to the changing needs and values of societies and respond to the needs of students within their diverse social and cultural settings.¹⁰⁴ In general, education must be flexible so that it can adapt to needs of a constantly changing society, notably those flowing from the opposing pressures of globalization and localization; the educational needs of minority and indigenous communities; the special situation of disabled children: and the special situation of working children.¹⁰⁵

¹⁰⁰ General Comment No.13 para.6(b)(ii)

¹⁰¹ Id., para.6(b)(iii)

¹⁰² Id., para.6 (c). See also K. D. Beiter, cited Above at note 1, p. 477

¹⁰³ K. D. Beiter, cited Above at note 1, p. 477-478

¹⁰⁴ General Comment No.13 para.6 (d)

¹⁰⁵ K. D. Beiter, cited Above at note, p. 478

2.3.2.3 Protection against Child labour

The hazardous and worst forms of child labour are of universal concern, given the obvious harm that they inflict on the lives of these children and their possibilities for a future hope. Child labour also has important economic implications. Most notable are the substantial income losses that working children will incur because of the negative consequences working will have on their human capital, including their health and education. Since children are more likely to work and not go to school if their parents worked as children the economic losses associated with child labour and their implication for poverty are often transmitted across generations.¹⁰⁶

Studies have concluded that eliminating child labour and putting these children in to education would have huge aggregate developmental benefits. Very, recently the ILO has published estimates that the discounted present value of this economic gain would be in the order of USD 5 trillion, over the 2000 -2002 period.¹⁰⁷ This shows a very large benefit far in excess of the costs that would be incurred. Besides economic arguments (benefits), there are compelling, if difficult to quantify, moral concerns with the worst forms of child labour. Moreover, child labour, in fact, stands as a serious obstacle to achieving a number of the goals including poverty reduction of the Millennium Development Goals (MDGs). Most directly, child labour has obvious implications for meeting the goal of universal primary education (education for every citizen in every society).¹⁰⁸

The International Covenant on Economic, Social and Cultural Rights also asserts in more detail the right to work and to just and favourable conditions of work.¹⁰⁹ Paragraph 3 of article 10 of the Covenant requires “special measures of protection and assistance” for all children and young persons: “Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or

¹⁰⁶Betcheman, et al. “Child labour, Education and Children’s Right” in Philip Alston and Mary Robinson(eds), Human Rights and Development. Towards Mutual Reinforcement. (Indian ed., 2006.) P.174

¹⁰⁷Ibid. cited from ILO, “Investing in every child: An economic study of the costs and benefits of eliminating child labour” (2004).

¹⁰⁸ Ibid

¹⁰⁹ ICESCR, Articles 6 and 7

health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”

In addition, in a General Comment on the right to education, the Committee on Economic, Social and Cultural Rights emphasizes, “States Parties have an obligation to ensure that communities and families are not dependent on child labour. The Committee especially affirms the importance of education in eliminating child labour and the obligations set out in article 7(2) of the Worst Forms of Child Labour Convention, 1999 (Convention No.182)”.¹¹⁰

2.3.2.4 Nature of States’ Obligations under ICESCR

The general obligations of States towards the fulfillment of ESR are dealt under Article 2 of the ICESCR. The covenant provides, *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*¹¹¹ Art.2 (2) provides *the principle of non-discrimination.*

The Committee on Economic, Social and Cultural Rights made a detailed General Comment on the nature of States Parties’ obligations in 1990. As regards progressive realization through the maximum use of available resources, the Committee states: “...the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party.”¹¹² Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic

¹¹⁰ General Comment 13, para.9

¹¹¹ Art. 2(1) ICESCR

¹¹² General Comment 3, 1990, The Nature of States Obligations, Committee on Economic, Social and Cultural Rights, para.9, UN Doc. E/12/1991/23(1990), reprinted in Asborn Eide, et al (ed.), cited above at note no. 33, p. 619

shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*.¹¹³

Similarly, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2(1) obligates each State Party to take the necessary steps 'to the maximum of its available resources'.¹¹⁴ In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate 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.¹¹⁵

On the other hand, while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations that are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States Parties obligations. One of these is the 'undertaking to guarantee' that relevant rights 'will be exercised without discrimination...'. The other is the undertaking in article 2(1) 'to take steps', which, in itself, is not qualified or limited by other considerations. "The means which should be used in order to satisfy the obligation to take steps are stated in article 2(1) to be 'all appropriate means, including in particular the adoption of legislative measures'.¹¹⁶

The Convention also proposes that States should undertake "legislative, administrative, and other measures" to implement all the rights it contains – including economic, social

¹¹³ Ibid

¹¹⁴ General Comment No.3, para.9 It should further be noted that the CRC, which includes many economic and social rights and corresponding state obligations, does not contain the qualifying clause progressive realization. Under the CRC, the obligations arise immediately, only qualified by the phrase within their means'. This shows that what is special about economic, social and cultural rights is only the question of the availability of means when such are required: the obligations are otherwise as immediate as are those relating to civil and political rights.

¹¹⁵ General Comment No.3, para.9

¹¹⁶ General Comment para.8

and cultural rights. The Committee recognizes that in many instances legislation is highly desirable and in some cases may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers, and education, as well as in respect of the matters dealt with in articles 6 to 9 [employment and social security rights] legislation may also be an indispensable element for many purposes...

In addition, "among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may be considered justiciable. The Committee notes, for example that the enjoyment of the rights recognized, without discrimination, will often be appropriately promoted, in part, through the provision of judicial or other effective remedies."¹¹⁷ In addition, there are a number of other provisions, which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self executing would seem to be difficult to sustain."¹¹⁸ For example, equal remuneration for work of equal value (article 7(a) (i), the right to form and join trade unions and the right to strike (article 8), special measures of protection on behalf of children (10(3), compulsory and free primary education (article 13(2), the liberty of parents to choose for their children non public schools and to ensure the religious and moral education of their children in conformity with their own convictions (article 13(3), the liberty of individuals and bodies to establish and direct educational institutions (article 13(4).

The General Comment indicates that the Covenant does not specify particular means of implementation, but that the means chosen must be adequate to fulfil obligations. Further, the Committee notes that the undertaking "to take steps ...by all appropriate means

¹¹⁷Indeed those States Parties which are also parties to the International Covenant on Civil and Political Rights are already obligated (by virtue of articles 2(1), 2(3), 3 and 26 of that Covenant) to ensure that any person whose rights or freedoms (including the right to equality and non-discrimination) recognized in that Covenant are violated, 'shall have an effective remedy' (article 2(3) (a))

¹¹⁸General Comment 3, para.5; see also Article 8 of the Universal Declaration of Human Rights, according to which 'Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law'."

“neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question, provided only that it is democratic and that all human rights are respected.”¹¹⁹

Therefore, States Parties are required to take legislative, administrative judicial, policy, allocation of sufficient national budget and other measures to the maximum extent of their available resources to ensure ESR of the child. In this regard, available resource includes financial resources and other type of resources such as human, expertise and organizational capacity.¹²⁰ Traditions, culture and political maturity and other important factors enabling the society to tackle its problems or values like tolerance, mutual respect and a spirit of solidarity, can be seen as resources.¹²¹ Furthermore, with a view to speed up the implementation of ESR, article 4 has also included within its ambit what has become indispensable for poor countries, i.e., international cooperation especially under article 24(4), 28(3) and 23(4) of CRC. It was to create procedures, which were ‘constructive’ rather than ‘finger pointing or punitive.’¹²²

However, in view of the lack of clarity as regards the exact legal nature of ESR, they are gradually clarified through additional, more specific instruments, and through the practice of monitoring bodies.¹²³ In addition, human rights lawyers further dealt with the nature of a State’s obligations in complying with human rights.¹²⁴ Moreover, a group of experts elaborated State Obligations for economic and social rights, for instance, The Limburg Principles on the Implementation of the International Covenant on Economic, Social and

¹¹⁹ General Comment 3, para.8

¹²⁰ Thomas Hammarberg, “Children” in Asbjorn Eide, et al.(eds.)(2001), cited above at note 33. p.365

¹²¹ Ibid

¹²² Ibid

¹²³ General Comment 3, para.8

¹²⁴ Henry Shue was introduced typology of state obligations consisting of four duties: the duty to respect, the duty to protect, the duty to fulfill or ensure and the duty to promote. Moreover, Asbjorn Eide, as Special Rapporteur of the Sub Commission on Prevention of Discrimination and Protection of Minorities on the Right to Food, in 1987, submitted his final report on the subject. In his report, Eide applied his tri-partite typology of state obligations to respect, protect and fulfill.

Cultural Rights¹²⁵ and Maastricht Guidelines on Violations of Economic, Social and Cultural Rights¹²⁶ are the best guide available to State Obligations under the ICESCR.

Overall, the consensus these days is human rights impose three types or levels of obligations on State Parties: the obligation to *respect*, to *protect* and to *fulfill*. The obligation to *fulfill* incorporates both an obligation to *facilitate* and an obligation to *provide* and *promote*.¹²⁷ The obligation to *respect* requires the State, and thereby all its organs and agents, to abstain from doing any thing that violates the integrity of the individual or infringes on her or his freedom, including the freedom to use the material resources available to that individual in the way she or he finds best to satisfy the basic needs.

The obligation to *protect* requires from the state and its agents the measures necessary to prevent other individuals or groups from violating the integrity freedom of action, or other human rights of the individual including the prevention of infringement of the enjoyment of his material resources. States, for instance, have duties to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties. It also obliges the State to prevent the violation of any individual's ESR by any other individual or non-state actors.

Finally, the obligation to *fulfill* requires the State to take the measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognized in the human rights instruments, which cannot be secured by personal efforts. Moreover, the obligation to *fulfill* requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full

¹²⁵The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN doc. E/CN.4/1987/17, Annex 3, reprinted in Asbjorn Eide, et al cited above at note 33, P. 717-726.

¹²⁶ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Annex 3, reprinted in Asbjorn Eide, et al cited above at note 33, P.726-734. For instance, Paragraph 6 of the Maastricht Guidelines on Violations of Economic, social and Cultural rights, states, like civil and political rights economic, social and cultural rights impose three different types of obligations on States the obligations to respect, protect and fulfill.

¹²⁷Asbjorn Eide, Economic, Social and Cultural Rights as Human Rights, in Asbjorn Eide et al., cited above at note p 23; General Comment No.12 (1999), para, 15. Report of the committee on Economic, Social and cultural Rights, UN doc. E/2000/22, p. 102-110

realization of the ESR. This obligation requires States, *inter alia*, to give sufficient recognition to the ESR in the national political and legal systems, preferably by way of legislative implementation, and to adopt a national policy with a detailed plan for realizing the rights.

2.3.4 ESR of the Child under Specific Instruments

Children are covered by the existing international human rights treaties (discussed above), because human rights are rights to which every human being is entitled regardless of his /her position in a given society or irrespective of any contingent circumstances. In this context, no distinction is drawn between them and adults in the enjoyment of rights. Besides that, as their comprehensive personality development is crucial to the well being of any society, special provisions relating to children were provided.¹²⁸

However, this does not mean that there is no international concern that calls for the need to accord special care and protection to children. This early development of the human person need to be brought up in an environment capable of providing the necessary material and spiritual care and affection was provided in 1924 and 1959 Declaration of the Rights of the Child.¹²⁹ This is clear from the statement *the child, by reason of his physical and mental immaturity needs special safe guards and care, including appropriate legal protections, before as well as after birth...mankind owes to the child the best it has to give.*¹³⁰

Further, in accordance with the 1959 Declaration, *the child shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have*

¹²⁸ See the first chapter section 1.3 above, For additional analysis of these special provisions in the treaties relating to children.

¹²⁹ Geraldine an Bueren , cited above at note 55, P. 28

¹³⁰ Preamble to the 1959 Declaration of the rights of the child, proclaimed by General Assembly Resolution 1386 (XIV) of the United Nations Organizations on Nov.20,1959; published in Human Rights a Compilation of International instruments, volume I, first part, Human for Human Rights. Geneva, in: Tilahun Teshome, The child and the law in Ethiopia, the Case of the UN Convention on the Rights of the Child, Journal of Ethiopia law, Vol.16, Addis Ababa university, 1998, p.31

*the right to adequate nutrition, housing, recreation and medical services.*¹³¹ With respect to education, the Declaration states *the child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education, which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society.*¹³² The Declaration also enshrines *the principle that the child shall be protected against all forms of neglect, cruelty and exploitation.*¹³³

In addition, the 1924 Declaration though not adopted the language of entitlement (child was seen as the object of international law, as evidenced by the phrase *the child must be given*) compared to 1959 Declaration, provides matters the child must be given.¹³⁴ Thus, the Declarations though non-binding resolution; however, besides recognizing the economic and social entitlements of children, they established internationally the concept of the rights of the child, thereby laying the foundation for future international standard setting in the field of children's rights.¹³⁵

Moreover, as a consequence of growing international concern about the vulnerability of the children separate conventions that address the specific human rights of children was adopted. The Convention on the Rights of the Child (CRC) of 1989¹³⁶ and the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990¹³⁷ are cases in point.

¹³¹ Declaration of the Rights of the Child, Proclaimed by General Assembly resolution 1386(XIV) of 20 November 1959, Principle 4

¹³² Declaration of the Rights of the Child (1959), principle 7

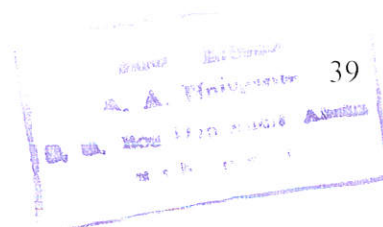
¹³³ Declaration of the Rights of the Child(1959), principle 9

¹³⁴ For instance the child must be given the means requisite for its normal development, both materially and spiritually; the child (that is hungry) must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; the child must be put in a position to earn a livelihood, and must be protected against every form of exploitation. See Declaration of the Rights of the Child, Fifth Assembly of the League of Nations, 1924; see also Geraldine Van Bueren, cited above at note 28 P. 28

¹³⁵ Geraldine Van Bueren, cited above at note 55, P. 24

¹³⁶ Convention on the Rights of the Child. Adopted by the General Assembly of the United Nations on 20 November 1989

¹³⁷ African Charter on the Rights and Welfare of the Child OAU, Doc. Cab/Leg/24.9/49 (1990). Entered Into Force Nov. 29, 1999.: Both CRC and ACRWC are ratified by Ethiopia. See Ratification Proclamations No. 10 1992 and 283.2002 respectively. This part will be dealt in the following chapter



CHAPTER THREE

SCOPE OF THE SOCIO-ECONOMIC RIGHTS UNDER CRC, ACRWC AND PROTECTION IN DOMESTIC LEGAL SYSTEM

The Convention on the Rights of the Child is the most comprehensive international human rights treaty. The convention recognises the various facets of the SER of the child. It imposes also obligations on a States to take all appropriate legislative, administrative, and other measures “to the maximum extent of their available resources for the implementation of the SER of the child. Generally, it is rooted in some basic values about the treatment of children, their protection and participation in the society.¹

On the other hand, ACRWC, besides recognizing the SER as fundamental human rights, it includes and emphasizes on special conditions of children that need immediate measures in most of the African countries, such as, the issue of child labour, protection against harmful and cultural practices, children under armed conflicts, children of imprisoned mothers, refugee children,² etc... ACRWC also gives due consideration to the virtues of the cultural heritage, historical background and the values of the African civilization, which should inspire and characterize their reflection on the concept of the rights and welfare of the child.³

However, domestic systems are the primary forum for effective protection and implementation of all human rights in general and ESR of the child in particular. Thus, in the following sections analysis of scope of the right to health, education and protection against child labour in CRC and ACRWC will be made. Domestic protection of SER of the child and status of CRC and ACRWC in FDRE as well as the protection under specific laws in Ethiopia follow this. Furtherore, general implementation mechanisms of ESR under CRC will be made.

¹Thomas Hammarberg, “Children” in Asbjorn Eide, et al (ed), *Economic, Social and Cultural Rights, A Textbook*, (2nd Rev. ed. 2001), p.355

²This is clearly provided in the preamble to the ACRWC that states ... the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care.

³ See the preamble to the ACRWC

3.1 Definition of a Child

The scope of application of the rights including, socio-economic rights recognized in CRC and ACRWC primarily depend on the determination of who is covered by the term “child”. Thus, the term child may be understood in two different ways: “a relationship with respect to parentage and consanguinity, the natural relationship that derives from the community of blood” and “the status of human being in its early years of life.”⁴ Article 2 of the ACRWC defines Child as *every human being below the age of 18 years*. While Article 1 of the CRC provides that for the purposes of the convention, *a child means every human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier*.

Pursuant to this article unless the applicable laws of State Party determine earlier attainment of majority, every human being below eighteen years of age are regarded as children. The Convention leaves the starting point of childhood open. Is it birth, conception, or somewhere in between? The last proviso *under the law applicable to the child majority is attained earlier* of the convention refers that, the definition of the concept to a legal system that has lower ages for the attainment of majority.

According to some commentators, the drafters of the convention decided to set the upper limit in order to maximize the protection offered by the convention and uniformly apply the rights there into as large an age group as possible.⁵ However, the upper age limit is not necessarily binding on states, as the convention clearly allows states to fix lower age limits to the attainment of majority, the inclusion of such an allowance for a possibly different age limit might have given a comfortable room to the diversity of nations.⁶

On the other hand, some argue that in the absence of a minimum age limit below which states cannot lower the age of attainment of majority, the protection guaranteed by the

⁴Tilahun Teshome, “The child and the law in Ethiopia, the Case of the UN Convention on the Rights of the Child,” *Journal of Ethiopia law*, (Vol.16, 1998) p.39

⁵Save the Children (Sweden), *Ethiopian Law and the Convention on the Rights of the Child: A Comparative Study*, p. 46 See also Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (1999), P52 and 57

⁶ Id., p.48

convention might easily be eroded.⁷ Yet again, some provisions of the convention do not give any room for national variations. For example, the Convention sets a clear line: no capital punishment or life imprisonment without the possibility of release for those under the age of 18 (article 37); no recruitment into the armed forces or direct participation in hostilities for those under the age of 15 (article 38). On other issues, States are required to set minimum ages: for employment (article 32) and for criminal responsibility (article 40). The requirement to make primary education compulsory also implies setting an age (article 28).⁸

Besides such controversial issues with respect to upper limit to the period of childhood, the lower age limit also remain subject to dispute. The drafters are said to have intentionally left out the issue of starting point of childhood because they wanted to avoid taking a position on abortion and other pre birth issues, which would threaten the convention's universal acceptance.⁹ Due to the vagueness of the convention in relation lower age limit, some scholars argue that, the convention is sufficiently clear in favouring the extension of protections to the unborn child.¹⁰

Finally, for the purposes of the Convention on the Rights of the Child, childhood ends and majority is attained at the age of 18 years "unless, under the law applicable to the child, majority is attained earlier". Thus the Convention is more prescriptive, but not inflexible, about defining for its purposes the end of childhood. This age limit should thus be used by States Parties as a rule and a reference for the establishment of any other particular age for any specific purpose or activity. This provision further stresses the need for States Parties to ensure special protection to every child below such a limit, and

⁷ Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (1999), p.107

⁸ Rachel Hodgkin and Peter Newel, *Implementation Handbook for the Convention on the Rights of the Child*, (fully rev. ed. 2002), p 1

⁹ *Id.*, p.3

¹⁰ *Ibid.* Some argue the since the Convention's Preamble draws attention to the statement in the Preamble to the 1959 Declaration pursuant to which *'the child by reason of his physical and mental immaturity, needs special safeguards and care including appropriate legal protection before as well as after birth*, the Convention favour the unborn child. The statement of the preamble serves as an authoritative guideline for the interpretation of an ambiguous provision or clause within the instrument. It also seems that the drafters of Convention also try to balance the consistency between article 1 and article 41, which emphasizes that the Convention does not interfere with any domestic legislation (or applicable international law) "more conducive to the realization of the rights of the child".

hence, such expression should in no way be interpreted as a general escape clause, nor should it allow ages to be established which might be contrary to the principles and provisions of the Convention.¹¹ In other words, the protective ages must not be set “unreasonably low”, and that in any case a State Party cannot absolve itself under the Covenant from obligations to children under 18 years old, even if they have reached the age of majority under domestic law.¹²

The Convention does not provide direction on the specific age, or ages, at which children should acquire such rights, but it does provide a framework of principles, such as, respecting children’s ‘*evolving capacities*’ as regards their views: that children acquire rights to make decisions for themselves on certain matters once they have acquired ‘*sufficient understanding*’.¹³ The advantage of such framework of principles is that they avoid rigid age barriers even though they leave judgments on when children have acquired sufficient understanding to adults, who may not respect the concept of evolving capacities. As a result, reference was made to the fact that the concept of majority age “varied widely between countries and also within national legislation, according to whether the civil, penal, political or other aspects of majority were at issue”¹⁴

Based on these, a glance to Ethiopian laws reveals that there is no single definition of the term child applicable to all legislations. The FDRE constitution does not define the term though it guarantees the right of children under Article 36. In Ethiopia, there are different legislations that provide protection to children and hence define the term child; however, such definitions lack uniformity. For instance, the Ethiopian Civil Code states *every human being is a subject of rights from its birth up to its death*.¹⁵ However, the civil code restricts children not exercise rights and duties by themselves considering them as incapable of stating that *every human being of both sexes below the age of eighteen years*

¹¹ Id.,4-5

¹² Ibid

¹³ Ibid

¹⁴ Sharon Detrick, cited above at note 7, P. 116

¹⁵The Civil Code of Ethiopia, 1960, Art.1, Proclamation No. 165 1960, 19th year, Gazeta extraordinary, no.1/1960

*are incapable (minors).*¹⁶ The Federal Revised Family Code clearly states *juridical acts concluded by children below the age of eighteen are subject to invalidation by court.*¹⁷ Thus, minors cannot perform acts that have Civil Code governed consequences, such as; concluding contracts, making tort claims for a damage, property administration, etc by themselves. Minors perform acts producing legal affects through their guardian and tutor which protects the personal interest or well-being of the child such as his or her education and health as well as the child's economic/pecuniary interest.¹⁸ For instance, in relation to medical treatment, Art 20(3) of the civil code empowers the guardian to submit the child to medical examination and treatment. The same power is entrusted to the guardian and tutor on this matter under Article 257 Revised Family Code, however taking into account the interests of the child.

Another legislation that is relevant to subject matter of this paper is labour proclamation No.377/2003 which provides age limit for concluding employment contract. The age limit of employment for children under this proclamation is 14 years. The proclamation prohibits employing persons less than 14 year of age. In addition, the labour proclamation considers persons between 14 and 18 years of age as young workers and gives special protection as well¹⁹

On the other hand, with respect to lower age limit the Civil Code does not in principle regard the unborn child as having rights because personality starts from the time of birth. However, under exceptional circumstance the civil code also recognizes the personality of unborn child provided that the cumulative conditions provided under Article 2 and 4 are fulfilled. Accordingly, there must be an *interest* that would accrue to the child at the time he/she was in the mother's womb and secondly, the child must be *born alive* and third child must be *viable* (staying alive for 48 hours).²⁰

¹⁶ Ethiopian Civil Code, Art.192

¹⁷Federal Revised Family Law, 2000, Art. 299, Proclamation No. 213/2000 Federal Negarit Gazeta, 6th year, extraordinary issue no.1/2000

¹⁸The rationale behind such restriction is to protect children from abuse by others who might take advantage of the inexperience and tender age of the former.

