



**ADDIS ABABA UNIVERSITY**

**COLLEGE OF LAW AND GOVERNANCE STUDIES**

**SCHOOL OF LAW**

**IMPLEMENTATION OF THE INTERNATIONAL LEGAL RIGHT TO  
PRIMARY EDUCATION IN ETHIOPIA'S EMERGING REGIONAL  
STATE: AFAR AS A CASE STUDY**

**A Thesis Submitted to the School of Law, Addis Ababa University, in Partial  
Fulfillment of Master of Laws Degree (LL.M) in Public International Law**

**By**

**Tofik Bedewi**

**May, 2020**

**Addis Ababa**

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**Mohammed Habib (Ass. Prof.)**

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**Approved by Board of Examiners**

**Mohammed Habib (Ass. Prof.)** \_\_\_\_\_  
**Advisor** **Signature** **Date**

**Mizanie A. (PHD)** \_\_\_\_\_  
**Examiner** **Signature** **Date**

**Yonas B. (PhD)** \_\_\_\_\_  
**Examiner** **Signature** **Date**

**May, 2020  
Addis Ababa**

## **Declaration**

**I, Tofik Bedewi**, hereby declare that this work is original and has not been presented in any other institution before. This thesis has been submitted in partial fulfillment of the requirement for LL.M degree in school of law at Addis Ababa University. To the best of my knowledge and belief, I also declare that any information used here has been duly acknowledged and cited.

**Name: Tofik Bedewi**

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## **Verification**

**I Mohammed Habib**, have read this thesis and approved it for examination.

**Advisor: Mohammed Habib (Ass. Prof.)**

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## **Acknowledgment**

First of all, I praise **Allah** for blessing me with strength that was necessary to complete this Thesis. Second, I would like to express my great appreciation to my advisor **Mohammed Habib (Ass. Prof.)**, who has been a wonderful guide for me.

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## **List of Acronyms**

ABE	Alternative Basic Education
ACHPRs	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the child
CESCRs	Committee on Economic, Social and Cultural Rights
CPRs	Civil and Political Rights
CRC	Convention on the Rights of the Child
EFA	Education for All
EMIS	Education Management Information System
ESCRs	Economic Social and Cultural Rights
ESDPs	Educational Sectoral Development Programs
ETP	Education and Training Polices
FDRE	Federal Democratic Republic of Ethiopia
ICCPRs	International Covenant on Civil and Political Rights
ICESCRs	International Covenant on Economic, Social and Cultural Rights
ISCED	International Standard Classification of Education
MDGs	Millennium Development Goals
MOE	Federal Ministry of Education
NNPE	Nations, Nationalities and Peoples of Ethiopia
REB	Regional Education Bureau
SDGs	Sustainable Development goals
SDG4	Sustainable Development goal 4
UDHRs	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
WEO	Woreda Education Office

## **Abstract**

*Primary education is the foundation of all level of educational system and requires a great efforts to reach all out of school children. Indeed, internationally as well as nationally the right to primary education is the priority agenda. Accordingly most of the major international human right treaties recognizes the right to primary education and impose legal obligation on the state parties. However the way of implementation is depend up on their internal political, economic and social context. Consequently the Federal Democratic Republic of Ethiopia efforts to achieve international as well as national commitments on primary education to all. Providing special support to those children out of school for different reasons special in the emerging regions of Ethiopia. This paper has examined the implementation of International legal right to primary education in Federal Democratic Republic of Ethiopia in light of the four emerging regional state.*

# Chapter One

## Introduction

### 1.1 Background of the Study

Education has to be in the lead and play a major role in societal development of the future.<sup>1</sup>To this end the Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) has duly recognized the right to education under its Article 36 and 90.<sup>2</sup> The Constitution recognize the right to education as a progressive right that depend up on the capacity of the state.<sup>3</sup> Besides Article 9(4) of the FDRE, Constitution has prescribed that all international agreements ratified by the Country are an integral part of the law of the land.<sup>4</sup> Moreover Article 13 of such constitution has also stated that the right to education specified under the Constitution to be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights (UDHRs), International Covenant on economic social and cultural Rights (ICESCRs) and other International instruments adopted by Ethiopia.<sup>5</sup>

The main international human right instrument recognize education in general and primary education in particular as universal legal right is ICESCRs. Article 13 is the single most comprehensive provision on the right to education in International law.<sup>6</sup> Moreover, Art.28 of the Convention on the Rights of the Child (CRC) recognize the right of children to education, and provide that primary education must be free and compulsory.<sup>7</sup> Contemporarily Ethiopian has flattered for being a signatory of a number of human rights instruments and already has adopted almost all global and regional human rights instruments among which the UDHRs and the ICESCRs represent the global human rights instruments while the African Charter on Human and Peoples Right (ACHPRs) can be mentioned as the regional one.<sup>8</sup> As it can be inferred from the

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<sup>1</sup> Raja Roy Singh *education for the twenty -first century* published by UNESCO principal regional office for Asia and the Pacific Bangkok, 1991 page. ix

<sup>2</sup> Constitution of The Federal Democratic Republic Of Ethiopia, Proclamation No 1/1995, Fed. Negarit Gasette, 1st Year No.1, (1995) art 36(1) (d) and art 90, [hereinafter FDRE Constitution].