¹⁹ Labour Proclamation, 2003, Art 48 and 89, Proclamation No. 377/2003, Federal Negarit Gazeta, 10th year, no.

²⁰ Ethiopian Civil Code, Arts.2 and 4

3.2 The Scope of the Right to Health under CRC and ACRWC

All provisions relating health and welfare can be deduced from the principle of the right of the child to survival and development, one the guiding principles, which reflect the fundamental basis of the convention,²¹ provided under Article 6 of CRC. It refers not only to the right not to be killed, but also introduces a dynamic aspect of the right to life, including the need for preventive action such as immunization and to physical health, mental, emotional, cognitive, social and cultural development of the child.²² Consequently, the principle relating to life, survival and development is a platform for all other articles in the convention dealing with the socio-economic rights of the children,²³ in general and the right to health in particular.

In relation to the right to health, States Parties are under obligation to embark on activities to ensure that children get the highest attainable standard of health care services. To this end, CRC in Article 24 states:

Government should strive to ensure that no child is deprived of access to health care services. States Parties should take appropriate measures to diminish infant and child mortality, to develop a primary health care system for children, to combat disease & malnutrition (through provision of nutritious food & clear water, to ensure pre and post-natal care for mothers, to spread awareness about child health & nutrition including advantage of breast feeding, hygiene, environmental sanitation, develop guidance for parents and family planning.²⁴

Moreover, the contours of the obligations created by article 24 are to be determined in light of other convention provisions including Art 27, which *requires the government to provide material assistance, particularly with regard to nutrition, clothing and housing, subject to available resources, special care for disabled children, with their means and international cooperation.*²⁵ Related to this is *the right of every of child to a standard of*

²¹CRC contains four guiding principle such as Non-discrimination; the Best Interest of the Child; Right to Life, Survival and Development and Views of the Child. See also Thomas Hammarberg, cited above at note 1, p.357

²² Ibid

²³ Ibid

²⁴ CRC, Art.24

²⁵ CRC, Art. 27(3)

living adequate for the child's physical, mental, spiritual, moral and social developments²⁶ as well as the physical and psychological recovery of child victims of neglect abuse or exploitation.²⁷

Similarly, ACRWC guarantees health and health Services under Article 14, which provides the following:

Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health. States Parties shall undertake to pursue the full implementation of this right and in particular shall take measures to: reduce infant and child mortality rate; ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; ensure the provision of adequate nutrition and safe drinking water; combat disease and malnutrition within the framework of primary health care through the application of appropriate technology; ensure appropriate health care for expectant and nursing mothers; and develop preventive health care and family life education and provision of service.²⁸

From the provisions it can be grasped that the right to health include the following core obligations:

A. Ensuring non-discriminatory access to health facilities, goods and services

Article 24 stresses that the State Party must recognize the right of the child to the enjoyment of the highest attainable standard of health and it must strive to ensure that no child is deprived of access to health care services. Article 24 read with article 2, which requires that no child in the jurisdiction suffers discrimination in the implementation of the article *irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status.*²⁹ The Committee on the Rights of the Child has linked concerns about health related discrimination issues in particular, to discrimination against children living in poverty, girls, disabled children, children living in rural areas

²⁶ CRC, Art 27(1)

²⁷ Id., Art.39

²⁸ ACRWC, Arts.14(1)(2)(a-f)

²⁹ CRC, Art. 2

and different regions of a State, ethnic groups, children of indigenous communities, asylum-seeking and refugee children and illegal immigrants.³⁰

Thus, Art 24 outlaws such practices and requires that every child equally benefit from available health care services. Moreover, while the constraints due to the limits of available resources are acknowledged, States Parties have immediate obligations relating to the right to health, such as the guarantee that the rights will be exercised without discrimination of any kind and the obligation to take deliberate, concrete and targeted steps towards the full realization of the right to health.³¹

B. Minimum essential foods; basic shelter, housing and sanitation, and an adequate supply of safe and potable water

The Committee on Economic, Social and Cultural Rights defines the right to adequate food as being realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.³² The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense, which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to mitigate and alleviate hunger... even in times of natural or other disasters.³³ The Committee also notes that the core contents of the right to adequate food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.³⁴

³⁰ Rachel Hodgkin and Peter Newel, cited above at note 8, p350-352.

³¹ Ibid

³² General Comment, No.11, The Right to Adequate food, Committee on Economic, Social and Cultural Rights, para.1-5, UN Doc. E/2000/22(1999), reprinted in Asborn Eide, et al (ed.), *Economic, Social and Cultural Rights, A Text book*, (2nd Rev. Ed 2001). p. 659

³³ General Comment, No.11. para.1-5

³⁴ Ibid. the committee further notes that any person or group who is a victim of a violation of the right to adequate food should have access to effective juridical or other appropriate remedies at both national and international levels. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition. National Ombudsmen and human rights commissions should address violations of the right to food

Furthermore, Article 27 of the Convention requires States Parties in cases of need to provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.³⁵ It recognizes that the child's development cannot be divorced from his or her conditions of living. By listing the different components of full development, such as physical, mental, spiritual, moral and social, article 27 makes clear that an adequate standard of living is not just limited to the basics of food, clothing and housing, important though these are.

With respect to the right to housing, in its General Comment on the right to adequate housing the Committee on Economic, Social and Cultural Rights has mentioned the requirements such as security of tenure, availability of basic services, affordability and accessibility of housing.³⁶ In addition, in its General Comment on forced evictions, the committee pointing out that eviction frequently violates people's rights even when they are justifiable, and in particular have a disproportionate impact on children and other vulnerable individuals.³⁷

C. To diminish infant and child mortality and Immunization against the major infectious diseases

Article 6 requires recognition that "every child has the inherent right to life"; States must ensure "to the maximum extent possible" the survival of the child.³⁸ The infant mortality rate is the probability of dying between birth and exactly one year of age, expressed per 1.000 live births; the term child mortality rate is the probability of dying between birth and exactly five years of age, expressed per 1.000 live births.³⁹

States' Parties are obliged to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking

³⁵CRC, article 27

³⁶General Comment 4, the Right to Adequate Housing, Committee on Economic, Social and Cultural Rights, para.8 (a-c), UN Doc E/ 1992/23, reprinted in Asborn Eide, et al (ed.), cited above at note 1 p. 623

³⁷General Comment 7, the Right to Adequate Housing: forced Eviction, Committee on Economic, Social and Cultural Rights, para.1-2, UN Doc. E/1998/22, p.643

³⁸ CRC, Art.6

³⁹ UNICEF, State of the World Report. 2009

water, taking into consideration the dangers and risks of environmental pollution are also guaranteed under the convention. Besides this, ensuring reproductive and maternal health care is also crucial. For example, as regards, ensuring appropriate prenatal and postnatal health care for mothers, the World Summit for Children Plan of Action notes: The causes of the high rates of infant mortality, especially neonatal mortality, are linked to untimely pregnancies, low birth weight and pre-term births, unsafe delivery, neonatal tetanus, high fertility rates.⁴⁰

D. Take appropriate and effective measures to abolish harmful traditional practices

Art 24 recognizes the progress that can be made in ensuring the health of children by combating harmful traditional practices. It requires States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.⁴¹ Article 24(3) together with and the non-discrimination principle in article 2 require a review in all States of any traditional practices that involve violence and/or are prejudicial to the health of children. Article 24(3) states unequivocally that appropriate measures should be taken with a view to abolishing traditional practices prejudicial to health.

The health risks of practices, which involve some invasion of the child's bodily integrity, may be intensified by their performance by people with no medical training, and in unhygienic conditions. Practices, which should be reviewed in the light of the Convention's principles, include all forms of genital mutilation and circumcision; binding, scarring, burning, branding, coin rubbing, tattooing, piercing; initiation ceremonies involving, for example, forced holding under water; deliberate discriminatory treatment of children involving violence and/or prejudicial to health; for example, preferential feeding and/or care of male children; lack of care for disabled children or children born on certain days; forms of discipline which are violent and/or prejudicial to health; and early marriage and dowries.⁴²

⁴⁰ Rachel Hodgkin and Peter Newel, cited above at note 8, p.366-367

⁴¹ CRC, Article 24(3)

⁴² Rachel Hodgkin and Peter Newel, cited above at note 8, p.367

E. Providing Health Education and Training

To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents also important points stated under the convention.⁴³ ACRWC also obliges State Parties to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents.⁴⁴

Finally yet importantly, the convention recognizes the inability of developing countries to immediately provide of health care services of quality as envisioned by Art 24. Thus, it stipulates that this right should be implemented to *the maximum extent... of available resources and where needed within the framework of international cooperation*.⁴⁵ The provision further encourages states parties to work cooperatively with international agencies to progressively achieve the goals it sets, which includes aid, advice and technical assistance collaboration on research and educational exchange. ACRWC also obliges State Parties to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children and to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.⁴⁶

⁴³ CRC, Art. 24(2)(e)

⁴⁴ ACRWC, Art.14(2)(h)

⁴⁵ CRC, Art 24(3)

⁴⁶ ACRWC, Art.14(2)(i)(j)respectively

3.3 Scope of the Right to Education in CRC and ACRWC

In the first place, education is both a human rights and an indispensable means of realizing other human rights. As empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy.⁴⁷

In line with this, CRC besides emphasizing non-discrimination with respect to right to education provide the following:

Primary education should be compulsory & free to all; Secondary education should be accessible to all on the basis of capacity. It requires the government to take measures to reduce dropout rates; school attendance of girls as compared to boys; protection to Children's of minority groups.⁴⁸ Education should aim at developing the child's personality, talents, and mental and physical abilities to their fullest potential. It should prepare the child for 'a responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendships among all peoples, ethnic, national and religious groups and persons of indigenous origin; respect for human right and the natural environment.'⁴⁹ (Emphasis added)

Likewise, ACRWC guarantees the right to education under Article 11 as follows:

Every child shall have the right to an education. The education of the child shall be directed to the full development of the child's personality, talents and mental and physical abilities, the strengthening of respect for human rights and fundamental freedoms; the preparation for effective participation in a free society, the promotion of understanding, tolerance and friendship among various groups of persons. It also includes the preservation of national independence and territorial integrity, positive African values, morals, tradition, culture, promotion and achievement of African unity and solidarity; the development of respect for

⁴⁷General Comment No.13, the Right to Education, Committee on Economic, Social and Cultural Rights, para UN Doc. E/C.12/2000/4, reprinted in Asbjorn Eide, et al (ed.), cited above at note 1 p. 665; See also Manfred Nowak, "The Right to Education" in Asbjorn Eide, et.al (ed.), cited above at note 1, p. 245

⁴⁸ CRC, Art. 28

⁴⁹ Id., Art 29

environment and natural resources; the promotion of the child's understanding of primary health care.⁵⁰ (Emphasis added)

Further, States Parties are obliged to take all appropriate measures *to provide free and compulsory basic education; the development of secondary education and to progressively make it free and accessible to all; make the higher education accessible to all on the basis of capacity; encourage regular attendance at schools and the reduction of drop-out rates.* In respect of female, gifted and disadvantaged children, States are *obliged to ensure equal access to education for all sections of the community.*⁵¹ It also requires States to ensure *school discipline to be administered in accordance with the inherent dignity of the child;* and *take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.*⁵²

From the above provisions of CRC and ACRWC, the following core contents of the right to education⁵³ can be identified. These are:

A. Free and Compulsory Primary Education

During the drafting of the Convention on the Rights of the Child, there was some discussion about the word “free” (which had already appeared in other related treaties). Objections were made that cost-free education is an illusion since someone always pays, either directly or indirectly through taxes. A representative from Japan proposed that the word “free” should be interpreted to mean that education “could be made accessible to all

⁵⁰ ACRWC, Arts. 11(1) (2) (a-h)

⁵¹ Id., Arts. 11 (3) (a-e); see also Article 13 which states the right to education of disabled child and state that states parties shall ensure that the disabled child has effective access to training...in a manner conducive to the child's achieving the fullest possible social integration, individual development and his cultural and moral development. Article 20 provides that States Parties have the obligation in accordance with their means and national conditions to take all appropriate measures 'to assist parents...and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education clothing and housing.

⁵² ACRWC, Arts. 11 (5)(6)

⁵³ For further analysis of this core contents see also Katarina Tomasevski, *Education Denied: Costs and Remedies*, (2003), p.53

children and not to mean that free education was a measure which States Parties were obliged to adopt".⁵⁴

The Committee on Economic, Social and Cultural Rights on plans of action for primary education, states in relation to the right to primary education free of charge. The right is expressly formulated to ensure the availability of primary education without charge to the child, parents or guardians.⁵⁵ Fees imposed by the Government, the local authorities or the school and other direct costs constitute disincentives to the enjoyment of the right and may jeopardize its realization, which is often highly regressive in effect.⁵⁶ Their elimination is a matter, which must be addressed by the required plan of action. Indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category.⁵⁷

Thus, the duty to make primary education free of charge is imposed up on the State and the community. The State has to secure the fund necessary for, at least, primary education from its budget allocation. Therefore, the budget allocation of a particular state evidences its vehemence to realize the right to education. In most parts of the world, the provision of primary education is considered the realm of local administrative organs, not of the central state. However, this decentralization of jurisdiction over primary education may pose a danger, as the variation in terms of capacity and willingness to raise and appropriate funds for education between localities may be reflected in the discrepancy of availability and quality of education, through out the state. Katarina Tomasevski reports this fact as follows:

"The process of decentralization may deepen the unequal enjoyment of the right to education by making the financing of education the sole responsibility of poor local communities or families... Making families and communities responsible for funding education broadens the

⁵⁴ Sharon Detrick, cited above at note 7, P. 393 cited from E/CN.4/1989/48, pp. 79-84

⁵⁵ General Comment 11, Plans of Action for primary education, Committee on Economic, Social and Cultural Rights (1999), UN Doc. E/2000/22 par. 7

⁵⁶ General Comment 11, para.7

⁵⁷ Id., para.7

gap between have and have-nots. Much as many other phenomena, this one has a visible gender profile.⁵⁸

In addition, it is not enough to ensure that primary education is free, it should also be compulsory. However, it should be noted that it is not necessary to make attendance at school compulsory in order to fulfill this obligation under the Convention. Education and school are not synonymous – children can be educated without schools, though this is unusual, and, sadly, attendance at school does not necessarily mean the child is being educated.⁵⁹

As noted by the Committee in its General Comment No. 11, paragraph 4, lack of primary education reinforces the exposure of children to violations of their human rights as attested by the direct correlation between primary school enrolment level for girls and major reductions in child marriages. So, one may safely conclude that making primary education compulsory can be a tool in endeavors to reduce abuse of human rights of children. In addition, free and compulsory education is instrumental for protection of child labour and child abuse.

B. Non-discrimination and Equal Treatment

The 1960 The UNESCO Convention against Discrimination in Education⁶⁰ defines discrimination as *any distinction, exclusion, limitation or preference which being based on race, colour, 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.*⁶¹

⁵⁸Report submitted by Special Rapporteur Katarina Tomaševski, Commission on Human Rights Sixteenth Session, Item ten of the Provisional Agenda Economic Social and Cultural Rights 2003/4, Para 17

⁵⁹Rachel Hodgkin and Peter Newel, cited above at note 110, p. 417

⁶⁰ UNESCO Convention against Discrimination in Education. Adopted by The 11th session of the General Conference of UNESCO on 14 December 1960

⁶¹UNESCO Convention against Discrimination in Education of 1960, Article 1(1): See also Article 3 of ACRWC, which provides Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status

Thus, the right to education is required to be achieved based on equal opportunity stresses the general principle of article 2 on non-discrimination. The principle of non-discrimination applies to all rights and freedoms, and the obligations of States to prohibit discrimination and undertake measures for its eradication are immediate, even in the enjoyment of those rights, which they do not have to guarantee fully and immediately. This is because the implementation of non-discrimination does not require substantial funds. It rather requires simple application of equal measures, which provide equal access to education for all people. For instance, in the General Comment on the right to education the Committee expressly provided that the prohibition on discrimination is “subject to neither progressive realization nor the availability of resources”.⁶²

The other thing with regard to the principle of non-discrimination is that it extends to all persons of school age residing in the territory of a State party, including non-nationals and irrespective of their legal status.⁶³ The State is also duty bound to put in place a system, which shows a disaggregated educational data based on the prohibited grounds and enables proper monitoring of the condition of the right with regard to vulnerable groups.⁶⁴ Furthermore, there should not exist difference in the quality of education in different regions of the State party resulting from huge disparity in spending policies of that particular State.⁶⁵

In addition, the Committee on the Rights of the Child identified various groups as suffering discrimination in education, such as, girls, rural children, minority groups, disabled children, Children in forms of detention. The foremost bar to equality of opportunity in education is, usually, the lack of resources - either in terms of a low government budget applied to education so that education is not made available to all members of the population, or in terms of families' poverty so that children have to be withheld or withdrawn from education.⁶⁶

⁶²General Comment No. 13, the Right to Education, Committee on Economic, Social and Cultural Rights, para.31, UN Doc. E/C.12/2000/4, reprinted in Asborn Eide, et al (ed.), cited above at note 1 p. 665

⁶³ General Comment 13, 1999, para.34

⁶⁴ Id., para 37

⁶⁵ Id., para 35

⁶⁶ Rachel Hodgkin and Peter Newel, cited above at note 8, p. 411-416

In general, the principle of non-discrimination applies neither progressive realization nor the availability of recourses. It applies fully and immediately to all aspects of education and encompass all internationally prohibited grounds of discrimination. E.g., Sharp disparities in spending policies that result in different qualities of education for persons residing in different regions shall amount to discrimination, hence, violation of the rights guaranteed.

C. Aims and Purposes of Education

As stated above, Article 29(1) of CRC and 11(2) ACRWC provide the most detailed provision on the aims and objectives of education. In addition, according to the Committee on Rights of the Child, the education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture, which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence.⁶⁷ Education in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes, which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.⁶⁸

Moreover, the child's right to education is not only a matter of access (art. 28) but also of contents. An education with its contents firmly rooted in the values of article 29 (1) for every child is an indispensable tool for her or his efforts to achieve in the course of her or his life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental change driven by globalization, new technologies and related phenomena.⁶⁹

Here, it is of paramount importance to mention that right to education only be enjoyed if accompanied by the academic freedom of staff and student, because staff and students in

⁶⁷ General Comment 1, Committee on the Rights of the Child, 2001, HRI/GEN/1/Rev.5, para.2

⁶⁸ Ibid

⁶⁹ Ibid

educational institution are especially vulnerable to political and other pressures, which undermine academic freedom. Neither Article 13 ICESCR nor Arts. 28&29 Of the CRC explicitly mention academic freedom and institutional autonomy. In paragraph 38 General Comment No.13, the CESCR states, however that it considers the issue to be covered by article 13. In the same paragraph, the committee also states that, although academic freedom is particularly relevant to institutions of higher education, as staff and students in higher education are especially vulnerable to political and other pressures, which undermine academic freedom, staff and students throughout the education sector are entitled to academic freedom.⁷⁰

Taken together, in the committee's view academic freedom comprises the freedom of members of the academic community, individually or collectively, to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing, the liberty of individuals to express freely opinions about the institution of system in which they work. The liberty of individuals to fulfill their functions without discrimination or fear of repression by the state or any other actor; or to participate in professional or representative academic bodies and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdictions. It also include obligation such as the duty to respect the academic freedom of others, to ensure the fair discussion of contrary views, and treat all without discrimination on any of the prohibited grounds.⁷¹

Finally yet importantly, in relation to the right to education, another important aspect is the respect for the right of parents. In this regard, ACRWC obliges States Parties *respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conforms to such minimum standards may be approved by the State.*⁷² The same is guaranteed under CRC.⁷³

⁷⁰General Comment 13, para 38

⁷¹Ibid.

⁷²ACRWC, Art.11(4)

⁷³CRC, Art.28

3.4 The Right to Protection against Child Labour

At international level, the child labour has been the focus of various conventions and recommendations. As early as 1921, when the International Labour Organization (ILO) passed the first minimum age convention, the world has attempted to protect children's right to an education and to prevent any child labour, which would prejudice their school attendance, health and development.⁷⁴ However, the most significant have been the CRC and the two ILO Conventions, the Minimum Age Convention (No 138, 1973)⁷⁵ and the Worst Forms of Child Labour Convention (No. 182, 1999).⁷⁶ Therefore, in promoting children's rights, each of these instruments, in very different ways, has been motivated by an interest in protecting children from exploitation through their labour and providing for education as a preferable alternative. These conventions provide important standards or points of reference for developing national policy as well as benchmarks against which national policies and interventions can be monitored and assessed.

To begin with, CRC recognizes the right of the child *to be protected from economic exploitation and from any work that is likely to be hazardous, or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*⁷⁷ The article requires States Parties *to take legislative, administrative, social and educational measures to ensure implementation, and in particular to provide a minimum age or ages for admission to employment; appropriate regulation of the hours and conditions of employment; appropriate penalties or other sanctions to ensure effective enforcement.*⁷⁸

In relation to Child Labour, ACRWC also provides the following:

Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical,

⁷⁴http://www.ilo.org/ilolex/cg_ilex/con_vede (0101 (visited last on October, 2009). This is provided under ILO, Minimum Age (Agriculture) Convention of 1921, Article 1

⁷⁵ ILO, Convention No. 138 26 June 1973, 1015 UNTS, 297, entered into force 19 June 1976

⁷⁶ 38ILM 1207 (1999), entered into force 19 Nov.2000 (convention 182)

⁷⁷ CRC, Art.32(1)

⁷⁸ Id., Art.32(2)(a-c)

mental, spiritual, moral, or social development.⁷⁹ States Parties take all appropriate legislative and administrative measures to ensure the full implementation of this Article, which covers both the formal and informal sectors of employment. States Parties shall in particular provide through legislation, minimum wages for admission to every employment; appropriate regulation of hours and conditions of employment; appropriate penalties or other sanctions to ensure the effective enforcement of this Article; promote the dissemination of information on the hazards of child labour to all sectors of the community.⁸⁰(Emphasis added)

In addition, According to ILO Convention No.182, the worst forms of child exploitation comprise the following:

All forms of slavery or similar practices such as the sale and trafficking in children, debt bondage and serfdom and forced and compulsory labour or forced and compulsory recruitment of children for use in armed forces; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performance; the use, procuring or offering of a child for illicit activities such as for the production and trafficking of narcotic drugs; and work which by its nature or the circumstances in which it is carried out is likely to harm the morals, health or safety of children.⁸¹

These two articles of the conventions requires States to recognize the right of the child to be protected from economic exploitation and from performing any work which is likely to be hazardous, interfere with the child's education, or be harmful to health or physical, mental, spiritual, moral or social development. Article 32 of CRC further obliges States parties to provide a minimum age or minimum ages for admission to employment. It requires that a minimum age, for employment must be set without prescribing any particular ages. However, the Committee has indicated that such ages should be established in light of other international instruments, and in particular ILO Convention No.138.

⁷⁹ ACRWC, Art.15(1)

⁸⁰ Id., Art.15(1)(2)a-d)

⁸¹ ILO Worst Forms of Child Labour Convention, 1999 (No.182). Adopted by the General Conference of the International Labour Organization on 1 June 1999, Art.1

Furthermore, the ILO Convention requires a commitment to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.⁸² In addition, it provides a minimum age for any employment not less than the age of completion of compulsory schooling and in any event not less than 15.⁸³ Moreover, a minimum age of 18 for admission to any type of employment or work, which by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of young persons.⁸⁴

However, there are also certain limited exceptions, which the Convention allows. In relation to the minimum age for any employment or work, it allows, *where the economy and educational facilities are insufficiently developed*, a member State may, provided it has consulted with organizations of workers and employers concerned, initially specify a minimum age of 14 years.⁸⁵ Member States may also list, after consultation, limited categories of work or employment – not hazardous – *in respect of which special and substantial problems of application arise*, which are excluded from application of the Convention.⁸⁶

Besides these, national laws or regulations may permit light work by 13 to 15-year-olds (or 12 to 14 initially), which is not likely to be harmful to their health or development, and does not prejudice their attendance at school or in vocational or training programmes, “or their capacity to benefit from the instruction received. Again, national laws or regulations may permit employment or work by young people who are at least 15 (or 14

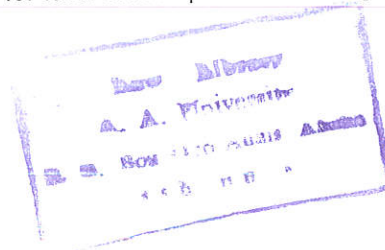
⁸² Id., Article 1

⁸³ Id., Article 2

⁸⁴ Id., Article 3

⁸⁵ Id., Article 2

⁸⁶ Id., Article 4. It Excludes from the Convention work done in schools or other training institutions for general, vocational or technical education, or by persons at least 14 years of age in undertakings under specified conditions, as provided under Art. 6 of the convention. These are; mining and quarrying, manufacturing; construction; electricity, gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.



initially) but have not completed their compulsory schooling, provided they meet the above conditions, and the hours and conditions of employment or work are specified.⁸⁷

The other point worth consideration in this regard is the inter-connection between the right to education, and exploitation in child labour. The Convention article 32 requires protection of the child from performing any work that is likely to *interfere with the child's education*.⁸⁸ In addition, article 28 requires States to *take measures to encourage regular attendance at schools and the reduction of dropout rates*.⁸⁹ Moreover, CRC obliges States party to provide *appropriate regulation of the hours and conditions of employment*. As a result, it requires detailed regulation in those instances in which children are permitted to work – above the minimum ages and where the work is not likely to be hazardous, interfere with the child's education or be harmful to the child's health or physical, mental, spiritual, moral or social development.⁹⁰

Furthermore, CRC also imposes an obligation on State party to provide appropriate penalties or other sanctions to ensure the effective enforcement of the present article.⁹¹ The Committee has proposed various components of *effective enforcement* as required by article 32(2) (c), including a labour inspectorate, complaints procedure and adequate penalties in cases of non-compliance. These should cover all forms of employment and work, including in the informal sector.⁹²

⁸⁷ ILO. Convention No.138, Article 7

⁸⁸ CRC, Article 32(1)

⁸⁹ Id., Art.28 see also the Worst Forms of Child Labour Convention, (No.182) which states the importance of free basic education in its Preamble and requires ratifying States to ensure access to free basic education for all children removed from the worst forms of child labour.

⁹⁰ CRC, Art. 32(2)(b)

⁹¹ Id., Art. 32(2)(c)

⁹² Rachel Hodgkin and Peter Newel cited above at note 8, p. 490. See also, ILO. Convention No. 138, Art.9 that requires all necessary measures, including the provision of appropriate penalties must be taken by the competent authority to ensure effective enforcement. National laws or regulations or a competent authority must also define who is responsible for compliance with the Convention, and what registers or other documents must be kept, recording names and dates of birth (duly certified wherever possible) of all under-18-year old employed or in work.

3.5 The Protection of ESR in Domestic Legal Systems

This section deals with the protection of ESR in domestic legal system, in particular the protection of the same from child perspective and the place or status of CRC and ACRWC in Ethiopia

3.5.1 General Overview

SER of the child has been afforded legal protection in various instruments at different levels. However, domestic legal systems are the primary forum for the most effective protection of SER, mainly because they are accessible to the disadvantaged groups in the society, would enable domestic courts and other institutions to apply the rights on a regular basis to a wide range of factual circumstances arising and hence develop the normative content of the rights.⁹³ Thus, to ensure the protection of SER at domestic level, much attention is given to their constitutional entrenchment, their protection in ordinary legislations and their justiciability before competent judicial and quasi-judicial organ.⁹⁴ The place or status of relevant international human rights treaties in domestic legal systems, the existence of policy framework which identifies responsible organs and sets time frame for the implementation of each form of ESR are also determinant factors.⁹⁵ In the following paragraphs, the protection of SER in domestic legal systems will be seen. However, the focus will be on the incorporation or otherwise of SER and the place or status of CRC and ACRWC in the FDRE.⁹⁶

At national level, SER may be protected through inclusion in the Bill of Rights of the constitution.⁹⁷ The entrenchment of SER as fundamental norms of constitution in the Bill

⁹³General Comment No.9, Domestic Application of the Covenant, Committee on Economic, Social and Cultural Rights (1998), para.4, UN Doc. E/C/12/1999/22, reprinted in Asborn Eide, et al (ed.), cited above at note 1 p. 651; See also, S.Liebenberg, "The Protection of Economic and Social Rights in Domestic Legal Systems" in A. Eide *et al* (eds.) cited above at note no 1, p. 55

⁹⁴Ibid. see also Sisay Alemayhu, "The Constitutional Protection of Economic and Social Rights in the FDRE", *Journal of Ethiopian law*, Vol. 22 No 2, 2008, P 136

⁹⁵Ibid. (Sisay Alemahu), see also M. Scheinin, "Economic and Social Rights as Legal Rights", in Eide et al. (eds), cited above at note no. 1, P.29-55

⁹⁶Other implementation measures will be dealt in the following chapter

⁹⁷The 1996 constitution of the Republic of South Africa is worth mentioning here. The constitution under art.28 (the Bill of Rights) has specifically given recognition to the rights to housing, food, health, water and education.

of Rights with stern amendment requirements provides a very strong basis for the protection of the rights through specific legislations or policies. However, there have been principled objections to the inclusion of ESR in the Bill of Rights of the constitution.⁹⁸ In some countries, ESR themselves become core principles of the constitution by forming part of the Directive Principles of State Policy (DPSP), which govern the interpretation of the rights, enshrined in the Bill of Rights.⁹⁹ Other constitutions require reference to relevant international human rights instruments in the interpretation of the rights.¹⁰⁰

In this regard, the FDRE constitution enshrines ESR both in the Bill of Rights and in the National Policy Principles and Objectives. As Constitutional Bill of Rights, Article 36 of the FDRE constitution outlines the rights of the child. It provides the following:

- 1) Every child has the right to:
 - a. Life;
 - b. To a name and nationality;
 - c. To know and be cared for by his or her partners or legal guardians;
 - d. 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, health or wellbeing;
 - e. To be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children
- 2) In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child.
- 3) Juvenile offenders admitted to corrective or rehabilitative institutions and juveniles who become wards of the State or who are placed in public or private orphanages, shall be kept separately from adults.
- 4) Children born out of wedlock shall have the same rights as children born in wedlock.
- 5) The state shall accord special protection to orphans and shall encourage the establishment of institutions, which ensure and promote their adoption and advance their welfare and education.

⁹⁸The objections relate to the legal nature of the rights (that they entail imprecise obligations that are not amenable for enforcement by courts of law) and the legitimacy and competence of courts.

⁹⁹Action Professionals' Association for the People (APAP), *Justiciability of the Right to Housing and the Right to Health in Ethiopia: The Legal and Policy Framework* (prepared by Sisay Alemayhu,) (2006), p.19-20. Where ESR is made part of the Bill of Rights of a Constitution, they are directly justiciable (provided that there is also the mechanism of judicial review). On the other hand, if they are made part of DPSP, it does not in principle give rise to a directly enforceable right. Some Indian cases do, however, illustrate that DPSP can be converted to justiciable guarantees. In two cases (*Mohini Jain v State of Karnataka*, and *Unni Krishnan J P v State of Andhra Pradesh*) which concerned the right to education, the Indian Supreme Court held that fundamental rights and DPSP are complementary because what is fundamental in the governance of the country could be no less significant than that which was fundamental in the life of an individual.

¹⁰⁰FDRE Constitutions of Ethiopia (article 13 (2) and South Africa (article 233) are cases in point.

In addition, the provisions dealing with the ESR in general are placed in the chapter that lays down fundamental rights and freedoms to which every individual is entitled. Article 41 entitled "Economic, Social and cultural rights" provides the following:

that every Ethiopian national has the right to equal access to publicly funded social services and obliges the State to allocate ever-increasing resources to provide to the public health, education and other social services. Further the State shall within available means, allocate resources to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian.¹⁰¹

Moreover, FDRE constitution guarantees SER in its other provisions.¹⁰² It is also important to note *that fundamental rights and freedom enshrined in the constitution should be interpreted in line with international human rights standards* as per Art.13(2). This by itself is illustrative of the importance given to the rights and freedoms provided in the Constitution. The stringent procedural requirement for the amendment of this chapter of the Constitution also demonstrates high recognition and important place given to human rights.¹⁰³

Furthermore, chapter ten of the FDRE Constitution is devoted to National Policy Principles and Objectives (DPSP).¹⁰⁴ In relation to social objectives it is provided that *to the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security and education shall be provided in a manner that is free from any religious influence, political partisanship or cultural prejudices.*¹⁰⁵ Thus, the Ethiopian government is duty bound to adopt and implement such policies in all areas of economic and social rights.

¹⁰¹ FDRE Constitution, Article 41(3)(4)(5)

¹⁰² See FDRE Constitution, Article 35 guarantees the right to equality of women in general, which extends the right to enjoyment of ESR; Article 40 protects the economic right to property; Article 42 guarantees labour right, and Art.25 guarantees the principle of non-discrimination, which is an integral element of all ESR, constitutes a basic and general principle relating to the protection of human rights

¹⁰³ See FDRE Constitution, Art. 105(1)

¹⁰⁴ FDRE constitution, Article 85 (1), This National Policy Objectives and Principles require the government to develop policies they endure the enjoyment of the rights by citizens. They are also used as tools that guide the interpretation of fundamental rights and freedoms of the FDRE constitution

¹⁰⁵ FDRE Constitution. Art.90(1)(2)

3.5.2 The Status of CRC and ACRWC in the FDRE

As mentioned above, the place or status of relevant international human rights treaties in domestic legal systems is one of the dominant factors for the protection of ESR in domestic legal system. This may take various forms depending on the methods used in the process that varies with the theory of incorporation to which particular states adheres.¹⁰⁶ As a result, a distinction is usually made between countries with Monist and Dualist legal system.¹⁰⁷ According to the former, international and national norms have similar or identical subjects, sources and substantive contents thus, publication of a treaty is sufficient to make it applicable in domestic courts and hence the method employed in internalizing treaties into domestic law is adoption.¹⁰⁸ For example, CRC ratification means that its provisions are incorporated in the national legal system and therefore directly applicable. However, for Dualists international and national law operates in different planes and as a result, transformation of international agreements into national law prior to their application in domestic tribunal is needed.¹⁰⁹ Therefore, in the dualist system, CRC ratification or CRC provisions become part of domestic law via specific legislative measures.¹¹⁰

With respect to the Status of CRC and ACRWC in Ethiopia, under its supremacy clause, the FDRE Constitution provides that all international agreements ratified by Ethiopia¹¹¹

¹⁰⁶ African Child Policy Forum (2007), In the Best Interest of the Child. Harmonising Laws in Eastern and Southern Africa, P. 17. The CRC Committee, after it has called for harmonization of laws relating to children, states incorporation should mean that the provisions of the Convention could be directly invoked before the courts and applied by national authorities and that the convention will prevail where there is a conflict with domestic legislation or common practice. See also

¹⁰⁷ The variations that stem from the views different theorists have on the relationship between international law and municipal law; See also M. Shaw, *International Law* (2005).

¹⁰⁸ Gebreamlak Gebregiorgis, "The Incorporation and Status of International Human Rights Under FDRE Constitution" in Girmachew Alemu and Sisay Alemahu (Eds), *The Constitutional Protection of Human Rights In Ethiopia: Challenges and Prospects*, Ethiopian Human Rights Law Series, (2009), AAU, Faculty of Law Vol. 2, P. 37

¹⁰⁹ *Id.*, p 40-41

¹¹⁰ CRC Committee, General Comment, No.5 para 18 and 20. The Committee believes that countries with both monist and dualist legal system should take action to harmonize national legislations with the CRC, even when primacy is given to the CRC. Complementary legislation and enforcement mechanisms should be adopted, particularly effective judicial and administrative remedies to ensure full implementation of the CRC. See also African Child Policy Forum (2007), In the Best Interest of the Child. Harmonisation of National Laws with the Convention on the Rights of the Child: Some Observations and Suggestion, P 4-5

¹¹¹ The Ethiopian Government had ratified the UDHR, ICCPR, ICESCR, and CRC in 1992. Thereafter, CEDAW, CERD, the African Charter on Human and Peoples Rights as well as ACRWC were adopted.

are an integral part of the law of the land.¹¹² Accordingly, international treaties and conventions have to be ratified by the House of Peoples Representatives to become an integral part of the law of the land.¹¹³ In addition, the Constitution states *that fundamental rights and freedoms specified in the third chapter shall be interpreted in a manner conforming to principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International Instruments adopted by Ethiopia.*¹¹⁴

There are two views regarding the import of this provision in relation to the status of international human rights treaties. The first view is that the constitution accords supremacy of international human rights treaties over the third chapter of the constitution, as the latter has to be interpreted in conformity with the former. The second view holds that international human rights treaties have to be employed as mere interpretative guidelines.¹¹⁵

In this respect, the practice of Ethiopian courts so far is not of much help with regard to setting the controversy over the status of international human rights treaties under the FDRE constitution. Some hold that they serve as mere guidance for interpretation.¹¹⁶ Yet, considering that international instruments get ratified by the organ that issues legislations and that the Constitution is the supreme law of the land,¹¹⁷ international human rights treaties are hierarchically below the Constitution and have a status equal to legislations.

Moreover, the ILO Convention No.173 on Minimum Age for Employment and Convention No. 182 on the Worst Forms of Child Labour. See Office of the United Nations High Commissioner for Human Rights, available at <http://www.ohchr.org/english/countries/ratification> visited last on October, 2009

¹¹²FDRE Constitution, Art 9(4) In addition to the protections of the ESR of the child under Article 36 of the constitution, the above mentioned international human rights instruments ratified by Ethiopian government, with the standard of protection they accord to ESR, are duly protected in the Ethiopian legal system.

¹¹³FDRE constitution, Art.55 (12); this requirement is very much in line with the *Dualist* theory. Ratification of an international human rights instrument makes it part of the laws of Ethiopia.

¹¹⁴Art. 13(2), FDRE constitution

¹¹⁵Getachew Assefa, Problems of Implementing International Human Rights Laws by Ethiopian Courts, in A Paper Presented in a Symposium on the Role of Courts in the Enforcements of the Constitution, (2000), ECSC, P.12

¹¹⁶ Gebreamlak Gebregiorgis, cited above at note no.108, P.48. He holds based on Art 10(2) of Spanish constitution which provides the same, that article 13(2) of the FDRE constitution unequivocally makes it clear that resort to the various international human rights instruments has to be made only when there is a need for interpreting the rights embodied in the bill of rights of the constitution.

¹¹⁷ FDRE Constitution, Art 9(1)

3.6 The Protection of the Right to Health under Domestic Laws

In this section, analysis of the provisions in the constitution and relevant legislation on the right to health will be made.

3.6.1 The Right to Health under FDRE Constitution

FDRE Constitution provides in relation to the right to health in the following sub-articles. According to article 41(4), the State has the obligation to allocate ever-increasing resources to provide to the public health (health services for the public at large).¹¹⁸ As per article 41(3), every Ethiopian national has the right to equal access to publicly funded *social services*, which apparently include health related services. It is also implicit in the obligation of the *State to provide rehabilitation and assistance to the physically and mentally disabled, the aged, and to children who are left without parents or guardian* under article 41(5) that health services be provided to these group of people.

The Constitution, however, fails to expressly provide for important aspects of the right to health like the right to get emergency medical services. However, one may add the rights to housing, to social security, to safe and potable water, to food, etc...from the open-ended use in the constitution (...and other social services).¹¹⁹

With specific reference to children, the constitution provides *every child has the right not to be subjected to work that is hazardous or harmful to his or her health or well-being*.¹²⁰ Moreover, with respect to women, the Constitution provides that in order to prevent harm arising from pregnancy and childbirth and in order to safeguard *their health, women have the right of access to family planning education, information and capacity*.¹²¹

Consonant with Art 24(3) of the CRC, which outlaws traditional practices prejudicial to the health of children, the FDRE constitution, provides for elimination of harmful

118 FDRE Constitution, Art, 41(4)

119 Sisay Alemahu, "The Constitutional Protection of Economic and Social Rights in The Federal Democratic Republic of Ethiopia," *Journal of Ethiopian Law*, Vol.22 No. 2, (2008), p. 140

120 FDRE Constitution, Art.36(1)(d)

121 *Id.*, Art.35(9)

customs and practices that cause bodily or mental harm to women.¹²² The victims of such harmful practice in Ethiopia are usually female children. The prevalent harmful practices prohibited by the constitution thus may include female genital mutilation, and early age marriage.

Furthermore, the Constitution also obliges the State to design policies that would provide all Ethiopians access to public health. This is one of the social objectives under article 90 of the Constitution. The obligation of the state extends to the extent the resources of the country permit and it is expected to design policies that aim to provide all Ethiopians access to public health, clean water, food and social security.¹²³ Thus, all these elements have an impact on the right to health of the child. However, It should also be noted that the provisions of article 90 are like Directive Principles of Public Policy protecting the right indirectly and cannot be invoked before courts of law.

3.6.2 Protection under the Criminal Code of Ethiopia

The criminal code of Ethiopia (FDRE Criminal Code) provides protections of the right to health under title viii, which provides crimes against public health. Accordingly, in the first section that deals with crimes committed by spreading diseases and polluting environment, it states that the act of intentionally spreading or transmitting a communicable human disease is punishable with rigorous punishment not exceeding 10 years. The punishment will rise from 20 years of rigorous imprisonment to life imprisonment or death if the act was committed with premeditation and heinousness, and if the disease transmitted would cause death.¹²⁴ However, if the act was committed negligently, it will help to extenuate the punishment to simple imprisonment or fine. Moreover, if a person intentionally disregards the measures prescribed by law for the prevention, limit or arrest of a communicable human disease, such person will be punished with a simple imprisonment not exceeding two years or fine.¹²⁵

¹²² FDRE Constitution, Art.35(4)

¹²³ Id., Article 90

¹²⁴ Criminal Code of the Federal Democratic Republic of Ethiopia, (2005), Article 514 (1)(2), Proclamation no. 414 /2004

¹²⁵ Id., Article 522(1) (2)

Furthermore, whoever, intentionally, directly or indirectly, creates a grave state of misery, want of famine, epidemic or epizootic disease or distress, especially by improperly hiding or hoarding, destroying or preventing the transport or distribution of grain, foodstuffs or provisions or remedies or products necessary to the life or health of man, is punishable with rigorous imprisonment not exceeding fifteen years.¹²⁶

The other protection extended by the Code relates to cleanliness of drinking water. Contamination of drinking water has been the cause for many communicable and non-communicable human diseases that endanger the life of people. According to article 517(1) of the Criminal Code, a person who contaminates by means of substance harmful to health drinking water serving the needs of man would be punished with fine or simple imprisonment not exceeding one month. However, in more serious cases, the punishment extends to rigorous imprisonment not exceeding seven years.¹²⁷

Again, pursuant to article 519 of the Code, a person who emits poisonous substance to the environment would be punished with fine not exceeding 10,000 birr or rigorous imprisonment not exceeding five years. If the pollution has affected the life or health of people, the punishment would be rigorous imprisonment not exceeding ten years.¹²⁸ From these articles, one can see that the State has made efforts to include environmental pollution as one of the criminal acts. This shows the improvement made and emphasis given by the state to the protection and fulfillment of the right to health.

The Criminal Code does also extend protection against the effects adulterated and damaged foodstuff on the right to health and thereby the right to life of people. According to article 527(1) of the Code, a person who intentionally manufactures food, provisions and food stuff or products unfit for human consumption or adulterates goods in such a way as to endanger public health would be liable for punishment of six months simple imprisonment or in grave cases rigorous imprisonment not exceeding five years. There is

¹²⁶ Id., Art. 523(1)

¹²⁷ Id., Art. 517(1). Moreover, cases of intentional poisoning of wells of cisterns, springs, water holes, rivers or lakes, the punishment would be extended to maximum of 15 years rigorous imprisonment. See article 517(2)

¹²⁸ Id., Art. 519(2)

also a situation whereby the punishment would be extended to rigorous imprisonment not exceeding seven years.¹²⁹

Another aspect of protection of the right to health by the Code relates to the production, making, transferring, and fabrication of poisons, narcotic or psychotropic drugs or substances. Accordingly, any person who is in possession of, imports, exports, transports, buys, sells, provides, distributes, traffics, or procures for another those narcotics described above, will be punished with rigorous imprisonment not less than five years and a fine not exceeding 100,000 birr.¹³⁰ If the act is committed by a person belonging to an international or national band or association organized for this traffic or by a person who makes a profession out of such felonious act, the punishment to be imposed will be rigorous imprisonment not less than 20 years and a fine not exceeding 200,000 birr.¹³¹

Moreover, the Criminal Code penalizes these acts with the view to protect the children. To this end, the new criminal code has come out with commendable reforms in the light of protecting the rights of children. For instance, its inclusion of a new chapter on prevention of Harmful Traditional Practices (HTPs) is an achievement worth noting.¹³² Included in the chapter are offences of Female Genital Mutilation (FGM) causing harm to the life of female children. The code has also criminalized the practice of early marriage, marriage by abduction and acts of domestic violence perpetrated against women, rape outrage and sexual harassment of women.

¹²⁹ This would be so where the offender discharges special duties of supervision or control in an undertaking of public interest and in case of deliberate manufacture, adulteration, sale or distribution of remedies, dietetic products or toxics not poisonous in themselves and procurable without a prescription, whose defective manufacture or adulteration can have dangerous effect. See article 527(2) of the Criminal Code

¹³⁰ The punishment will be the same for a person who produces, holds, imports or exports materials that are used for the production, fabrication or *composition* of the narcotics illustrated under sub article 1 of the article 525(1)(c)

¹³¹ There are also other grounds listed under article 525 as aggravating circumstance like a situation where the crime was committed using children and persons with mental problems and if the crime is committed in a school or penitentiary. See the details under article 525(2) of the criminal code

¹³² FDRE Criminal Code, Book V, Title I, Chapter III, Arts. 561-570

3.6.3 The Ethiopian Civil Code

Some provisions of the Civil Code of 1960 show legislative measures that have been taken by the state on the right to health. The Code provides for certain articles concerning the body integrity. In this respect, article 18 states that the disposition of the whole or part of the body of a person will not have a legal effect when the person is still alive and if the disposal would cause serious injury to the integrity of the body. However, there is exception to this rule if the disposal of the body part can be justified by rules of medical practice.¹³³ Apart from the disposition of one's body, physical integrity may be threatened by medical examination and treatment. In principle, anyone can in any time refuse to submit to a medical or surgical examination.¹³⁴ However, this freedom has also some restrictions attached to it. The first exception is public interest. Pursuant to article 20(2) of the Civil Code, if the public interest requires the individual person to submit for medical examination or compulsory vaccination or other similar measures, such person may not invoke the right to refuse submitting for medical examination as a defence.¹³⁵ Similarly, the Revised Family law provides that *the guardian shall watch over the health of the minor, take the necessary measures for his recovery (in case of sickness), direct the up bringing, take the necessary measures for the purpose of ensuring his up bringing.*¹³⁶

3.6.4 The Labour Proclamation No. 377/2003

As mentioned above, the duty of the state to protect the right to health requires it to prevent the spread of diseases. In this connection, the state can fulfil this obligation only if it can force the individuals to submit to medical examination whenever the public interest so demands. This is further reinforced under the labour Proclamation No. 377/2003. Article 14(2) of the labour code provides that a worker may not refuse to submit for medical examination when required by law or by the employer for good cause. Here, the interest of the other workers is taken in to consideration while obliging a single worker to submit for medical examination even without his consent. However, this is not

¹³³ Civil Code, Art.18(2)

¹³⁴ Id., Art. 20(1) See Also, FDRE Criminal Code, Art.573, which protects bodily integrity.

¹³⁵ Id., Art.20(2)

¹³⁶The Revised Family Code, *Federal Negarit Gazette*, Proclamation No.213/2000, Art.257 and 258, 6th year, Extraordinary Issue No.1/2000

without exception. As can be seen from the same article, a worker may not be required to undergo HIV testing without his will.¹³⁷

3.6.5 Public Health Proclamation No. 200/2000

In its preamble, the proclamation stresses the need for the active participation of the society in the health sector and that the attitudinal change of the society through primary health care approach can solve most of the health problems of the country. Considering that the legislation has a stated contribution in the implementation of the country's health policy, it is an important step in carrying out the obligation to fulfil the right to health.

One area of concern addressed by the proclamation is food quality control. Consequently, Article 8(1) puts prohibition on the preparation, import, and distribution or making available to consumers any food, which is unhygienic, contaminated or mislabelled. It provides that any food that is intended for human consumption need to meet the standards of food quality.¹³⁸ According to article 20(1), any person who violates the food standard set by the Ministry of Health will be punished with a fine from 2500 to 5000 Birr. The requirements set for food are also extended to water. Thus, it prohibits giving water supply service from springs, wells or through pipes unless the Health authority verifies the quality.¹³⁹

3.6.6 Environmental Protection Proclamations

As stated above, the right to health is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as healthy occupational and environmental conditions. In line with this, there is a prohibition on any individual from polluting the environment under any manner. For instance, environmental pollution is a crime under the FDRE Criminal Code.¹⁴⁰

¹³⁷ Labour Proclamation No. 377/2003, Art.14(2)

¹³⁸ Public Health Proclamation. *Federal Negarit Gazeta*, proclamation No.200:2002. Article 8(2), 6th year No.28

¹³⁹ Id., Art.10

¹⁴⁰ FDRE Criminal Code, Art.519

In addition, the Environmental Impact Assessment Proclamation also provides the need to assess the impact of any project on the environment before the project is implemented. The impact of the project will be assessed based on the size, location, nature, cumulative effect on other concurrent phenomena, duration, and reversibility as well as on trans-regional effect.¹⁴¹ Under this will be included the effect of the project on the health of the inhabitants.

Moreover, there are proclamations specifically designed to tackle the issue of environmental pollution in the country. Environmental Protection Organs Establishment Proclamation No.295/2002 established the Ethiopian Environmental Authority whose objective is to see to it that policies, laws, strategies and standards are formulated in such a manner as to enhance the welfare of humans and safety of the environment.¹⁴² On the other hand, the Environmental Pollution Control Proclamation gives a mandate for the Authority to take an administrative or legal action on any person who releases any pollutant to the environment.¹⁴³

3.7 The Protection of the Right to Education in Ethiopia

In this section, analysis of the provisions in the constitution and relevant legislation on the right to education will be made.

3.7.1 Right to Education under FDRE Constitution

Contrary to what one would expect, the FDRE constitution does not exclusively devote many provisions in relation the right to education. It makes rather indirect reference to it in arts 36 and 41 and 90. Sub 4 of Art 41 obliges the state to allocate ever-increasing resources to provide to the public health, education, other social services,¹⁴⁴ which could be in conformity with the ‘maximum available resource’ standard of the CRC provided

¹⁴¹ Environmental Impact Assessment, Federal Negarit Gazeta, Proclamation No. 299/2002, Art.6 ,8th year.

¹⁴² Id.,Art.5

¹⁴³ Environmental Pollution Control, Federal Negarit Gazeta, Proclamation No. 300/2002, Article 3(2), 8th year No.10

¹⁴⁴ FDRE Constitution, Art.41(4)

under Art.4.¹⁴⁵ Sub 3 of Art.41 recognizes *the right of every Ethiopian to equal access to publicly funded social services.*¹⁴⁶ Education being among such services as can be gathered from this sub article. Therefore, equality of opportunity or non-discrimination as regards education enunciated by Art 28 of the convention is embodied in the FDRE constitution.

Likewise, Art 36 of the constitution recognizes the freedom of the child not to subject to activities that compromise his/ her education. This is consistent with Art 28 (1) (e) of the convention obliging states to take measures to encourage regular attendance at school and the reduction of dropout rates in a similar vein. Art 36(1) (e) of the FDRE constitution entitles the child freedom from corporal punishment or cruel and inhumane treatment a principle embodied in Art 28 (2) of the convention. Art 36(5) of the FDRE constitution also obliges the government to advance the welfare and education of the child consonant with the spirit of the convention article 28. Article 36(1) (d) seems to be dealing with the adaptability element of the right to education to working children and the element of the right to health i.e. the right to healthy workplace environment.

Similarly, can we say that the right to free and compulsory primary education for all is guaranteed? What about the aims and objectives of education guaranteed under art.29 of the CRC? The letters of articles 41 & 36 above do not provide answer to this question.

One may thus, conclude that the provisions of the constitution, though lacking in detail, incorporate some of the core principles embodied in Art.28. In addition, the constitution states that all international agreements ratified by Ethiopia are an integral part of the law of the land.¹⁴⁷ By virtue of this provision, one may contend that Art 28 in its entirety is actually part and parcel of the constitution. Suffice it, therefore to say that the constitution embodies some of the core principles under Art 28 of the convention one way or another.

¹⁴⁵ Obligations of States Parties stated under Art.4 CRC will be dealt with in the following section of this chapter

¹⁴⁶ FDRE constitution, Art.41(3)

¹⁴⁷ Id., Art.9(4)

3.7.2 The Protection of the Right to Education through Legislations

In relation to the right to education, Article 2052 of the Civil Code imposes on the parents or guardian of a child to take measure of education and supervision. This duty to educate is conditioned on the circumstances and custom of the area where they are living. However, if the parents or guardians of the child fail to provide education to the child in conformity to the custom of the area, it can result in civil liability. The child can sue for damage he or she has incurred as a result of failure to observe this duty. Likewise, The Federal Revised Family Code provides that the guardian shall ensure that the minor be given general education or professional training commensurate with his abilities.¹⁴⁸

As regards, other subordinate laws put in place for the implementation of the principles embodied in the convention as well as the constitution of Ethiopia, in the area of education; it is important to see the federal political system of the country, which shares power to the federal and regional governments. First, it is important to know which of the government are responsible to enact relevant laws on education. In fact, the constitution empowers the federal government to formulate and implement basic policy criteria for education and other matters of social development. It does not seem to leave the administration of the educational system a federal matter as such.¹⁴⁹ Similarly, Art 52, which lists the powers conferred on states too does not mention the administration of the educational system.¹⁵⁰ However, it may be argued that the administration of the educational system falls within the competence of the states because powers that are not expressly given to the Federal government are reserved to the states.¹⁵¹

In addition, Proclamation No. 471/2005, define the powers and duties of the Ministry of Education. Accordingly, it confers the powers and duties to

- Set education and training standards and ensure the implementation of same;
- formulate a general frame work of curricula for education;

¹⁴⁸ Federal Revised Family Code, Art.260

¹⁴⁹ FDRE Constitution, Art.51

¹⁵⁰ Id., Art. 52

¹⁵¹ Id., Art.52(1)

- set minimum educational qualification requirements for primary and secondary school teachers;
- set standards for vocational and technical training and certification;
- set minimum standards for higher education institution
- establish, expand and accredit higher education institutions; and ensure that they offer quality and relevant education;
- Undertake national popularization programs on education and training.¹⁵²

However, this proclamation though it is an amendment to previous legislation¹⁵³ in this regard, it does not include important matters provided therein. In addition, a thorough understanding of the state of Ethiopian law on education presupposes an understanding of the federal policies issued pursuant to Art.51. The policies of the Federal Government will be discussed under chapter three of this paper.

3.8 Protection against Child Labour in Ethiopia

In this section, analysis of the provisions in the constitution and relevant legislation on the right to protection against child labour in Ethiopia will be made.

3.8.1 FDRE Constitution

The FDRE constitution under Article 36 stipulates that *every child has right not to be subjected to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well being.*¹⁵⁴ Moreover, the constitution prohibits compulsory or forced labour under Art.18.¹⁵⁵

¹⁵² Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, proclamation No. 471/2005, Art.14, 12th year No.1

¹⁵³ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia proclamation No.4/1995. This proclamation provides among others, the powers and duties to ensure the availability of educational materials and text books in adequate quality and quantity; prepare and implement projects designed to improve the quality and enhance the expansion of education, encourage and give technical assistance to regions in the preparation and implementation of such projects; and in cooperation with the appropriate organs, devise ways and means of providing special assistance in rendering educational services to minority nationalities, women, children and adults: See further Article 21 of proclamation No.4/1995

¹⁵⁴ FDRE constitution, Art.36(1)(d)

¹⁵⁵ Id., Art.18(6)

3.8.2 The Labour Proclamation No. 377/2003

The labour proclamation of 2003 sets the minimum age and the conditions of work of young persons (children between the ages of 14 and 18).¹⁵⁶ The labour proclamation prohibits the employment of persons under the age of 14.¹⁵⁷ This minimum age corresponds with the minimum age under international standards, which is allowed as an exception taking into account the economic development of the country under ILO, Convention No.138 Article 2.

With respect to working conditions of young workers, Article 89(3) of the labour proclamation prohibits the employment of young persons in a work, which by accounts of its nature or due to the working condition in which it is carried out may endanger the life, or health of the young worker. The proclamation also provides an illustrative list of activities in which young persons may not be engaged in.¹⁵⁸ The Minister of Labour and Social affairs is entrusted with the power to prescribe the list of such hazardous activities. The labour proclamation has listed the following as hazardous work in which young persons are prohibited from engaging in *work in the transport of passengers and goods by road, railway, air and related works; work connected with electric power generation plants, transformers or transmission lines; work in mines, quarries and similar underground works and work in sewers and digging tunnels.*¹⁵⁹

However, the prohibition does not, apply to work performed by young persons in connection with courses in vocational schools that are approved and inspected by the competent authority. This is because according to labour proclamation worker is a person (individual) who has employment relationship with an employer. Further, the proclamation excluded employment relationship for the purpose of education from its coverage.¹⁶⁰ Related to this the proclamation does not apply to employment relation ship

¹⁵⁶ Labour Proclamation, *Federal Negarit Gazeta*, Proclamation No. 377 2003. (Labor Procamation, Pro.377/2003). Arts.89(1) &48(1), 8th year,

¹⁵⁷ Id., Art. 89(1)

¹⁵⁸ Id., Art. 89(5),

¹⁵⁹ Id., Art. 89(5)

¹⁶⁰ Id., Art. 2(1) and Art 3(2) (a)

of personal services, which includes domestic servants.¹⁶¹ However, this category of persons leads a very destitute life of exploitation by their employer.

Moreover, Article 90 of the labour proclamation regulates the working hours of young workers. Accordingly, young workers are not allowed to work for more than 7 hours a day.¹⁶² Night work (work between 10 PM and 6 PM), overtime work, employment of young workers on weekly rest days, or public holidays is prohibited.¹⁶³

In addition, the proclamation authorizes the Minister of Labour and Social Affairs to issue directives on, among other things, the standards of working conditions and the classification of hazardous jobs. The proclamation also provides for the setting up of labour inspection service to ensure the implementation of the provisions of the proclamation, regulation and other directives issued under it.¹⁶⁴ Finally, Penalty clauses for contravening the proclamation articles regarding working hours are also provided under the labour proclamation.¹⁶⁵

3.8.3 FDRE Criminal Code

Last but not least, the FDRE Criminal Code also provides violation of the right to freedom to work as crimes against person's right.¹⁶⁶ In addition, the criminal law also penalises enslavement, which includes exploitation with rigorous imprisonment from five years to twenty years and fine not exceeding five thousand birr.¹⁶⁷ Where the crime is committed against children, the punishment shall be rigorous imprisonment from ten years to twenty years.¹⁶⁸

¹⁶¹ Id., Art. 3(2) (d)

¹⁶² Id., Art. 90

¹⁶³ Id., Art.91

¹⁶⁴ Id., Art. 170

¹⁶⁵ Id., Art. 184

¹⁶⁶ FDRE Criminal Code, Art 603

¹⁶⁷ Id., Art. 596(1) (a)(b)

¹⁶⁸ Id., Art.596(3)

3.9 General Measures of Implementation under CRC

Article 4 sets out States overall obligations to implement all the rights in the CRC.

Pursuant to Article 4:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Thus, States Parties must take all appropriate legislative, administrative, and other measures. In relation to economic, social and cultural rights measures shall be undertaken to the maximum extent of their available resources and, where needed, within the framework of international cooperation. Besides this, the Committee on the Rights of the Child, in its *Guidelines for Periodic Reports*,¹⁶⁹ has proposed a wide range of strategies to ensure Governments give appropriate priority and attention to children in order to implement the whole Convention effectively.

Related to Art.4, is the obligation of States to make the provisions and principles of the Convention widely known to adults and children pursuant to article 42 and the obligation to make periodical reports to the committee on the CRC, as per article 44(6) of CRC. Other obligations of States Parties are provided by article 2 (to respect and ensure the rights in the Convention to all children without discrimination) and article 3(2), to ensure to the child such protection and care as is necessary for his or her well-being.

In general, pursuant to the *Guidelines for Periodic Reports and CRC*, States Parties have the following obligations in relation to the implementation of the SER of the Child:

¹⁶⁹ Reporting Guidelines to States Parties General Guidelines regarding the form and contents of periodic reports to be submitted by States Parties under article 44, paragraph 1 (b), of the Convention. Adopted by the Committee on the Rights of the Child at its 343rd meeting (thirteenth session) on 11 October 1996. For the purposes of reporting under the Convention, the Committee has grouped the Convention's provisions into eight "clusters"

➤ **Ensuring all legislation is fully compatible with the Convention**

The Committee on the Rights of the Child has emphasized in examining all Initial and Second Reports that an essential aspect of implementation is ensuring that all legislation is “fully compatible” with the provisions and principles of the Convention, requiring a comprehensive review of all legislation, developing consolidated statutes for the rights of the child.¹⁷⁰ In addition, the rights of the child should be guaranteed in constitution.¹⁷¹

➤ **A comprehensive national strategy for children**

The Committee on the Rights of the Child has emphasized that children must be accorded a high, or higher, priority. In stressing the need for a comprehensive approach to the implementation of children’s rights, the Committee has frequently promoted the need for a national policy or plan of action reflecting the implementation of the whole Convention, as well as *any steps taken or envisaged to adopt a comprehensive national strategy for children in the framework of the Convention*.¹⁷² In this regard, equally expected is the measure to ensure that children’s interests are considered in policy formulation in line with, Article 3 of CRC requires States to ensure that the *best interests of the child* are a primary consideration in all actions concerning children.

➤ **Permanent government mechanisms**

The Committee has made it clear that it sees the process of implementation as a continuing process requiring *permanent mechanisms* for coordinated action for the realization of children’s rights. The Committee has referred to coordination between government departments and ministries and other governmental bodies, between federal and central government and provincial, regional or local government, between

¹⁷⁰Reporting Guidelines to States Parties General Guidelines regarding the form and contents of periodic reports to be submitted by States Parties under article 44, paragraph 1 (b), of the Convention (*Guidelines for Periodic Reports*), Arts.12 and 13 See also General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6). CRC/GC/2003/5 Para.18

¹⁷¹ General Comment No. 5 (2003), CRC/GC/2003/5, Para.18

¹⁷²*Guidelines for Periodic Reports*, para. 7 and General Comment No.5 (2003). CRC/GC/2003/5, Pars28-36

government and public and private bodies, including non-governmental organizations dealing with human rights and children's rights, and between such bodies themselves.¹⁷³

➤ **Budgeting and budgetary analysis**

The Committee has emphasized that States' obligation to implement SER *to the maximum extent of their available resources* implies adequate budgetary analysis. To this effect, the Committee seeks information on following:

the proportion of the budget devoted to social expenditures for children, including health, welfare and education at all levels of the government (federal and provincial levels): the steps taken to ensure that all competent authorities are guided by the best interests of the child in their budgetary decisions and to evaluate the priority given to children in their policymaking. The measures taken to ensure that disparities between different regions and groups of children are bridged in relation to the provision of social services; the measures taken to ensure that children, particularly those belonging to the most disadvantaged groups are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector.¹⁷⁴

Thus, the overall proportion of national and local budgets allocated to social programmes must be adequate, and there must be sufficient budgetary provision to protect and promote children's rights.

➤ **Independent human rights institutions for children**

The Committee consistently asks the establishment of independent human rights institutions such as a children's ombudsman, commission or commissioner, or focal points for children developed within human rights commissions. The Committee has been concerned that States should understand the importance of establishing institutions that are independent of government and equipped to monitor, promote and protect children's rights effectively.¹⁷⁵ They emphasize the importance of establishing institutions with

¹⁷³ Id., para.18

¹⁷⁴ Id., para.20 and General Comment No. 5 (2003), CRC/GC/2003/5. Para.51

¹⁷⁵ See Guidelines for Periodic Reports, para.18, see also (General Comment 10, Committee on Economic, Social and Cultural Rights, 1998, HRI/GEN/1/Rev.5, pp. 62 and 63). In 1998, the Committee on Economic, Social and Cultural Rights adopted a General Comment on the role of national human rights institutions in

appropriate legislative powers and duties and guarantees of independence. The Committee on the Rights of the Child resolved to develop a General Comment on independent human rights institutions for children. Among others, the CRC Committee strongly recommended that National Human Rights Institutions should take legal proceedings to vindicate children's rights in the state or provide legal assistance to children and should provide expertise in children's rights to the courts, in suitable cases as *amicus curiae* or *inventor*.¹⁷⁶

➤ **Participation of civil society**

The Committee has stressed that coordination and action to implement the Convention should extend beyond government to all segments of society.¹⁷⁷ It has stressed the importance of the involvement of non-governmental organizations (NGOs) and civil society, and in particular, the direct involvement of children and young people.¹⁷⁸

➤ **International cooperation for implementation**

In its Guidelines for Periodic Reports the committee asks for information on the extent to which international cooperation relevant to the State Party is designed to foster implementation SER rights of children.¹⁷⁹ The *Guidelines* requires from donor countries identification of the amount of international aid as a proportion of the total government budget and details of the allocation to health, education and other sectors.¹⁸⁰ In its comments on general measures of implementation, the Committee has urged many countries to seek and use international cooperation and technical assistance, especially under article 24(4), 28(3) and 23(4) of CRC.

the protection of economic, social and cultural rights. It notes that these institutions "have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. Unfortunately, this role has too often either not been accorded to the institution or has been neglected or given a low priority by it. It is therefore essential that full attention be given to economic, social and cultural rights in all of the relevant activities of these institutions.

¹⁷⁶ CRC Committee GC/2002/2, para.10

¹⁷⁷ See also, in the Introduction to its Guidelines for Periodic Reports, it emphasizes that the process of preparing a report should encourage and facilitate popular participation and public scrutiny of government policies para.3

¹⁷⁸ Guidelines for Periodic Reports, para.18, General Comment No. 5 (2003), CRC/GC/2003/5. Para.56

¹⁷⁹ Id., para.12. see also, General Comment No. 5 (2003), CRC/GC/2003/5, Para 60

¹⁸⁰ Id., para.21

Another Implementation Mechanisms under CRC is the obligation of States Parties to file periodic reports to the UN Committee on the Rights of the Child and make the report widely available to the public in their own countries.¹⁸¹ Reporting, as the principal mechanism of monitoring has been emphasized and several developments ensuring its efficiency have taken place.¹⁸²

When we see the experience of Ethiopia in this respect, the government has done well for CRC to which it has made three reports so far. The fourth periodic report for CRC is due by 2008. however, the Committee on the Right of the Child in its Concluding Observations on Ethiopia issued in 2006, has allowed Ethiopia to submit its considered 4th and 5th periodic reports by 12 December 2011 (that is 18 months before the due date of the 5th report).¹⁸³

However, Ethiopia has not submitted many of the reports required under the human rights treaties to which it is a party, that have significant reference to the socio-economic rights of the child. These are ICESCR (an initial and two periodic reports are over due); the African Charter on the Rights and Welfare of the Child; the African Charter on Human and People's Rights (at least four periodic reports are over due). With respect to CEDAW, an initial and one periodic report were made but still two periodic reports; one over due has to be submitted.¹⁸⁴

Obviously, preparation of human rights reports requires resources such as financial, human and many others, as it involves many people and experts. One can say that resource constraint have contributed to the delay or lack of reports. However, the basic

¹⁸¹ Art.44 (6), CRC

¹⁸²That is why Committee on the Rights of the Child has designed reporting guidelines, which States Parties should follow. Included, in this guideline among other things, is General Measures of Implementation; Basic Health Care and Welfare Services: Education, Leisure and Cultural Activities and Special Protection Measures, which includes Protection against Economic Exploitation including Child Labour. See also Committee on the Rights of the Child (2005), Consideration of reports submitted by states parties under article 44 of the convention, 3rd periodic report of Ethiopia due in 2003, CRC/C/129/add.8, Para.2

¹⁸³CRC/C/ETH/CO/3, para.84. This is an exceptional measure due to the large number of reports received by the Committee every year.

¹⁸⁴Wondemagegn Tadesse, "Ethiopia's Human Rights Reporting: Challenges and Opportunities", in Girmachew Alemu and Sisay Alemahu (Eds)(2008), *The Constitutional Protection of Human Rights In Ethiopia: Challenges and Prospects*, Ethiopian Human Rights Law Series, AAU, Faculty of Law Vol. 2 p 219-220

problem that contributed to the lack of reports is absence of responsible organ that have the legal authority or mandate to do the same. Thus, the absence of legislative action appointing organs to ensure the implementation of many of the human rights treaties let alone identifying organs responsible to make regular reports may be cited as one of the problems attributed to lack of political commitment on the part of the law making organ of the government, which is empowered to ratify international agreements.¹⁸⁵

However, with the objective of preparing the over due reports on 5 treaties and to the African Commission on Human and Peoples Right, an attempt is being made by Ministry of Foreign Affairs in collaboration with the Ethiopian Human Rights Commission and with the technical assistance of OHCHR East Africa Regional Office.¹⁸⁶ Actually, the concern of the former emanates from its authority pursuant to proclamation No. 471/2005 *to ensure the enforcement of the rights and obligations arising from treaties signed by the Ethiopian Government except in so far as specific power have legally been delegates to other organs.*¹⁸⁷ On the other hand, the latter's mandate regarding human rights reports emanates from its responsibility *to forward its opinion on human rights reports to be submitted to international organs and its broad mandate to ensure respect for human rights in Ethiopia.*¹⁸⁸

From this, it is clear that there is lack of permanent government bodies with the legal mandate to ensure the implementation of many of the human rights treaties and make regular reports to the treaty bodies. Nevertheless, from the viewpoint of the various opportunities of reporting such as effective implementation of human rights, discharging the obligation of the government, promoting further international cooperation and

¹⁸⁵Id. P 220-221. However, this is with an exception to Art.28 (8) of proc.no.471/2005, which defines the Powers and Duties of the Executive Organs of the Federal Government that empowers MOWA to submit period reports concerning women and children. Beyond this, the proclamation carries no provision that mandates governmental institution in this respect. Further evidence that reflects lack of political willingness is the absence of a provision with respect to the organs responsible for preparing reports of human rights even in the proclamation that state the accession or ratification of the African Charter on Human and Peoples Rights.

¹⁸⁶Wondemagegn Tadesse, cited above at note no.185, p 224-239, the National Conference held on the implementation of Ethiopia's reporting obligations, aimed at raising the awareness of the participants and the general public regarding the benefits as well as the obligations of human rights reporting and at committing the participants to actively involve in the preparation of the reports

¹⁸⁷ Proclamation No. 471/2005, Art.25 (9)

¹⁸⁸ Ethiopian Human Rights Commission establishment proclamation No. 210 2000, Art 6

assistance, as well as creating the opportunity to be heard.¹⁸⁹ attention should be required from the government.

Finally yet importantly, Article 42 specifies the duty to disseminate widely the principles of the convention using all means at their disposal. In relation to dissemination, training and awareness creation, the Committee on the CRC notes with appreciation the efforts made by Ethiopia in disseminating the convention through its publications in several local languages and public events. However, the Committee is concerned that additional efforts are required to raising awareness of the Convention among relevant professional categories, parents and children themselves especially in rural areas.¹⁹⁰ The Committee recommends human rights education to be included in the official curriculum, at all levels of education and that the Government of Ethiopia conduct public awareness campaigns paying particular attention to people with low literacy skills.¹⁹¹

¹⁸⁹CERD/C/ETH/CO/15, see also Wondemagegn Tadesse, cited above at note no. 185, p224-239. In this respect, Concluding Observation of Committee on Elimination of Racial Discrimination regarding the government of Ethiopia in 2007 is the clear instance, in which the former adopted Concluding Observations on Ethiopia without any report from the country based on solely Shadow Reports, or Supplementary Reports presented by NGOs, UN Organs and other concerned bodies

¹⁹⁰ CRC/C/ETH/CO/3, para.20

¹⁹¹Id., para.21

CHAPTER FOUR

IMPLEMENTATION OF THE SOCIO-ECONOMIC RIGHTS OF THE CHILD IN ETHIOPIA: GOOD PRACTICES, GAPS AND PROBLEMS

In order to measure the performances of government one needs to define what the government is required to do under the CRC and ACRWC. In the present chapter, the main area of interest will be assessing the performances of the government or good practices, the gaps and problems in the area of SER of children in particular education, health and child labour. In doing so, a thorough examination and analysis of the measures taken in terms of legislative, judicial, administrative, policy and others as well as practices pertaining to the same will be carried out.

Therefore, an attempt will be made to respond to the following and other related issues. Whether the FDRE constitution guarantees all facets of SER of the child, and the specific legislations intended to implement the same are adequate? Whether the SER of the child are enforced by judicial organ? Are there comprehensive national policies, strategies and programs for children? Are there permanent government mechanisms competent enough (in terms of budget and other resources) to monitor the implementation of the SER of the child? Finally, the realities on the ground will also be explored to see the prevailing situation as regards health, education and child labour.

4.1 Compatibility of Domestic Laws with the CRC and ACRWC

States Parties are duty bound to carry out a comprehensive review of all domestic laws to ensure compatibility with the provisions of the CRC. The government has made law reforms with the objective to make existing legislations compatible with the provisions of the FDRE constitution, CRC and ACRWC.¹

¹In relation to legislative measures the focus will be on the existing gaps and problems, but not the contents of these laws as this part was dealt under previous chapter of this research. For the detail analyses see or refer to chapter three of this paper.

4.1.1 FDRE Constitution

As stated in previous chapter of this research, the FDRE constitution enshrines SER both in the Bill of Rights and National Policy Principles and Objectives. Nevertheless, the constitutional provisions give recognition to only some of the elements of SER of the child guaranteed under the ICESCR, CRC and ACRWC. The constitutional provisions do not provide the SER of the child such as the right to education and its core elements such as the right to free and compulsory primary education, the aims and objectives of education as well as right of the parents to choose education for their children.²

In addition, some of these rights are not recognized explicitly in the section providing for human rights. For instance, the constitution does not include the full range of basic rights of children such as the right to adequate food, health services, clean water, sanitation, and adequate housing in the Bill of Rights. These rights are stated under social objectives of the Constitution.³ Thus, one can say constitution leaves the specific rights at the mercy of policy makers and legislators. These rights could simply be denied, as they could be regarded, as they are not constitutional priorities and hence beyond the reach of citizens to have a right to redress or reparation if these rights are denied or infringed upon.

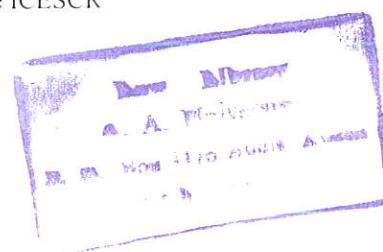
Furthermore, the special protections to be accorded do not cover other vulnerable groups of children such as girls' children, disabled children, working children, street children, children in conflict with the law, children deprived of liberty, minority and indigenous groups, refugee children, children in armed conflict.

The constitutional provisions specific to children is so critical that the Committee on the Rights of the Child stated the following:

Many countries have constitutions that appear to meet various requirements of the Convention, as far as they guarantee all citizens – including children – specific rights and freedoms. However, this is generally an illusion, since in practice children manifestly cannot claim these rights on an equal basis with adults – because domestic law may contradict the rights (for example, children of compulsory school age do not have freedom of movement; in

² See for instance Art. 28 and 29 of the CRC and 13 and 14 of the ICESCR

³FDRE Constitution, Art.90(1)(2)



law young children are not permitted to have sexual relationships or enter into financial contracts; children cannot vote, and so on) and constitutions themselves often explicitly uphold parents' rights to bring up and educate their children as they see fit, without reference to the child's own rights. Besides these, children's physical, emotional and economic dependence on adults and the future prosperity of the State depends on them, and thus, it is in the State's interest to accord them special constitutional rights.⁴

Another point worth consideration in relation to FDRE constitution is the possibility for children or their lawful representatives to directly invoke the provisions of the CRC and ACRWC in court proceedings or litigations. Actually, Ethiopia is a party to various international human rights treaties relevant to the SER of the child including CRC and ACRWC and made these treaties part and parcel of the Ethiopian legal system.⁵ The constitution provides that the act of ratification by the parliament and expression of the ratification in the form of a proclamation on the Negarit Gazeta are the requirements set for the making treaties in Ethiopia.⁶ To this effect, in relation to some treaties ratification or accession proclamation is published in the Federal Negarit Gazeta,⁷ though it does not provide to the text of the CRC and ACRWC and also there is no official translation in the working languages of the Federal or the State Government.⁸

⁴ Rachel Hodgkin and Peter Newel, *Implementation Handbook for the Convention on the Rights of the Child*, (fully rev. ed. 2002), p. See also the South African Constitution of 1996, IR para.1. This is clearly reflected in article 28 of the Bill of Rights of the Constitution, which deals specifically with the rights of children, in addition to the rights they enjoy elsewhere in the Bill of Rights. Every child has the right: ...; (b) to family care or parental care, or to appropriate alternative care when removed from the family environment; (c) to basic nutrition, shelter, basic health care services and social services; (d) to be protected from maltreatment, neglect, abuse or degradation; (e) to be protected from exploitative labour practices; (f) not to be required or permitted to perform work or provide services that (i) are inappropriate for a person of the child's age; or (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;.... (3) In this section 'child' means a person under the age of 18 years

⁵ FDRE constitution, Art 9(4)

⁶Id., Arts. 55(12) and 71(2)

⁷The House of Peoples' Representative pursuant to proclamation No.10/1992 ratified CRC, proclamation no.283/2002 adopted the ACRWC and the African Charter on Human and Peoples' Rights by Proclamation No.114/1998, Accession to the African Human Rights Charter Proclamation No 114/1998. Federal Negarit Gazeta, 4th Year No 1

⁸ Save the Children Sweden (2006), Good Governance and Budget Tracking from Child Rights Perspective, Eastern and Central Africa, (prepared by Tilahun Teshome and Getnet Alemu),P.14-15; The attempts to translate the CRC were made by few NGOs into local languages, CRC was translated into Amharic and other 11 major languages spoken in the country. See Italian Development Cooperation and MOWA, p.6, However, the problem is that they are not official and hence their binding nature is doubtful. Beyond that, this will lead to confusion if several groups come up with their own translated version of the CRC, which might be incompatible with one another. See also, Tilahun Teshome, *The child and the law in*

In this respect, some argue the statement that the treaty has been ratified or acceded to it is as good as publishing the full text of such instrument; because, publication of the treaty should not serve as a reason to bar citizens from enjoying or invoking their rights in the international instruments ratified by the State for such instruments impose much of state obligations than individual responsibilities.⁹ Such an argument is raised because others allege that the proclamation on the Negarit Gazeta besides the act of expression of the Parliament's approval to be bound by the treaty, it could be taken as an act of *incorporation to make the treaty applicable in domestic tribunals*.¹⁰

The ratification proclamation as the expression of the Parliament's approval to be bound thereof, is obvious, as stated under art.55 (12) of FDRE constitution. However, as regards, the view ratification proclamation could be taken as an act of incorporation to make the ratified treaties applicable in domestic courts nothing is stated in the ratification proclamations.¹¹ It is therefore, submitted that the full text of treaties, including the ones whose ratification was not promulgated, should be published in the official gazette with translations in the working languages, is tenable since it would make more known and easier for litigants as well as courts to refer to the treaty provisions. It is also equally important to mention that public awareness should not be underestimated taking the problem of legal penetration and extension in Ethiopia, as the lack of public awareness has contributed to weak implementation of fundamental rights and freedoms and violations by local tyrannies not less than the absence of ratification proclamations or lack of laws.

Ethiopia, the Case of the UN Convention on the Rights of the Child, Journal of Ethiopia law, Vol.16 Addis Ababa university, 1998, p.39

⁹ Sisay Alemahu. Sisay Alamuhu, "The Constitutional Protection of Economic and Social Rights in the FDRE", *Journal of Ethiopian law*, Vol. 22 No 2, 2008. P. 151, However, it is also worth noting the existence of international human rights that impose duties on individuals like the ACHPR.

¹⁰ Gerbemalk Gebregioris, "The Incorporation and Status of International Human Rights Under FDRE Constitution" in Girmachew Alemu and Sisay Alemahu (Eds), *The Constitutional Protection of Human Rights In Ethiopia: Challenges and Prospects*, Ethiopian Human Rights Law Series, (2009), AAU, Faculty of Law Vol. 2, P 43

¹¹For instance. Proclamation No.10/1992, the ratification proclamation of CRC has four articles dealing with citation, ratification *per se*, delegation of powers to the State organ responsible for its implementation and the date of enforcement. Article 3 of the ratification proclamation empowers the MOLSA to *undertake all acts necessary for the implementation of the CRC*. Beyond that, such proclamations in the official law Gazette do not exist in relation to some other ratified international human rights treaties relevant to the subject matter of this research paper including ICESCR, CEDAW and CERD.

4.1.2 Law Reforms

Besides the constitutional provisions, legal norms that concern children in separate branches of the law are found in the Civil Code, Criminal Code, Labor Law, Revised Family Code and other special proclamations. However, the existing laws have gaps and problems in that there is no legislations that provide free and compulsory primary education, the objectives/aims of education, and the right to health care that contains the core contents of the rights as analyzed in chapter three above. We have no laws that guarantee the right to food as an entitlement though millions of our children are exposed to hunger and dying thereof.¹² The existing labour law (proclamation No.377/2003) does exclude employment relationship of domestic workers and those working in informal sector, though it is obvious that many of them being subjected to exploitation and lead a very destitute life of exploitation by their employer, especially domestic servants.¹³

Therefore, a systematic review of all rules affecting children as well as enacting adequate legislation that cover at least such areas of concern need to be made because, the text concerning the provisions of the CRC is unavoidably of general nature and allows for different interpretation. The FDRE constitution also provide some of the SER rights in a crude and very general terms and hence it requires further legislations and compilation works of laws on children.

In line with this, the Committee on the Rights of the Child regularly recommends State Parties to develop and adopt a Comprehensive Children's Act.¹⁴ However, Comprehensive Children's Act that incorporates all the provisions of the CRC is a very ambitious undertaking, as it requires more than just copying the text of the CRC and hence each provision must be translated into concrete and specific rules within the

¹²Actually, this is one the controversial issues between the Ethiopian government on the one hand and the donors, International Medias and Some UN agencies on the other with respect the numbers of the needy. However, it is clear is the fact that millions of Ethiopian children are exposed to danger (whether it is called famine or hunger).

¹³ See for instance, Labour Proclamation No. 377/2003, Art.3(2)(d)

¹⁴CRC/C/ETH/C0/3 (2006), Committee on the Rights of the Child, 43rd session, Concluding Observations, Ethiopia, Para 9 For instance, with respect to Ethiopia the Committee states that, the government should consider undertaking a comprehensive review and adopt a comprehensive children's code, which incorporates the provisions of the CRC and the ACRWC.

context of national legislation.¹⁵ Thus, it is very difficult, if not impossible, to come up with such a Comprehensive Children's Act that would address all matters to be legislated concerning children in Ethiopia, given the required resources such as financial, human and others.

Thus, the best harmonization approach may be one that combines children's act with separate legislative measures for specific areas.¹⁶ Accordingly, in relation to the SER separate legislative measures could be taken for harmonizing existing laws on education, health care, adequate food, shelter, adequate standard of living standard and social security, protection against economic exploitation among others with the provisions of the CRC. This enables the judicial and administrative tribunals to enforce the human rights provisions related to the SER of the child guaranteed in the FDRE constitution, CRC and relevant international human rights instruments adopted by the government as well as for those children whose rights are infringed or threatened.

4.2 Judicial Measures

Besides legislative reforms to realize the enjoyment of ESR of children, a judicial measure is also a dominant factor. To this effect, by imposing the responsibility of respecting and enforcing the fundamental rights and freedoms (including the guaranteed SER of the child) on the judiciary, article 13 (1) of the FDRE constitution, has given a justiciable dimension to the rights. Article 37 (1) also provides that everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.

However, problems of both theoretical and practical nature arise in seeking judicial measures for the enforcement of SER generally and with regard to children in particular under the Ethiopian legal system. The first problem arises with regard to the power of courts to entertain such claims of SER to which constitution provides general protection

¹⁵ ACPF (2007), *In the Best Interest of the Child, Harmonization of National Laws with the Convention on the Rights of the Child: Some Observations and Suggestions*, P 8.

¹⁶ *Id* P. 9, see also Italian Development Cooperation, *Assessment of the Performances of Relevant Ministries in the Discharge of Their Duties and Responsibilities in Child Rights Promotion*, (2009) (Submitted by B & M Development Consultants PLC) (Unpublished), P.8

with out specific enabling legislations.¹⁷ From the beginning, article 83 (1) of the FDRE Constitution, entitled “Interpretation of the Constitution”, provides that *the House of Federation shall decide all constitutional disputes*. Article 84 indicated that the latter exercises this power upon the recommendations of the Council of Constitutional Inquiry that it is necessary to interpret the Constitution. Therefore, the House of Federation has the mandate of “interpreting” the provisions of the Constitution (including the SER of children).

Similarly, the practice also justifies that courts usually decline to see cases in which constitutional provisions are invoked and refer to the Council of Constitutional Inquiry and this trend has caused the negative impacts up on accessibility of judicial measures in enforcing the SER.¹⁸ In this regard, the FDRE constitution in its article 13(1) obliges the courts (also other organs) to respect and enforce chapter three of the constitution, which deals with the fundamental rights and freedoms. Secondly, there is no any constitutional limitation prohibiting courts from applying clear constitutional provisions and the power of courts is limited only with regard to “constitutional disputes”. Thus, the mandate of ‘interpretation’ given to the House of Federation should be understood as applying to situations where courts find some provisions of the Constitution vague or difficult to apply to cases under their consideration.¹⁹

Nevertheless, the problem is more complex if the rights which called for an interpretation is one that is not included or not mentioned in the third chapter of FDRE constitution, for example, the right to food, which is provided in the Social Objective of FDRE constitution (chapter ten), the applicability of Article 13 is non exist. The other problem is related to how should a court resolve a case if the rights at stake is one that is embodied in the FDRE constitution and if the latter provide a narrower protection compared to the same rights provided for in the CRC? For example, the right to education, which includes free and compulsory primary education, not mentioned in the constitution. The other

¹⁷ Sisay Alemahu, The Constitutional Protection of Economic and Social Rights in the FDRE”, *Journal of Ethiopian law*, Vol. 22 No 2, 2008, P 142 -152

¹⁸ See Action Professionals’ Association for the People (APAP), *Justiciability of the Right to Housing and the Right to Health in Ethiopia: The Legal and Policy Framework* (prepared by Sisay Alemayhu,) (2006), p.21-22

¹⁹ Ibid

question related to this is, if international human rights instruments are tools of interpretation for provisions of the constitution and if the final authoritative and binding interpretation is to be made by the House of Federation then how it would be possible for the court to entertain cases involving the ESR of the Child. These matters any way need clarification.

Finally, besides matters related to the power of courts (as a justification for not entertaining cases involving constitutional interpretations), there is another problem in relation to the strength of international conventions ratified by the country as legal norms to be cited before courts of law. The CRC and ACRWC as well as other international instruments protecting the SER of the child have been ratified and hence made part of the laws of Ethiopia²⁰, though their full texts have not been published on the Federal Negarit Gazeta. However, pursuant to article 2 (3) of Proclamation No.3/1995 G.C., *courts take judicial notice of laws published on the Negarit Gazeta* and thus, it is only when laws are published in the law gazette that judicial organs are bound to take judicial notice of it as law. This has been one of the causes for the failure of litigants as well as courts to refer to these instruments in practice and the belief among members of the judiciary that the rights in ratified international treaties which are not otherwise clearly guaranteed in domestic laws are not justiciable.²¹

In this regard, though the Cassation Division of the Federal Supreme Court had in a couple of cases decided citing a provision of the CRC, however, as many who have the experience tell, it is not the case everywhere within the judicial structure.²² Therefore, whether ratification or accession *per se* confers the force of the law on a treaty instrument or not, there is a need to promote and enhance the mechanisms that enable the members of the judiciary to implement the rights guaranteed in the CRC, ACRWC and other international treaties in the area of the SER of the child citing the relevant provisions of the conventions.

²⁰ FDER Constitution. Art.9(4)

²¹ See Action Professionals' Association for the People (APAP), *Justiciability of the Right to Housing and the Right to Health in Ethiopia*, (2006), cited above at note no.20, p.21-22, the conclusion is reached after an Interview with Judges and advocates of the various level of courts in Ethiopia.

²² See Italian Development Cooperation (2009), cited above at note no.16, p. 6

4.3 Administrative and Institutional Measures

As clearly stated under Article 4 of the CRC, one of the obligations of States' Parties for the realization of the rights recognized in the present convention is providing administrative and other institutional framework, which follow the affairs of children. Thus, this section deals with the major roles of the administrative agencies and other concerned institutions in implementing the SER of the child.

4.3.1 The Ministry of Women's Affairs (MOWA)

MOWA is entrusted with the powers and responsibilities to implement the CRC and look after the interest of children since 2005,²³ with the legal mandate *to follow up the implementation of treaties concerning women and children and submit the periodical reports to the concerned organs as well as the responsibility to undertake studies to promote the well-being of mothers and children and implement the same with cooperation of the concerned organs.*²⁴

The Ministry is also empowered to *sponsorship studies and formulates and implements programs and projects contributing to the improvement of living condition of needy women, and gives the necessary support to organizations operating for achieving the said objective.*²⁵ However, nothing is mentioned here regarding the same for needy and vulnerable children as well. Although it is established to follow both the affairs of women and children, only two articles,²⁶ from twelve articles, are dedicated for children in the establishment proclamation. This has brought the impression that children's issue is given lesser concern than women's issue. Some argue that only by way of a sideline issue is the wellbeing of children included in the powers and responsibilities of MOWA.²⁷

²³Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, (Proclamation No.471/2005). MOLSA was formerly responsible with the task of proper upbringing of children and implementation of the CRC through proclamation 4/1995.

²⁴Id., Art. 29(8) (11)

²⁵ Id., Art. 28(10)

²⁶ Id., Art.29(11)

²⁷ Italian Development Cooperation (2009), cited above at note no.16, p10; the authors in this study assert that although the Ministry is established to mainstream women's affairs rather than children.

MOWA performs its responsibilities on child rights through a team within the Mothers and Children's Department in the Ministry.²⁸ But, taking into consideration the prevailing socio-economic problems of children and the capacity of this unit to monitor and follow up the affairs of the children, as well as looking into how much the issue was downsized (from Commission to Team within a department)²⁹, one can safely conclude less attention was given for children's issue. However, with the application of BPR from November 2009, Children's Directorate is established.³⁰ In terms of human resource, the current children's Directorate has 9 staff members who are experts in various fields to carry out its duties and responsibilities accordingly.³¹ Yet, due to the complexities of the programs in the area of child rights many more experts from various would have been needed.

Be that as it may, the Ministry has undertaken a number of useful measures towards the promotion of Children's Rights. After the third periodic report, the Ministry in collaboration with MOLSA, has given awareness raising trainings to regional and local stuffs, which is aimed at encouraging adoption and ensuring the follow up of the situation of adopted children.³² The Ministry has also been involved in the measures of reviewing domestic legislations, translation (in local language) and distribution of versions of the CRC for use. In addition, in order to restructure the current administrative structure of MOWA, proposal was sent to the Council of Ministers for consideration, to make it Ministry of Women's and Children's Affairs.³³

Nevertheless, the institutional and administrative infrastructure for the implementation of the convention on the Rights of the child in general and ESR in particular, not much seems to have been performed to build the capacity of MOWA in terms of resources

²⁸Ibid

²⁹Ibid. In terms of the historical development of administrative framework, there was National Children's Commission established by the previous government, which had served several years before the adoption of the CRC, following the declaration by the United Nations General Assembly of the year 1979 as the International Year of the Child. Then after, in 1991 it was restructured and downsized as the Children, Youth and Family Affairs Organization under MOLSA. Since 2005 up to now, matters relating to children are more downsized under the domain of a team within a department in above Ministry.

³⁰ Interview with Abiy Ephrem, Information and Public Relations Directorate, MOWA, interview held on February 15, 2010

³¹ Italian Development Cooperation (2009), cited above at note no.16, p10

³²Id, p.77

³³ Interview with Abiy Ephrem, Information and Public Relations Directorate, MOWA, interview held on February 15, 2010

required to perform its responsibilities.³⁴ There is problem with respect to the budget allocation for the Ministry.³⁵ Except of the salary of the employees, the Ministry operates almost all its programs by the fund from different donors (like the Italian Development Cooperation), UN agencies like UNICEF and some NGOs working on children issues, which may indicate that little commitment has been in place to address the issues of children on part of the government.³⁶ However, as noted by the Committee on Rights of the Child, *no State can tell whether it is fulfilling children's economic and social rights "to the maximum extent of ... available resources", as it is required to do under article 4, unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly.*³⁷ Thus, making children visible in budget allocation by the Ministry should be given emphasis.

4.3.2 The Role of the National CRC Committee

One of the notable achievements in relation administrative measures was the issuance of a directive for the establishment of Child Rights Committees by MOLSA, in 1995. The directive, (officially designated as the Directives on the Responsibilities and Functions of Executive Committees of the Convention on the Rights of the Child), defines the functions of the committee all the way from the one's established at the Federal level down to those at the kebele,³⁸ with the main purposes:

- to widely disseminate the principles of the convention amongst members of the Public;
- to assist, coordinate and follow up and evaluate works that are being undertaken by governmental and Non-governmental organizations engaged in the areas that are covered by the convention;

³⁴In this respect, the Committee on the Rights of the Child notes that the newly created Ministry of Women's Affairs is responsible for coordinating the activities in view of the implementation of the convention. However, the Committee is concerned that the Ministry lacks sufficient resources and the ability to establish coordination at the regional, zone and woreda level. See CRC/C/ETH/Co/3, Para,10

³⁵ Italian Development Cooperation (2009), cited above at note no.16, p.5

³⁶ Id., p.79

³⁷ General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5 para.51; The Committee also stated that, it needs to know what steps are taken at all levels of Government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns.

³⁸ Italian Development Cooperation (2009), cited above at note no.16, p.11

- to formulate strategies that ensure observance of implementation of the convention and create the enabling environment for governmental and non-governmental organizations working in the areas of child-rights and welfare; as well as to follow up, review and solicit reports on the same; and
- To create conducive climate for the conduct of studies, seminars and workshops on child right issues.³⁹

Following this, at national level, a National Inter-Ministerial Committee on the Rights of the Child, which includes various Ministry offices and some other governmental agencies was established,⁴⁰ with the mandates to:

- Design strategies for the implementation and follow up of the CRC at Federal, Regional, Zonal and Woreda Levels;
- Evaluate each of the organization's member plan of implementation and mainstreaming of the CRC;
- Evaluate the implementation of the CRC Committees at Regional level and Confirm children participation in planning for actions related to the CRC;
- provide child centered organizations with technical advice and support;
- Monitor activities on CRC and include child-focused programs as part of the national program of the government;
- Work on the inclusion of the CRC issues with the government laws and legislations;
- Participate and facilitate the reporting of the CRC implementation from the Regional and Zonal level to the UNCRC; and
- Support efforts to implement the CRC.⁴¹

³⁹ Ibid, see also Section II The Directives on the Responsibilities and Functions of Executive Committees of the Convention on the Rights of the Child, MOLSA, 1994

⁴⁰Italian Development Cooperation (2009), cited above at note no.17, p 11. The National CRC Committee at the National level consisted of representatives from MOLSA, MOWA, Ministry of Education, Ministry of Justice, Ministry of Health, Ministry of Youth and Sports, Ministry of Water Resources, Ministry of Finance and Economic Development, Ministry of Information, Institute of the Ombudsperson, Ethiopian Human Rights Commission, Disaster Prevention and Preparedness Agency, Federal Supreme Court and Federal Police Commission. It also consists of representative of some NGOs and other donor community like UNICEF, Save the Children Sweden and the African Child Policy Forum, as an advisory group to provide technical support to this national committee. The Committee currently chaired by MOWA

⁴¹Italian Development Cooperation and MOWA (2006), Assessment Report: Actual Status, Function and Capacity of the National CRC Committee in Promoting the Convention on the Rights of the Child in Ethiopia,(prepared by Mekdes G/tensay and Tsegaye Kasasa) p.13. However, proclamation 471/2005, does not have much to say on the duties and responsibilities of the whole Ministries and Agencies mentioned above regarding the mainstreaming of child rights.

Therefore, the objective of the directive was to establish a committee that works on the mainstreaming of the child rights and follow up implementation of the CRC by the member organizations. In this regard, major works through the initiative of CRC Committee include among others: training the Regional CRC Committees, organizing School Communities and Child CRC Clubs, training on prevention and treatment of child abuse to professional (psychological treatment of children at high risk), organized through the assistance of UNICEF.⁴²

Another achievements initiated through CRC Committees includes promoting students participation by forming student's councils, flourishing of child rights clubs, various trainings given to teachers and school communities on the issue of banning corporal punishment, fight against early marriage and Harmful Traditional Practices in rural communities through the student clubs.⁴³

Despite these achievements, there are visible problems, especially regarding the coordination of its programs.⁴⁴ Some sources indicate that there are problems regarding *the level of activism by the National Committee in the formulation of policy directives, the manner of performance of their functions, communication channels between committees both vertically and horizontally, budgets initiation and approval, their dealings with third parties and its outcomes.*⁴⁵ Actually bringing together the various sector ministries with direct and indirect links to children's wellbeing is not an easy task. Yet, in order to accomplish the works on the mainstreaming of the child rights and follow up implementation of the CRC accordingly, a lot is desired from the national CRC Committee in terms of coordination.

⁴²Id., p.17

⁴³ Ibid.

⁴⁴ Italian Development Cooperation (2009), cited above at note no.16, p 11

⁴⁵Ibid, see also, Italian Development Cooperation and MOWA (2006), cited above at note no.40, p.10

4.3.3 Independent Human Rights Institutions for Children

National Human Rights Institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. It is therefore essential that full attention be given to SER in all of the relevant activities of these institutions.⁴⁶ In this respect, it is prescribed under article 55(14) and 55(15) of the FDRE Constitution that the House of Peoples' Representatives shall establish these organs. Accordingly, proclamation No.210/2000 and proclamation No.211/2000 were adopted by the House for the establishment of the Ethiopian Human Rights Commission and the Institution of the Ombudsperson respectively, and thus have commenced their operations since the year 2005.

For the protection and promotion of children's rights and welfare, the Ethiopian Human Rights Commission further appointed the Deputy Chief Commissioner and the Commissioner for Children's and Women's Affairs.⁴⁷ Thus, organizational structure of the Commission contains a unit that deals with the Human rights of Women, Children and Persons with disabilities.⁴⁸ Positive developments have been observed on the performance of the Commission so far. To mention some, in the area of SER of the child, after conducting an assessment on several elementary schools from the perspective of the inclusion of human rights in curricular and extra curricular activities, the Commission has been organizing several training programs in seventy-two Elementary School under the theme: Making Elementary schools Child- Friendly.⁴⁹ In addition, it has also been active in providing instructions and recommendations based on its observations of the situation of women prisoners with their children during its working visit to prison administrations and police stations as well as children in orphanages.⁵⁰

⁴⁶Committee on Economic, Social and Cultural Rights, General Comment 10, 1998, HRI/GEN/1/Rev.5, pp. 62 and 63

⁴⁷ Ethiopian Human Rights Commission(2009), Human Rights, Maiden Magazine, Vol.1 No.1, p.30

⁴⁸Article 8(2)(c) of the Proclamation 210/2000, The Ethiopian Human Rights Commission Establishment Proclamation

⁴⁹ Ethiopian Human Rights Commission(2009), cited above at note no. 47, p. 29

⁵⁰ Ibid

On the other hand, as regards the Institution of the Ombudsman, the organizational structure consists of a Unit for Children under a team for Children and Women. Its functions are awareness creation, investigation, and promoting children's participation through children's parliament.⁵¹ To this end, the institution has given awareness training for both Federal and Regional Members of the parliament, judges, public prosecutors, police and other administrative agencies like Ministry of Education. Although it happens in a very limited occasions, there are reports to the institution, concerning maladministration on children by governmental agencies through families and representatives, which include cases of unfair dismissal from school, refusal from medical institution on victims of violence, and neglect by police officers in handling cases of children.⁵²

The establishment of the children's parliament is also one the positive achievements for the protection and welfare of children. In the model parliaments, children will be given the opportunity to express their views. All children knew where to go to express their views and how to complain, even though some of them were not necessarily aware of their rights.⁵³

Encouraging as these moves may be through; a lot remains to be done to make their impact felt within the public, which is not the case yet, due to its inaccessibility. Neither has the Commission been able to issue nor publish a national report about the Human rights situation of children in the Country, except the report to the Parliament like other agencies of the government. Moreover, though the budget allocated to the Human Rights Commission has shown a notable improvement during the past two successive years,⁵⁴ there have been shortages of human resources. To this researcher's knowledge there are only three experts who work under the Commissioner for Children's and Women's

⁵¹ See the Institution of Ombudsman Establishment Proclamation, Proclamation No.211/2000

⁵² Interview with Getachew Gedo, Children Affairs Research, Counseling and Complaint Handling team leader, and a member of National CRC Committee representing the office of Ombudsman. Held by Fikreab Gintamo, on November 5, 2009

⁵³ For example, a model Parliament was established in Konso Woreda, Karat town on October 2006. The is being done in Addis Ababa

⁵⁴ Italian Development Cooperation (2009) cited above at note no.16, p.15; forexample, the budget laws of the Federal Government depict that funds allocated to them have nearly doubled during the 2007/2008 year as compared to the previous one, ranging from Birr 3.850.400 to Birr 7.332,700 and for Birr 3.793,700 Birr 7,312,900 respectively.

Affairs. Furthermore, though of the Commission has mandate to undertake investigations on alleged human rights violations with or without complaint;⁵⁵ however, there are very few instances where the commission entertained cases involving the protection of children's rights brought to it through complaints. The Commission rather tries to engage on influencing the policy and legal framework of the system in general.⁵⁶

Generally, independent human rights institutions are complementary to effective government structures for children; the essential element of which is independence. Thus, from the viewpoint of *the role of national human rights institutions is to monitor independently the State's compliance and progress towards implementation and to do all it can to ensure full respect for children's rights*⁵⁷ a lot is desired from the Human Rights Commission and the Institution of the Ombudsman in the promotion and protection of child rights in general and SER of child in particular.

4.3.4 Participation of Civil Society and Other Stakeholders

As part of their obligation under Art.4 of the CRC, States' Parties are also required to establish coordination among different actors such as NGOs, and the public at large for the implementation of the convention. NGOs have been taking a part in responsibilities of filling the gap of the social services that are not yet provided by the government system specifically on the mainstreaming and programming of the child rights. using different approaches and focuses on different groups of children and perform various activities.⁵⁸

⁵⁵Article 6(4), Proclamation 210/2000, The Ethiopian Human Rights Commission Establishment Proclamation

⁵⁶Aron Degol, The Role of the Ethiopian Human Rights Commission in the Protection of the Rights of Vulnerable Groups, The Case of Children, Women and Persons with Disabilities. (2009, unpublished LLM Thesis), p. 98.

⁵⁷ General Comment No. 5 (2003). CRC/GC/2003/5, Para.59

⁵⁸ For instance, in cooperation with UNICEF, Save the Children Alliance had significant role in working on child rights programs in partnership with the local NGOs and government organizations. The Italian Development Cooperation has shown its involvement on building government capacities and in partnership with the government, providing guidance on alternative child care of OVC groups. Forum for Street Children Ethiopia (FSCE), since 1996, has also been involved in advocacy program towards the promotion and protection of children's rights. See further UNICEF. Assessment Report: Justice for Children. Good Practices and Remaining Challenges in the Area of Justice for Children in Ethiopia. (2005). p. 29

In line with this, noting their vital role in the implementation of CRC, the Committee on the rights of the Child welcomes the development of NGO coalitions and alliances committed to promoting, protecting and monitoring children's rights and urges Government to give them non-directive support and to develop positive formal as well as informal relationships with them.⁵⁹ The engagement of NGOs in the reporting process under the Convention, coming within the definition of "competent bodies" under article 45 (a), has in many cases given a real impetus to the process of implementation as well as reporting.⁶⁰

Strong network of NGOs at the national level to advance the goals of the Convention and to strengthen their services as a whole is vital; and hence, with a better effort from them and with facilitation by the government they could contribute a better service. However, as regards cooperation with civil society in Ethiopia, the Committee on the CRC, is seriously concerned over restrictions placed upon civil society since the elections in 2005 and in particular, regrets the arbitrary mass detentions, including of children, that place severe restrictions upon the freedom of expression which is the fundamental element of a free civil society.⁶¹

Moreover, despite the absence of an enabling environment and institutional capacity limitations facing CSOs,⁶² the Charities and Societies Proclamation⁶³ is also of special concern in Ethiopia. Although enacted with the objective of ensuring transparency and accountability of CSOs, the proclamation threatens the existence of CSOs working on human rights, as it stipulates that they cannot obtain more than 10% of their funds from foreign sources.⁶⁴ This restriction will also entrench aid dependency, as it forces

⁵⁹ General Comment No. 5 (2003), CRC/GC/2003/5, Para.51

⁶⁰ Ibid. In this regard, CRDA had played an important role not only towards the creation of forums, but also in supporting and facilitating their agenda. One of such forums is the Children and Youth Forum of NGOs, which has 59 NGOs and CSO members. NGOs Complementary Report on the implementation of the CRC was made possible through such understanding. See also, Italian Development Cooperation (2006), Existing Situation and Best Practices in the Area of Information Management related to Children Living in Vulnerable Circumstances in Ethiopia, cited above at note 41, p 28.

⁶¹ CRC/C/ETH/CO/3(2006), para.22-23

⁶² Save the Children Sweden (2006), Assessment of Actors Working in the Field of Children's Rights in Ethiopia, (prepared by A. Kalpan and S. Davidoff), p.10

⁶³ Proclamation to Provide for the Registration and Regulation of Charities and Societies. Federal Negarit Gazeta. Proclamation No. 621/2009, 15th year, No. 25

⁶⁴ Id., Art.2(3)

development CSOs to abandon their rights based development programs and to focus only on relief and social service delivery. In addition, the requirement that national CSOs should open offices and/or have membership in at least five regions, the broad definition of administrative costs to include operational expenses for goods and services and the restriction not to use more than 30% of the budgets for such expenses as well as severe penalties for non-compliance with administrative and reporting requirements will also hamper their operations.

Thus, the role played by civil society in furthering the implementation of the Convention in Ethiopia is beyond doubt, though there are weaknesses. As recommended by the CRC Committee the government should encourage the active, positive and systematic involvement of the civil society, including NGOs in the promotion of children's rights, including their participation in the follow-up to the concluding observations of the Committee.⁶⁵

4.4 Comprehensive Policy, Strategy and Programs for Children

Adoption of appropriate policies towards economic and social rights of the child is one of the immediate obligations of States' Parties to the CRC. Accordingly, the Ethiopian government has adopted policy instruments on a wide range of economic and social issues. For instance, Health Policy of 1993; Health Sector Strategy of 1994; the Policy on HIV/AIDS of 1998; the Education and Training Policy of 1994; the Developmental Social Welfare Policy of 1996 and National Youth Policy of 2004 and the Health and Education Sector Development Programs, since 1997/8 can be mentioned.⁶⁶

Another policy instrument that could be mentioned is the Sustainable Development Poverty Reduction Program (SDPRP)⁶⁷ and the Plan for Accelerated and Sustained

⁶⁵ CRC/C/ETH/CO/3(2006), para.22-23

⁶⁶ Italian Development Cooperation (2009), cited above at note no. 16, p.8, see also Save the Children Sweden (2006), cited above at note no.8, p. 28

⁶⁷FDRE Ministry of Finance and Economic Development (MOFED) Ethiopia: Sustainable Development and Poverty Reduction Programme

Development to End Poverty (PASDEP),⁶⁸ a national development programme as well as the main poverty reduction strategy. PASDEP is inclusive of all the Millennium Development Goals (MDGs) relevant sectors (Health, Education, and Water, etc) and most of the targets for the sector programs are inline with MDGs.

To this end, Health Sector Development Program (HSDP) is the main medium of translating the health component of the PASDEP with minimum targets more or less similar with MDGs.⁶⁹ HSDP is a twenty-year Health Development Strategy, with a three to five year rolling investment programs. Now HSDP is in the third phase, which covers a period of five year i.e. July 2005 to June 2010. The major goals of HSDP-III are improving maternal health, reducing child mortality and combating HIV/AIDS, malaria, TB and other diseases with the ultimate aim of improving the health status of the Ethiopian peoples and achieving the MDGs.⁷⁰

Moreover, in the area of education, one of the sector development programs of the PASDEP, the government had been implementing Education Sector Development Programme (ESDP) since 1997/1998.⁷¹ The third ESDP is currently being implemented (years 2005/06-2010/11) with the objectives to improve educational quality, relevance, Efficiency, equity, and expand access to education with special emphasis on primary education in rural and under-served areas as well as the promotion of education for girls as a first step to achieve universal primary education by 2015.⁷²

With respect to the child labour, the Developmental Social and Welfare Policy of the Federal Democratic Republic of Ethiopia, which was issued by the Ministry of Labour and Social Affairs in 1996, has addressed the rights of the child. One of the focus areas of

⁶⁸Ministry of Finance and Economic Development (MOFED) (2006),Ethiopia: Building on Progress: A Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (2005/06-2009/10)Volume I

⁶⁹Three of the 8 MDGs are directly related with the Health Sector i.e. reduction of under-5mortality, maternal mortality ratio and combating HIV/AIDS by 2015

⁷⁰Ministry of Education, Ethiopian Health Sector Development Program III 2005/2006-2009/2010, p.57

⁷¹Government of The Federal Democratic Republic of Ethiopia, Education Sector Development Programme Action Plan, Ministry of Education Addis Ababa June 1999; and Education Sector Development Programme II June 2002 Addis Ababa. Related to this is the Transitional Government of Ethiopia, Education and Training Policy, March 1994 and the Transitional Government of Ethiopia Education Sector Strategy, Addis Ababa, 1994.

⁷²MOE, ESDP III, 2005/06-2010/11, P.1

the policy was child welfare, of which it is declared that *all efforts shall be made to implement all international and regional conventions and legal instruments concerning the rights of children, which Ethiopia has already acceded to.*⁷³

In general, some of this policy instruments carry statements relevant to child rights and the enhancement of programs for child welfare and development. Yet, one of the major gap in this regard, is the absence of a clearly spelt out comprehensive national policy on children.⁷⁴ In addition, though the policies have given the health and education sector development utmost priority, it has not taken health and education as a right to be respected, protected and fulfilled by the State, but as an input to give an impetus to the poverty alleviation objective of the State (PASDEP).⁷⁵ The human rights perspectives are lacking, that is the policy instruments do not recognize the right of the child to education and health nor assume the State as the main duty bearer in relation to the right.

In this regard, Katarina Tomasevsky, in order to determine the objective towards which education is geared, puts the following statement that illustrates the distinction between the *human rights approach* and the *human capital approach* to education:

Human rights law specifies the purpose and objective of education, increasingly calling for the mainstreaming of human rights throughout the contents and process of education. From the human rights viewpoint, education is thus an end in itself rather than merely a means for achieving other ends. Some economists may, however, define education as efficient production of human capital and classify all its human rights dimensions as externalities. A definition of people as human capital obviously differs from defining people as subjects of rights.⁷⁶

Taken together, adoption of human rights approach to public services, such as health and education, is of significant importance in a number of ways. If they are recognized as a right, children or their lawful representative can claim and enforce it through judicial

⁷³ Italian Development Cooperation, 2009, cited above at note no. 16, p8-9

⁷⁴ Ibid

⁷⁵ *Action Professionals' Association for the People (APAP) (2007), The Obligation of the Government to Ensure Free and Compulsory Primary Education and the Situation in Selected Major Urban Areas of Ethiopia*, (unpublished), 2007, P. 80

⁷⁶ Ibid, cited from Katarina Tomasevsky, "Right to Education Primers No.4", p. 8. See also K B Deiter, *The Protection of the Right to Education by International Law*, International Studies in Human Rights, Vol, 82 (2006), p. 607

measures and hence, there is a possibility to make the concerned organ legally answerable for its failures to meet its obligations.⁷⁷ However, if a particular social services are not considered a right (simply policy matters or at the mercy of policy makers) it will be up to the state to provide or not. In latter cases the means of holding the concerned government administration responsible could political one, which is very unpredictable and subject to maneuvering as evidenced in 2005 election of Ethiopia.

In addition, SDPRP, the sector development programs and require integrated planning, integrated management information systems, regular reporting and continuous monitoring and evaluation. However, there is lack of capacity in participatory methods and techniques for effective engagement of communities in the development process.⁷⁸

4.4.1 Ethiopia's National Plan Action for Children (2003-2010 and beyond)

Ethiopia has adopted National Plan Action (NPA) for Children (2003-2010 and beyond)⁷⁹ in the context of the goals, targets and strategies of "A World Fit for Children,"⁸⁰ as well as MDGs, PASDEP, other policies and laws of the Ethiopian government and the prevailing socio-economic situations and future national aspirations. NPA focuses on promoting healthy lives; providing quality education; protecting against abuse, exploitation and violence, and combating HIV/AIDS.⁸¹ In this context, the following are the goals, strategies and actions planned for each sector:

- A. Promoting healthy lives involves increasing health care coverage to 62%, reduction of maternal and child mortality by one-third; improvement in nutrition, sanitation and water facilities and controlling the major killer diseases such as HIV AIDS, malaria and TB.

⁷⁷ See also the discussion in relation to the constitutional entrenchment of the SER, under chapter three of this research.

⁷⁸ Government of Ethiopia-UNICEF Country Programme Action plan (2007-2011) p. 6

⁷⁹ Ministry of Labor and Social Affairs (MOLSA)(2004). Ethiopia's National Plan Action for Children (2003-2010 and beyond)

⁸⁰ The 27th General Assembly of the UN held a special session in May 2002 on children and adopted a resolution regarding "a World Fit for Children." The commitment, basically, is part of the efforts to implement the CRC; however, this special session was an incomparable historic accession for the first time as the General Assembly gathered with the exclusive intent of discussing children's issues. The priority areas identified were promoting health lives; providing quality education; protecting against abuse, exploitation and violence, and combating HIV/AIDS.

⁸¹ MOLSA (2004), NPA, P.44

- B. Providing quality education involves the expansion of early childhood education, providing quality primary education to 90% of the Ethiopian children, improvement of the quality of teachers, allocation of larger amount of resources (budget) and working towards narrowing the disparity gaps between regions and the sexes. Special assistance will be provided to children in pastoralist's areas, and those with disabilities. By the end of the plan period, adult literacy rate is to be 50%.
- C. Protection of children from abuse, exploitation and violence: involves protection of children from all forms of abuse, exploitation, neglect and violence and protect children from various harmful traditional practices (HTPs) and provide assistance to children in especially difficult situations.⁸²

Therefore, the Ethiopian NPA for children outlines the government's commitment to the survival, protection and development of children allocating the necessary resources for the promotion of planned programs. With respect to NPA, the Committee on the Rights of the Child stated that in Ethiopia, NPA for children is good but there lack of a systematic review and evaluation of the previous NPA for children to better address previous challenges and it has not been translated into local languages and adequately disseminated among authorities responsible for its implementation.⁸³

4.4.2 The National Strategy for Child Survival

The National Child Survival Strategy that has already been finalized has the overall objective of reducing under-five mortality to 67/1000 population by 2015 to achieve the MDGs.⁸⁴ The strategy addresses the major causes of child mortality that account for 90% of under five deaths i.e. pneumonia, neonatal conditions, malaria, diarrhea, measles, malnutrition and HIV/AIDS as underlying condition, and aims to reduce neonatal, child and under-five mortality rates proportionally.⁸⁵ The full implementation of the Child Survival Interventions will enable a reduction in Under-five mortality by 48% by 2009 and by 61% by 2015, which is greater than the MDGs target of reduction of Under-five

⁸² MOLSA(2004), NPA, 44-53

⁸³ UN Doc. CRC/C/ETH/CO/3/E1/2006, para.12

⁸⁴ Federal Ministry of Health, The National Strategy for Child Survival, 2005

⁸⁵ Ibid

by 52%.⁸⁶ The objectives, strategies and key activities of the strategy have been fully articulated into the various components of HSDP-III.

Accordingly, with respect to children, the major objectives of HSDP-III are the following:

- to reduce U5 mortality rate from 123 to 85 per 1000 population and infant mortality rate from 77 to 45 per 1000 population;
- to reduce maternal mortality ratio to 600 per 100,000 live births from 871;
- to reduce the adult incidence of HIV from 0.68 to 0.65 and maintain the prevalence of HIV at 3.5;
- to reduce morbidity attributed to malaria from 22% to 10%;
- to reduce case fatality rate of malaria in age groups 5 years and above from 4.5% to 2% and case fatality rate in under-5 children from 5% to 2%; and
- to reduce mortality attributed to TB from 7% to 4% of all treated cases⁸⁷

In order to materialize HSDP, high impact and community based health interventions like the Health Service Extension Programme (HSEP), Accelerated Expansion of Primary Health Care Facilities and Essential Health Service Packages become important.⁸⁸ HSEP is an innovative community based health care delivery system aimed at creating healthy environment as well as healthful living, with the main objective to improve access and equity to preventive essential health interventions provided household levels.⁸⁹

Therefore, HSEP could be considered as the most important institutional framework for achieving the MDGs. But, as practically they focus only on Hygiene and environmental sanitation, there are problems in the areas such as Disease prevention and control, Family health services, Health Education and Communication.⁹⁰

⁸⁶ Federal Ministry of Health, The National Strategy for Child Survival, 2005

⁸⁷HSDP-III, p.57 This policy has been supplemented by the policy on HIV/AIDS of 1998 to address the peculiar impacts of this pandemic. The objectives of this policy include promoting a broad multi sectored response to the epidemic, promoting proper institutional, home and community based health care to victims of the disease, orphans and surviving dependents.

⁸⁸ MOH, HSDP-III, p. 36

⁸⁹ Ibid

⁹⁰HSEP includes 16 packages in four main areas: Hygiene and environmental sanitation, Disease prevention and control, Family health services, Health Education and communication.

4.5 The Reality around Ethiopian Children

4.5.1 Reducing Child Mortality (MDG4)

As mentioned above, Improving Child Health is one of the priorities of HSDP III, which has set a target for the reduction of under-five mortality rate from 123 to 85 per 1000 live births and the infant mortality rate from 77 to 45 per 1000 live births.⁹¹ However, child mortality is the highest in Ethiopia. The 2009 report of UNICEF indicates that Ethiopia ranks 27 in descending order out of 191 countries. The rate is 119 per 1000 live births of which 75 dies before their first birthday (between birth and one year) and the total number of under-five deaths was reported to be 83099.⁹² with the annual reduction of 1.4, which is very low.⁹³

A substantial portion of all under-five deaths in Ethiopia is due to preventable diseases (pneumonia, diarrhea, malaria, measles, and HIV/AIDS) and malnutrition, which is the underlying cause of death in about 54% of the cases.⁹⁴ One of the indicators used to monitor progress towards the goal of Reducing Child Mortality is immunization coverage, which aims to reduce the incidence of vaccine preventable diseases in children through high immunization coverage.⁹⁵ To this end, the existing data reveals the following.

4.5.1.1 Measles

Measles is one of the leading causes of vaccine - preventable child mortality. In Ethiopia nation wide implementation of supplementary immunization activities was made in 2006. However, Measles vaccine coverage was 76.6% at the national level in 2008/09, short of the target (86.4%) set for the year, but above the performance in 2007/08 (75.9%).⁹⁶ There were fluctuations in immunization coverage, with Pentavalent 3 vaccine coverage decreasing from 85.4% in 2007/08 to 81.6% in 2008/09, short of the target (91.9%) set

⁹¹ MOH(2009), Annual Performance Report (APR) of HSDPIII EFY2001 (2008/2009), p.117

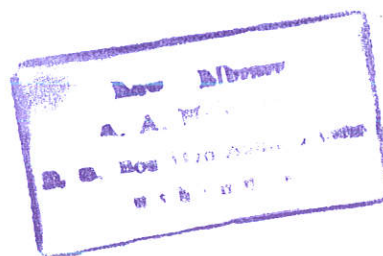
⁹² Id., Table 1, p.118

⁹³ Id., Table 10, p.154

⁹⁴ Ibid.

⁹⁵ Id., p.57

⁹⁶ Id., p 58



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⁹¹ MOH(2009), Annual Performance Report (APR) of HSDP III EFY2001 (2008/2009), p.117

⁹² Id., Table 1, p.118

⁹³ Id., Table 10, p.154

⁹⁴ Ibid.

⁹⁵ Id., p.57

⁹⁶ Id., p 58



for the year and below the performance in 2007/08 (85.4%). Measles vaccine coverage slightly increases from 75.9% to 76.6%, and full immunization coverage fluctuating around 66% (66.4% in 2007/08 and 65.5% in 2008/09).⁹⁷

4.5.1.2 Diarrhoeal Diseases

The percentage of children under five with diarrhoeal who receive oral dehydration or increased fluids with confined feeding, between 2000 and 2007 is 15%, which is too low, compared to 30% of Sub Saharan African countries.⁹⁸ In addition, the total percentage of population using improved drinking water in 2006 was 42 in which urban population is 96 % and 31% in rural, while the percentage of population using adequate sanitation facilities in the same year is 27% in urban areas where 8% in rural of the total percentage of 11%.⁹⁹ Thus, though there is improvement, compared to the total 3% in 1990, yet the progress towards the MDG target¹⁰⁰ is insufficient and hence, a lot is desired from the government.

4.5.1.3 Malnutrition

Adequate nutrition is vital for building children's immune systems and for their motor and cognitive development. However, the level of malnutrition is alarmingly high, with nearly one in two Ethiopian children under-five years of age are categorized as being chronically malnourished. The consequences can be fatal: more than half (54%) of child deaths are attributable to under nutrition. In addition, the average annual rate of reduction in under weight prevalence between 2000 and 2007 is 0.6 percent and 2.5 percent, which is insufficient progress to achieve the MDG target.¹⁰¹ The percentage of under five suffering from under weight is 38% (moderate & severe), 11% severe; suffering from

⁹⁷ Id., Figure 40, p 60

⁹⁸ UNICEF(2009), Table 3, p 126, Measures to prevent childhood diarrhoeal episodes include promoting exclusive breastfeeding, raising Vitamin A supplementation rates, improving hygiene, increasing the use of improved sources of drinking water and sanitation facilities, promoting zinc intake and immunizing against rotavirus.

⁹⁹ UNICEF(2009), Table 3, p126

¹⁰⁰ This is related to MDG7: Ensure Environmental Sustainability. MDG target is Halve, b/n 1990 and 2015, the proportion of people without sustainable access to basic sanitation, which is 54%.

¹⁰¹ Malnutrition is related to measure that is to Eradicate Extreme Poverty and Hunger (MDG1). The MDG target is to Halve, between 1990 and 2015, the proportion of people who suffer from hunger. MDG indicator: under weight prevalence among children under-five.

wasting 11 (moderate and severe): suffering from stunting is 47% (moderate and severe)- which is below minus two standard deviations from median weight and height for age of reference population respectively.¹⁰²

Moreover, the percentage of infants with low birth weight between 1990 and 2006 is 2% that is those children whose weight is less than 2,500 grams at birth, which is very low compared to 14% the average of Sub Saharan countries. Only 49% of children at 6 months of age are exclusively breastfed, while 54% are given the first milk, called colostrums, which is crucial for babies to start up their life with necessary nutrients and protection from infections.¹⁰³ The percentage of house holds consuming adequately iodized salt is 20% (about 80% of children are iodine deficient) while vitamin A supplement coverage rate (6-59 months) is 88%.¹⁰⁴

Despite the problem of food security, Safety Net Programme and other food security interventions are on going. Other factors causing malnutrition, such as inadequate caring feeding practices at home, lack of adequate hygiene, maternal malnutrition, lack of mother's time for active feeding and stimulation, are paramount.¹⁰⁵ In this context, the government has launched the National Nutrition Strategy (2008) to ensure that all Ethiopians secure adequate nutritional status in a sustainable manner, which will be implemented through the comprehensive National Nutrition Programme (NNP) supported by multiple partners.¹⁰⁶ Yet, the target of sustainable elimination of vitamin A deficiency by 2010; protecting, promoting and support exclusive breast feeding for six months and confined breast feeding with safe, appropriate and adequate complementally feeding up to two years of age or beyond is not yet met. Thus, MDG target that is halve, between 1990 & 2015, the proportion of people who suffer from hunger is not achieved or the progress towards the MDG target is insufficient.

¹⁰² UNICEF(2009), Table 2, p122

¹⁰³ Ibid

¹⁰⁴ Ibid, however, the report of the MOH indicates that out of the eligible population of 6-59 months children, the coverage of those with two rounds of vitamin A supplementation in EFY 2001 was 95% against the target of 98.2% set in the Core Plan. Whereas, out of the eligible population of 2-5 years children, the de-worming coverage in EFY 2001 was 98%, slightly lower than the target (99%) set for EFY 2001. see for example MOH, (2009), APR of HSDPIII, Figure 14, p

¹⁰⁵ Ethiopia, National Nutrition Survey, UNICEF(2006-2007)

¹⁰⁶ Ibid

4.5.1.4 Combating HIV/AIDS, Malaria and Other Diseases (MDG6)

The number of people living with HIV worldwide has continued to rise, and more than 10 million people aged 15-24 are infected with HIV of which about 95 percent of people living with HIV reside in low and middle-income countries, and almost two thirds of them are in sub-Saharan Africa.¹⁰⁷ In this respect, in Ethiopia HIV prevalence among young people (aged 15-24) in 2007 was 0.5 for male and 1.5 for female. HIV prevalence rate with respect to Mother to child transmission in young pregnant woman in capital city was 11.5. The percentage of those who have comprehensive knowledge of HIV/AIDS between 2000 and 2007 is 33 and 20 for male and female respectively. The percentage of those who used condom at least in high-risk sex is 50 and 28 for male and female in the same year. The estimated number of children (aged 0-14 living with HIV/AIDS in terms of thousands is 92.¹⁰⁸

With respect to Malaria, in Ethiopia, the percentage of under-five sleeping under an insecticide treated net between 2003 and 2007 was 33, while the percentage of under-five with fever receiving anti-malarial drugs in the same year was 10,¹⁰⁹ which is very low to meet 60% roll back malaria - Abuja target in 2005 and 80 percent in 2010.¹¹⁰

The other disease, which kills children, is Pneumonia (it kills more than any other illness, more than HIV/AIDS, malaria and measles combined).¹¹¹ Preventing child hood pneumonia is critical to the MDG target of reducing child deaths. In Ethiopia, percentage of children under five with suspected pneumonia who are taken to an appropriate health provider between 2000-2007 is 19, which is very low compared to the average Sub-Saharan countries, which is 40.¹¹²

¹⁰⁷ UNICEF(2007), Progress for Children, A World Fit for Children Statistical Review, No. 6 Dec., , p30

¹⁰⁸ UNICEF(2009), table 4, p130

¹⁰⁹ Id., table 3, p126

¹¹⁰ UNICEF(2007), cited above at note no. 107, p. 36

¹¹¹ UNICEF(2009), Table1, p.118

¹¹² Id., Table 3, p.126

4.5.1.5 Improving Maternal Health (MDG5)

Maternal Mortality (maternal deaths per 100,000 live births) is also the highest in Ethiopia. The maternal health indicators¹¹³ showed antenatal care coverage increased from 61.2% in 2007/08 to 66.3% in 2008/09 and postnatal coverage from 25.9% to 34.3%. The proportion of deliveries with skilled health attendants rose from 20.7% to 24.9% in the same periods. Despite this upward trend, the coverage of maternal health services is still low in Ethiopia, and the national targets set for 2008/09 were not achieved (80.5% for ANC coverage and only 37.1% for proportion of deliveries with skilled health attendants) according to the annual performance report of HSDP III by MOH of 2008/09.

Like wise, according to 2009 report by UNICEF,¹¹⁴ contraceptive prevalence from 2000-2007 is 15%; antenatal care coverage is 28%; skilled attendant at delivery is 6%, institutional delivery is 5%, the maternal mortality ratio is 673 but adjusted to 720; life time risk of maternal death is 27%, FGM prevalence is 74%, early marriage, 49%. This figure is very lesser than even the average Sub-Saharan Africa, the region furthest behind on almost all of the health related MDGs.

At any rate, despite the decline in Maternal Mortality Ratio from 871 deaths per 100,000 live births in 2000 to 720 deaths per 100,000 live births in 2007, maternal mortality is still unacceptably high in Ethiopia. Improving maternal health also means reducing child mortality, especially newborn deaths (neonatal death). Newborn deaths (Neonatal) children die within the first 28 days of life account for 37 percent of all under fives deaths, and hence improving neonatal survival is essential if MDG4 - reduce child mortality is to be reached. Reducing neonatal deaths requires improving women's health during pregnancy, providing appropriate care for both mother and newborn during and immediately after birth, and caring for the baby during the first weeks of life.

¹¹³Moreover, Five major indicators that have been selected to measure the progress towards the achievement of MDG5 are: antenatal care coverage, percentage of deliveries attended by skilled health personnel, clean and safe delivery service coverage (percentage of deliveries attended by HEWs), post natal care coverage, and contraceptive acceptance rate

¹¹⁴ UNICEF (2009), Table 8, p. 146

4.5.2 Providing Quality Education

As mentioned earlier, the ESDPIII aims at improving educational quality, relevance, efficiency and equity. To this effect, the Ministry of Education (MOE) is committed to provide Universal Primary Education by 2015, to assure quality of education and expand vocational training, secondary and higher education. The overall goal is to facilitate active participation of all citizens in community and society.¹¹⁵ Implementation of the policy has produced some significant changes in practice. There have been great achievements and some shortcomings in the education sector. In this section, analysis of the current situations of education in Ethiopia, in relation to Pre-Primary Education, Primary Education, Secondary Education and Technical and Vocational Education and Training (TVET) Program, will be made (using indicators in the Education Statistics Annual Abstract 2007/08).

4.5.2.1 Access and Equity

According to Education Statistics Annual Abstract (2007/08),¹¹⁶ with respect to primary education,¹¹⁷ the annual average increase enrollment for five years is 12.6% since 2002/03.¹¹⁸ The Gross Enrolment Rate (GER) is 95.6% while Net Enrolment Rate (NER) is 83.4% in 2007/08,¹¹⁹ of the 100.2% and 82.8% target set for the same year under ESDP III.¹²⁰

¹¹⁵ This is in line with the Millennium Development Goals to meeting Universal Access to free and compulsory primary schooling of good quality by the year 2015. The MDG Target is to ensure that by 2015, children of everywhere, boys and girls alike will be able to complete a full course of primary schooling.

¹¹⁶ Ministry of Education (MOE) (2009), Education Statistics Annual Abstract 2007-2008, p. 6-7

¹¹⁷ Primary Education is defined as education in grade 1-8 in two cycles, 1st cycle (grades 1-4) and 2nd cycle (grades 5-8), See MOE, 2009, P.4

¹¹⁸ Id., P.23

¹¹⁹ Id., Table 4.2, and 4.2 respectively, P.23-25, GER is the percentage of pupil (irrespective of age) at a particular grade level, compared to the corresponding school age population. The NER is the percentage of pupils at a particular grade level, who are of the official enrollment age for that level, compared to the corresponding school age population.

¹²⁰ MOE, 2009, P.6

There is also expansion of Secondary education.¹²¹ The facts indicate that the GER for grades 9-10 reached 37.1%, (44.4% boys and 29.6% for girls) in 2007/08.¹²² The GER for the preparatory was 5.8% (7.8% boys and 3.8% girls) in the same year.¹²³ Similarly, the NER for grades 9 -8 is 13.8%, (lower than 14.7% in the previous year).¹²⁴ In addition, the total enrollment in TVET programme was 229,252(52.0% boys and 48.0% girls) in 2007/08.¹²⁵ TVET programme has been increasing by 27.4% for the past five years.¹²⁶

On the other hand, according to the 2009 UNICEF report, in Ethiopia, primary school enrollment ratio between 2000-2007 was, in terms of gross, 97 for male and 85 for female, while the net enrolment ratio was 74 for male and 69 for female during the same year.¹²⁷ The secondary school enrolment ratio is 37 for male, 24 for female in terms of gross, while 29 for male and 19 for female that is net.¹²⁸ The net secondary school attendance ratio between the same years is 30 and 23 for male and female respectively, and youth literacy ratio is 62 for male and 39 for female.¹²⁹

Despite these achievements, there are gaps and problems with respect to the enrollment rate for pre-primary education or Kindergarten (KG).¹³⁰ The GER of this early childhood education was only 3.1 % and 3.9% in 2006/07 and 2007/2008 respectively and concentrated Addis Ababa (74.9%).¹³¹ In 2007/2008 out of the estimated 6.76 million children of this age group only about 263,464 have access to pre-primary education in 2,740 KG sites all over the country.¹³²

¹²¹ Secondary schools have been in Ethiopia providing for post primary education in a first cycle (9-10), also called General Secondary and a second cycle (11-12 preparatory). See MOE, 2009, P6

¹²² MOE (2009), Table 4.16, P.6

¹²³ Id., chart 4.18, P.44

¹²⁴ Id., Table 4.18, P.45

¹²⁵ Technical and Vocational Education and Training (TVET) programme run for one to three years (10+1, 10+2 or 10+3), but now replaced by level (Level I, II, III, and IV) after students complete their 10th grade. See MOE, 2009, Table 4.25, P.54

¹²⁶ Ibid

¹²⁷ UNICEF(2009), The State of the World's Children: Maternal and Newborn Health. Table 5, p 134

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ MOE (2009), p.21. This level includes children of ages 4 to 6 enrolled in the pre-primary education.

¹³¹ Id., Chart 4.1, P.22

¹³² Id., P.22, See also MOE, National Policy Framework for Early Childhood Care and Education (ECCE), April, 2009, p12. The major challenges as regards the current early childhood education practices identified in the 2007 Situation Assessment Study includes lack of proper training of pre-school teachers; lack of

However, pre-primary education has enormous advantages. Research on brain development emphasizes that the first six years of life are extremely important because this is the fastest period of growth and development in all aspects: it is during the early years that children learn and acquire knowledge, skills and attitudes quickly and with minimal effort.¹³³ Early stimulation through play, schooling, and various activities promote language development, cognitive abilities, better social skills, and stable personality development, and those who have participated in pre-primary education are less likely to depart (dropout) from schools.¹³⁴

Moreover, early childhood education is of particular relevance for children with disabilities as often their disabilities and special needs are first recognized in these institutions.¹³⁵ If a child is identified as having a disability or developmental delay at an early stage, the child has much better opportunities to benefit from early childhood education which should be designed to respond to her or his individual needs.¹³⁶

For the implementation of the early childhood education, private investors, NGOs, and religious institutions appear to show interest in expanding this level of education centers (they are predominant operators of KGs in Ethiopia).¹³⁷ In addition, the government provides policy, guidelines and strategic operation plan for Early Childhood Care and Education (ECCE).¹³⁸ Still a lot remains to be done and thus, government should give attention to this level of education.

standard curriculum and guidelines; lack of culturally relevant story books; quasi nonexistence of alternative care and education services for the majority population in the rural areas; lack of access to early childhood education for almost all children from low socio-economic backgrounds. The same was indicated by Ato Shifa Radi, Foreign and Public Relation Directorate Officer, MOE. Interview held February 16, 2010

¹³³ MOE, National Policy Framework for Early Childhood Care and Education, April, 2009, p14-15

¹³⁴ Habtamu Wondimu, (1996) in Italian Development Cooperation(2009). cited above at note no.16. P.54

¹³⁵ General Comment No. 7 (2005), Committee on the Rights of the Child, Implementing child rights in early childhood, CRC/C/GC/7/Rev.1 20 September 2006, para 36(6)

¹³⁶ Ibid

¹³⁷ MOE (2009), P.22

¹³⁸ With the vision of *ensuring all children the right to a healthy start in life, to be nurtured in a safe, caring and stimulating environment and to develop to their fullest potential* the government of Ethiopia has prepared National Policy Framework, Guidelines and Strategic Operation Plan for Early Childhood Care and Education (ECCE) in April, 2009

With respect to equity, the facts reveal that there are significant disparities. For instance, the GER for pre-primary education is only 3.9% at national level, while it is 74.9% in Addis Ababa followed by 12.6% in Harari and 10.7% in Dire Dawa, however, it is 0.5% in Afar, 0.6 in Somali and 3.0% each in Oromia and SNNPR and 1.0% in Tigray and 2.0% in Amhara.¹³⁹

For primary education, though Gambella, Addis Ababa, Amhara, Benishangul Gumuz, and Tigray have achieved more than 100% GER, the two predominantly pastoralist regions of Afar and Somali scored 26.2% and 32.7% respectively.¹⁴⁰ Likewise, according to the data from UNICEF, even though Primary school NER increased, but it remains much lower among pastoralist communities due to challenges with service provision to the pastoral lifestyle and only relatively recent interventions to provide non-formal education.¹⁴¹

Thus, although much has been achieved such wide regional variations demonstrate the need for continued efforts to achieve Universal Primary Education and maintain equity between regions, as well as respecting the principle of non-discrimination of the right to education. Thus, this requires the allocation of adequate resources in all areas within the territory and fair distribution of resources as well as effective utilization of the same.

There are also gender disparities as educational level increases. For instance, at primary level, the NER for girls is 80.7% while it is 86.0% for boys. The GER for secondary education first cycle was 29.6% for girls while it is 44.4% for boys, and 5.8% (7.8% for boys and 3.8% for girls) for preparatory program,¹⁴² which is wide. Gender Parity Index (ratio of females to males' enrollment) at primary level was 0.90, though highest in Addis Ababa (1.00), Tigray (0.98) and Amhara (0.96) regions, it was lowest in Benishangul Gumuz (0.76) and Afar (0.77) regions.¹⁴³ However, for grades 9-10, it is 0.67 and 0.49

¹³⁹ MOE (2009), Chart 4.1 P.22

¹⁴⁰ Id., Chart 4.3 P.24, These regions achieved GER of 121.4%, 114.3, 112.4%, 112.3%, and 109.4% respectively. However, the NER is (20.1%) in Afar and (29.4%) in Somali regions compared to the (101.6%) and (97%) in Amhara and Tigray respectively. See MOE, 2009, Table 4.4 P.25

¹⁴¹ Government of Ethiopia-UNICEF Country Programme Action plan (2007-2011), p.3

¹⁴² Id., Table 4.19 P.45

¹⁴³ Id., Chart 4.7 P.28

for grades (11-12).¹⁴⁴ This means that for every three students enrolled in the first cycle Secondary Education, only one is a girl.

The problem of gender gap is related to MDG3 (promoting gender equality and empowering women), which aims to eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015. Thus, if UNESCO's gender parity index between 0.97 and 1.03 is taken to represent the elimination of gender disparities,¹⁴⁵ only Addis Ababa and Tigray out of 9 regions have achieved the target within the given time limit. In addition, gender equality in education goes beyond having equal number of boys and girls in access. When parents are, in particular mothers, are educated, their children both boys and girls will be healthier, better nourished and have a greater chance of going to school and doing well there.¹⁴⁶

4.5.2.2 Quality of Education

Achieving Universal Primary Education depends fundamentally upon the quality of education. Taking Pupil-Teacher Ratio (PTR) as one of the quality indicators, the existing data reveals that PTR for primary education, has increased from 65 in 2003/04 to 66 in 2004/05 and declined to 62 and 59 in 2005/06 and 2006/07 respectively, while it was 57 for primary education¹⁴⁷ and 43 for secondary education in 2007/08.¹⁴⁸

However, low or high PTR alone does not explain the quality of education because quality of education depends on other factors such as mode of delivery, the policy framework, commitment, qualification of teachers, the supply of educational materials, its contents and similar others.¹⁴⁹ That is why the number of teachers qualified/certified for the level they are teaching is used as an indicator for quality of education. To this end, nationally only 63.9% of the secondary (9-12) teachers are qualified for their level of

¹⁴⁴ Id., P.46

¹⁴⁵ Mulugeta Tsegai, cited above at note 99, p. 10

¹⁴⁶ Ibid

¹⁴⁷ MOE (2009), chart 4.8 p. 28

¹⁴⁸ Id., Table 4.20, p. 47. The standard set for the PTR is 50 pupils per teacher at primary level and 40 pupils per teacher at the secondary level. See MOE, 2009, p. 29

¹⁴⁹ Id., P.29

teaching.¹⁵⁰ However, it is better in primary education level that is 97.3% of the teachers are certified /trained for the first cycle (grades1-4), while only 66.3% are for the second cycle (grades 5-8) of primary education in the same year.¹⁵¹

Moreover, National Learning Assessment (NLA)¹⁵² also measures the quality of education and identifies factors that contribute to the outcome. In this respect, the evidences suggest that grade 4 sample assessment of learning achievements was 48.5%, while it was 40% for grade 8.¹⁵³ According to UNICEF, National learning achievement scores for grades 4 and 8 are 49 percent and 40 percent, reflecting insufficient levels of teacher qualification, lack of textbooks and non-participatory learning approaches.¹⁵⁴

4.5.2.3 Efficiency

The efficiency of the education system is measured by dropout and repetition rates, which help to understand how the education system works in terms of the use of available resources and time because repeating a grade or dropout before completing a particular cycle means using more resources than allocated to a student.¹⁵⁵ The facts reveal that there is an increasing net of repetition and dropout rate. For example, the repetition rate was 6.1% (6.4% for boys and 5.7% for girls) and 6.2% (6.6% for boys and 5.7% for girls) for 2005/06 and 2006/07.¹⁵⁶ Repetition is highest in the 8th grade, followed by 7th grade that is 12.1% (12.5% for boys and 11.4% for girls).¹⁵⁷ The dropout rate for the primary education was 12.4% (12.6% for boys and 12.1% for girls) and 12.4% (13.1% for boys and 11.6% for girls), in the same year.¹⁵⁸ The dropout rate remains especially high in grade 1, 18.3% (18.7% for boys and 17.8% for girls) and followed by grade 5.¹⁵⁹

¹⁵⁰ Id., p47

¹⁵¹ Id., Table 4.7 p30

¹⁵² The first NLA was carried out in 1999/2000 on grades 4 and 8 achievements and the second NLA was conducted in 2003/04 on the same grade, with the objectives to establish baseline data on students' learning achievements as well as to monitor its progress overtime.

¹⁵³ MOE (2009), P.7

¹⁵⁴ Government of Ethiopia-UNICEF Country Programme Action plan (2007-2011) p.3-4

¹⁵⁵ MOE (2009), P. 32

¹⁵⁶ Id., Table 4.8 P.32

¹⁵⁷ Id., Chart 4.11 P.33

¹⁵⁸ Id., Table 4.9 P.34

¹⁵⁹ Id., Chart 4.15 P.35

According to some evidences, dropout rates of that much in grade 1 are largely due to both natural and human made emergencies in addition to seasonal labor demands in crop-producing areas, orphan hood as a result of HIV/AIDS and other causes also contributes to the drop out rate.¹⁶⁰ School environments are rarely child-friendly, with limited water and sanitation facilities and low capacity to take advantage of development opportunities under decentralization and further educational investment has focused almost entirely on the formal educational process.¹⁶¹ At any rate, high repetition and dropout rate besides wastage of resources, it results in low efficiency of the education system, which is strong barrier for many children for their continuation and completion of primary education and thus, results in lowering the access to primary education there by prolonging the target year for achieving UPE.¹⁶²

Moreover, the Committee on the Rights of the child is also concerned at the large number of school dropouts, the charging of fees in primary education, the limited provisions for vocational training, the low transition rate to secondary school, the insufficient number of trained teachers and available school facilities, the absence of budget allocations for pre-primary schools and the poor quality of education as well as inequalities (in rural regions and on the basis of ethnicity and sex), which impact on children's access to education.¹⁶³

4.5.2.4 Education of Children with Special Educational Needs

Special needs education focuses on children and students who are at risk of repetition and dropout due to learning difficulties, disabilities (physical, sensory or intellectual impairments) or socio-economic problems, or are excluded from education.¹⁶⁴ Inclusive education¹⁶⁵ is the goal of educating children with disabilities.

¹⁶⁰ Government of Ethiopia-UNICEF Country Programme Action plan (2007-2011) p. 4

¹⁶¹ Ibid

¹⁶² Mulugeta Tsegai, cited above at note no. 99, p 9

¹⁶³ Concluding observations of the Committee on the Rights of the Child, CRC/C/15/Add.144, Feb.,2001

¹⁶⁴ MOE, Special Needs Education Program Strategy, Emphasizing Inclusive Education to Meet the UPEC and EFA Goals, 2006, Addis Ababa, p.3

¹⁶⁵ Inclusive education refers to an additional system that is open to all learners, regardless of poverty, gender, ethnic background, language, learning difficulties and impairments. It emphasizes that all children and students can learn. It requires identifying barriers that hinder learning and reducing or removing these

Though 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,¹⁶⁶ there is a scarcity of data concerning the educational and socio-economic situation of these groups of children.¹⁶⁷ The facts indicate that, government or non-governmental and charity organization render education services. In 2006, there are 17 special needs education schools, 11 of them run by NGOs.¹⁶⁸

In 2007/08, only 35,177¹⁶⁹ were attending primary schools. Since ordinary schools tend to refuse to enroll children with special educational needs, particularly with apparent disabilities and the special units and schools are located in urban areas and most of them have long waiting lists, a significant number of children and students are still excluded from all education.¹⁷⁰

barriers in schools, vocational training, higher education, teacher education and education management. The educational environment must be adjusted to meet the needs of all learners.

¹⁶⁶ General Comment No. 3(2003), CRC/GC/2003/5, para.48

¹⁶⁷ Italian Development Cooperation (2009), cited above at note no. 16, p. 58

¹⁶⁸ Special Needs Education Program Strategy, Emphasizing Inclusive Education to Meet the UPEC and EFA Goals, 2006, Addis Ababa, p.8, (Tirusew (Prof.) 2001 and 2006)

¹⁶⁹ MOE, 2009, Table 4.11 p38. See also Italian Development Cooperation (2009), cited above at note no. 16, p. 58

¹⁷⁰ Special Needs Education Program Strategy, Emphasizing Inclusive Education to Meet the UPEC and EFA Goals, 2006, Addis Ababa, p.8, (Tirusew (Prof.) 2001 and 2006). Further the document indicate that insignificant number of students get access to primary education, very few of them continue in secondary education and vocational training, and due to lack of identification, assessment support, children with learning difficulties are likely to repeat and dropout. This fact was also evidenced by Ato Radi Shifa and Melkamu Daba, , Foreign and Public Relation Directorate Officer, MOE, Interview held February 16, 2010

4.5.3 The Situation of Child Labour

The right to education and health of the child and protection against child labour¹⁷¹ are closely related. Various researches also indicate that the latter acts as a significant barrier to the achievement of Education for All (EFA) since child labour leads to reduced human capital formation; lowers net primary enrolment ratios, and also, high levels of child labour are usually associated with low literacy rates.¹⁷² In addition, when children work full-time, school dropout and repetition rates tend to increase. Children are less motivated to do good schoolwork (sometimes because they are just too tired), and school failure is often the result.¹⁷³

Be that as it may, children are part of the labour market as domestic workers, herders, caretakers of siblings and assist their parents. A number of children working in cafeterias, taxis, shoe shining, street vending and so on would make one to conclude that the situation of child labour is one of the critical social problems in Ethiopia and it has an impact on health and education. The existing data also reveals that 53% of 5-14 year old children are involved in child labour as follows: children 5-11 years old do at least one hour of economic activity or at least 28 hours of domestic work; children 12-14 year old do at least 14 hours of economic activity or at least 28 hours of domestic work per week.¹⁷⁴

In addition, according to the 1999 National Labour Force Survey, about 9.8 million children between 5-14 years of age were engaged in domestic and productive

¹⁷¹The term “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work. See for Instance, ILO, *Child Labour: A textbook for university students*, International Programme on the Elimination of Child Labour (IPEC) Geneva, 2008, p. 16

See also, Art. 36(5) of FDRE constitution

¹⁷² Federico Blanco Allais and Frank Hagemann, *Child labour and education: Evidence from Statistical Information and Monitoring Programme on Child Labour (SIMPOC) surveys*, International Programme on the Elimination of Child Labour (IPEC) Geneva, 2008, p.

¹⁷³ ILO, *Child Labour* (2008), cited above at note no.173, p. 115

¹⁷⁴ UNICEF (2009), *The State of the World's Children*, Special Edition, Statistical Tables, Table 9, p 40

activities.¹⁷⁵ The 2001 Child Labour Survey Report also estimates that over 15.5 million (about 85.4%) of the country's children (5-17 years of age) were reported to have been engaged in economic activities, house keeping and in both activities, and 81.2% (12.6 million) of these children were between 5-14 years of age, which exceeds the number of children in the same age group in 1999.¹⁷⁶ The estimates show that child labour prevails in Ethiopia and hence it is one of the issues of concern.

Understanding why children work is essential for designing appropriate interventions that reduce child labour, since there are various reasons that make children to work. According to one study, besides poverty and its consequent socio-economic and cultural problems, the problems of child labour stems from (children work instead of going to school) combination of the following factors: incentives favour work; constraints compel children to work, and /or decisions are not made in the child's best interest (agency problem).¹⁷⁷ Other reasons include educational problems, like distance from school, poor quality of education, over-crowding, inability to support schooling (food, uniforms, exercise books, school fees, etc.); family disintegration due to divorce; various conflicts; drought and resettlement; orphan hood due to HIV/AIDS, conflict; and rapid urbanization.¹⁷⁸

Thus, each of these problems has different policy implications. Some argued that compulsory and universal education for all children would effectively eliminate child labour, while for others this measure alone cannot overcome all the social and economic obstacles that combine to keep children out of school and in the labour force.¹⁷⁹ Understanding household decision-making and the incentive and constraints facing families is essential, then to comprehend why child labour exists and to consider interventions that can effectively address the underlying causes.¹⁸⁰

¹⁷⁵ MOLSA, 2005 p.12, see also Italian Development Cooperation(2009), cited above at note no.16, P.66

¹⁷⁶ Ibid. 2005, p.12

¹⁷⁷ G. Betcherman, et al. Child Labour, Education and Children's Right in: Philip Alston and Mary Robinson(ed), *Human Rights and Development: Towards Mutual Reinforcement*(2006), p.186

¹⁷⁸ Id, p. 186-187

¹⁷⁹ ILO, Child Labour (2008), cited above at note no.173, p. 134

¹⁸⁰ Ibid

In connection with child labour, some of the encouraging measures that were put in place and/or on going include the Formulation of a NPA on child labour is in progress by the MOLSA.¹⁸¹ In addition, the implementation of international programme for Elimination of Child Labour (IPEC) programme has commenced and child labour is being regarded as one of the main requirements for international markets for many industries (e.g., floriculture), to export their produce.¹⁸² In any case, the situations require multi-sectoral approaches that can involve, at a minimum, education, social protection, and health interventions as well as enforcing compulsory education and child labour regulations and removing constraints stopping children from going to school like poverty reduction strategies. Since child labour will not be eliminated immediately, providing protection and services to children who are working are also needed.

¹⁸¹Italian Development Cooperation (2009), cited above at note no.16, p. 67

¹⁸²Ibid. The ILO put in place the international program on the Elimination of Child Labour (IPEC) in 1992, to facilitate its efforts in combating child labour. IPEC supports the development and implementation of national plans by providing legal advice, capacity building, expertise and technical assistance in the areas of data collection, awareness raising, program design and workplace monitoring. At present, the program is being carried out by countries, which have signed memorandum of understanding with ILO.

CONCLUSIONS

The enjoyment of all human rights by all human beings irrespective of age, sex, language, race or any other contingent circumstances is a universal human rights principle. The international community has also accepted that the child, by reason of his physical and mental immaturity needs special safeguards and care, and thus, guaranteed the rights of the child at universal and regional human rights instruments such as the ICESCR, CRC and ACRWC, which provide the socio-economic rights of the child.

However, in the protection of SER, domestic legal systems take primacy due to their accessibility to the disadvantaged section of the society, including children. To this effect, the Ethiopian Government has ratified the CRC and ACRWC as well as other relevant international human rights instruments, which guarantee the SER of the child. By doing so, the government has taken up on itself the obligation to implement all facets of children's rights.

At national level, the optimum system for the protection of the SER of the child requires a range of mechanisms, which include the entrenchment of these rights as fundamental norms in the Bill of Rights of legal system. There is also a need for the existence of comprehensive legislations and policies that give concrete effect to the rights: accessible and effective judicial remedies for redressing violations of the rights and appropriate administrative measures as well as permanent mechanisms vested with legal mandate to monitor and follow up proper implementation of the SER of the child, adequate budgets and effective coordination.

In line with this, the FDRE constitution enshrines SER of the child. However, the constitutional Bill of Rights do not provide some of the SER of the child such as the right to education and its core elements; the right to free and compulsory primary education, the aims and objectives of education as well as right of the parents to choose education for their children. Other SER of the child are not recognized explicitly in the chapter providing for fundamental rights and freedoms. Included here are the right to adequate food, health services, clean water, sanitation, and adequate housing, which are stated under Social Objectives of the Constitution. The constitution leaves the latter aspects of

the SER of the child at the mercy of policy makers and legislators. These rights could simply be denied, as they could be regarded, as they are not constitutional priorities and hence they are made beyond the reach of children to have a right to redress or reparation if these rights are denied or infringed upon.

Regarding the compatibility of domestic legislation with the convention, the promulgation of the Revised Family Code, labour law and Criminal Code witness a move on the right track. However, these legislations do not provide the compulsory aspect of education at the primary level; the objectives towards which education is geared for; we cannot find a legislation providing a legally mandated length of compulsory education. There is no legislation that guarantees the right to food, shelter, components of the right to health of children, as special care seekers. The existing laws do not cover some categories of children, especially, those rendering services as domestic workers and children in informal sectors.

In order to follow the affairs of children, MOWA is entrusted with the legal mandate to follow up the implementation of treaties concerning children and submit the periodical reports. Nevertheless, a glance at the powers and responsibilities of MOWA reveals that children's issue is given lesser concern compared with the multitude responsibilities entrusted to the Ministry as regards women. The Ministry lacks also resources, both financial and human. Indeed, it would not amount to an overstatement if one concludes that MOWA is not competent enough to monitor and follow the proper implementation of the SER of the child, in its current organizational structure, besides the multitude responsibilities entrusted to it.

Furthermore, though the government has adopted a good number of policy instruments on a wide range of economic and social issues, there is no comprehensive and clearly spelt out policy on children. In those policy documents the government has recognized the intimate relationship between health improvements and quality education and economic development; and thus, it has given the health and education sector development utmost priority. However, the policy has not taken health and education as a right to be respected, protected and fulfilled by the State, but as an input to give an

impetus to the poverty alleviation objective of the State (PASIDEP). The human rights perspectives are lacking in these documents and that do have significant consequences on the realization of the right.

Since the issuance of those policies, there are improvements in the area of education and health status of children. For instance in the area of education, the enrollments have increased and some targets have been met in primary education. However, lesser attention is given to pre-primary education. National Learning Assessment and other indicators reveals that the quality of education has deteriorated, due to greater emphasis on access alone. In addition, due to extreme disparities (urban-rural, regional and gender gaps), some sections of the society are denied of the right to education. In terms of efficiency, due to the increasing trend of the dropout and repetition rate in education, there are also economic wastages. Therefore, from the viewpoints of government obligation to protect the children's right to education of the child on the bases of equal opportunity with quality and minimum dropout, a lot is to be desired.

Moreover, with respect to health, as the facts on the ground reveal, infant and child mortality as well as maternal mortality rates is still one of the highest in the world. The growing malnourishment, along with poor and inequitable coverage of basic health services led to high infant and child mortality with wide regional disparities. Thus, all these poor health status of children underscores the challenge the government faces in ensuring child right to the enjoyment of the highest attainable standard of health, through combating disease and malnutrition.

Finally, the legal and policy framework for abolishing economic exploitation of children and child labour has been put in place in Ethiopia. However, the laws and the policies do not sufficiently address child exploitation in the informal sector. Similarly, the labour proclamation regulates the condition of work based on employment relationship. Even for those working under employment relationship, the enforcement of the law remains very weak. Thus, various estimates show that the situation of child labour is one of the critical social problems of Ethiopia today.

RECOMMENDATIONS

In view of the foregoing conclusions, the following recommendations are made to facilitate the effective implementations of the SER of the child in Ethiopia, in particular the right to health, education and protection against child labour.

- The entrenchment of SER of the child as fundamental norms of constitution in the Bill of Rights is a significant marker of the extent to which countries consider SER to be fundamental human rights that should be protected. In particular, due to children's physical, emotional and economic dependence on adults, constitutional provisions specific to children is so critical. Thus, the right to education and health of the child with its core contents should be guaranteed in clearer terms in the Bill of Rights of the FDRE Constitution.
- In order to bring domestic laws into full compliance with the CRC and ACRWC, the government should consider undertaking a comprehensive review and adopt a comprehensive children's code. To this end, a systematic review of all rules affecting children as well as enacting adequate legislations need to be made. In all these legislative efforts, it is good practice to include in the proposed law or amendment, mechanisms of its implementation especially the specific functions of administrative agencies entrusted with the duty to follow its implementation as well as the grievances and remedies thereof to enable the victims to claim their rights. In addition, measures for regular evaluation of the legislative measures are recommended in order to check whether the intended results have been achieved and if necessary to amend that law to make it more effective.
- Courts and other quasi-judicial organs should exercise judicial power and enforce human rights guaranteed by the Constitution. In particular, the trend of referring to the provisions in the CRC and ACRWC and other treaties should be promoted through training of members of judicial organs. In order to facilitate this implementation mechanism the full text of CRC and ACRWC, including other relevant treaties to SER of the child should be published in the official law gazette

with translations in the working languages of the Federal and Regional governments. Further, the government is highly recommended to ratify the Optional Protocol to the ICESCR, so that it would help the courts and other organs with judicial power to identify violations in the area of SER.

- For effective implementation of SER of the child, administrative measures should be strengthened. Therefore, there should be an amendment to the powers and responsibilities of MOWA as well as its structural organization. The Ministry should be the Ministry Women's and Children's Affairs so that emphasis be given to children as well. This requires the government of Ethiopia to enact legislation, if not, at least amend the existing one (proclamation No. 471/2005). It is also important to redefine the powers and responsibilities of organs that have direct or indirect contact with the SER of children; such as MOE, MOH, MOLSA and others. In addition, the National CRC Committee, in order to accomplish the works on the mainstreaming of the child rights and follows up implementation of the CRC, should also strengthen the coordination between federal government agencies and between federal and regional government as well.
- The government is also recommended to adopt comprehensive national policy on children that address the SER of the child, in particular, emphasis be given to health, education and protection against child labour. The development of the policies in this respect should be transparent and the process should have the genuine participation of the children, parents and NGOs working in the area. In addition, since human rights and development have a common ground, in the policy, health and education of the child should have be taken as a right to be respected, protected and fulfilled by the State.
- Regarding children's right to education, in order to ensure all children's right to a healthy start in life, to be nurtured in a safe, caring and stimulating environment and to develop to their fullest potential, the Ethiopian government is highly recommended to invest more in terms of human resource. awareness raising about

the value of care and education, establishment of KG centers, allocation of sufficient budget, coordination of the same and implementation of the curriculum for this level of pre- primary education. In order to achieve UPE the government should give attention to the prevailing wide regional disparities, gender disparities as well as urban-rural disparities. This requires allocation of fair and equitable distribution of resources to all sections of the society. Here it should also be noted that while increasing access to primary education is an important step, ensuring that pupils progress smoothly through the grades and ultimately complete primary school is equally so.

- Offering education opportunities for disabled children should also be given priority. In other words helping schools integrate children with disabilities is the other main task which the concerned authorities at both the federal and regional levels should perform as soon as possible.

- Furthermore, government has increase the quality of health services of children by constructing new health services. In order to achieve the intended targets of reducing child mortality and to ensure children's right to highest attainable standard of health; allocation of adequate budget, efficient use of the allocated budget, community participation, political commitments and willingness especially to cooperate with UN agencies and NGOs are strongly recommended. In all cases emphasis should be given to increase immunization coverage against preventable diseases and the nutrition of the child.

- In order to avoid child labour, if possible, or mitigate its impact on education and health, there is a need to develop an integrated policy and programme of action to provide quality free and universal education that is relevant and accessible (more, flexible scheduling) to children in poor families. Using legislation to encourage schooling and discouraging labour, and enforce compulsory education laws are equally important. As regards working children, the government should also recommended providing access to education and health services as well as offering vocational training and other rehabilitation services.

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Declaration

I ABULJEBAR ABULAHU MUHAMED, do hereby declare that this research is my own original work and that to the best of my knowledge and belief; it has not been previously, in its entirety or in part, been submitted to any other University for Degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: _____

Date: _____

This Dissertation has been submitted for examination with my approval as University Supervisor.

Signed: _____

Getachew Assefa (Ass. Professor and Asso. Dean)

Addis Ababa University, Faculty of Law

Date: _____