<sup>3</sup> Id, Article 90(2) of the FDRE Constitution

<sup>4</sup> Id, Article 9(2) of the FDRE Constitution

<sup>5</sup> *Baseline Study for a Comprehensive Child Law* in Ethiopia Center for Human Rights Studies College of Law and Governance Studies Addis Ababa University September 2013 page. 19

<sup>6</sup> Right to education handbook Published in 2019 by the United Nations Educational, Scientific and Cultural Organization (hear in after UNESCO 2019), page. 46 [www.unesco.org](http://www.unesco.org) (accessed at Oct.13, 2019)

<sup>7</sup> Supra note 5 page 117

<sup>8</sup> Id page 19

verbatim of the FDRE Constitution and the above International human rights instruments, though the primary education is not an absolute right, it is one among the bundle of rights, which have got the legal recognition and guarantee its implementation progressively.<sup>9</sup>As cherished under these legal instruments, primary education is more or less similar in scope and substance.

Accordingly, the Ethiopian educational system, which was previously highly centralized, has been replaced by a decentralized educational management system principally at primary education level.<sup>10</sup>Furthermore, the Ethiopian education system is structured through a multi-tiered structure.<sup>11</sup> From pre-school, primary and secondary education, there is also technical, vocational training and education, and post-secondary higher education.<sup>12</sup>The Federal Ministry of Education (MOE) is responsible for the overall policy (supervision, coordination, goal and standard setting, quality assurance, among others) though it primarily takes a supportive role as to operations for primary education.<sup>13</sup> However, most of the implementation of the right to primary education is the power of the regional state including the emerging regional state.

Primary education is developed in Ethiopia in the issue of affordability however the issue of quality education is still as a challenge. However still there are children out of school for different reasons especially in the pastoralists and agro-pastoralists areas of the Ethiopia. The government of Ethiopia gives special treatments to those areas and recognized as emerging regional state to reach the marginalized children in those areas.

## **1.2 Statement of the Problem**

The contemporary Ethiopian Constitution guarantees the right to education of all citizens.<sup>14</sup>Besides, the right to education is broad and covers many aspects of education mainly the issue of primary education the foundation for all level of education.<sup>15</sup> As an extension of such constitutional recognition, Ethiopia has adopted a number of International human rights

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<sup>9</sup> Id page. 115

<sup>10</sup> Yodit Zenebe Mekuria *the Right to Primary Education in Ethiopia: Progress, Prospects and Challenges* 2009 University of Oslo Faculty of Law page. 30

<sup>11</sup> *An Impact Evaluation of Alternative Basic Education in Ethiopia The Case of the Regions Afar, Oromia and Somali Final Evaluation Report* October 2017 page. 9

<sup>12</sup> *Education system Ethiopia described and compared with the Dutch system Education system Ethiopia* | Nuffic | 2nd edition, February 2012 | version 3, July 2018 page. 5

<sup>13</sup> Supra note 11 page. 10

<sup>14</sup> Supra note 2 Article 36(1)(d) and article 90.of the FDRE Constitution

<sup>15</sup> UNESCO 2019 Supra note 6 page. 28

instruments, which further safeguard the right to primary education.<sup>16</sup> The UDHRs and the ICSECRs are the prominent global human rights instruments recognize the right to primary education, which are adopted by Ethiopia.<sup>17</sup> When states ratify or accede to a human rights treaty guaranteeing the right to education, they are legally bound to implement the provisions of the treaty.<sup>18</sup> This means the right to primary education places legal obligations on states when they make decisions regarding education and the educational system.<sup>19</sup> However, the particular form and content of the obligations may vary depending on the list of purposes set out in each convention, and in cases where Economic Social and Cultural Rights (ESCRs) of individuals whose implementation entails the employ of resources are involved and full realization is secured progressively.<sup>20</sup> Moreover states significant discretion in determining the degree to which they commit themselves to guarantee such rights of children whose realization depends on the use of resources and organization.<sup>21</sup>

Moreover, since 1990 International communities are under commitment to achieve universal primary education for all. Ethiopia also among the members state working for the achievement of universal primary education to all citizens. Consequently the government takes different measures to achieve universal primary education. The measures includes enactment of the 1994 education and training polices (ETP) as well as the Educational Sectoral Development Programs (ESDP) since 1998 for further implementation of the policy.

On top of that, the Constitution that came into effect in 1994, Ethiopia is composed of Nations, Nationalities and Peoples of Ethiopia (NNPE) that freely and voluntarily adhere to it, and made up of nine federal states and two chartered cities.<sup>22</sup> In Ethiopia's decentralized government structure, Regional Authorities has autonomies power on providing basic services, such as primary and secondary education.<sup>23</sup> Furthermore, Decision-making is being shifted from Regions and Zones to

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<sup>16</sup> Claiming human rights guide to international procedures available in case of human right violation in Africa available at [www.claiminghumans.org/ethiopia.htm](http://www.claiminghumans.org/ethiopia.htm)( accessed Dec. 17, 2019)

<sup>17</sup>Supra note 5 page. 19

<sup>18</sup>UNESCO 2019 Supra note 6 page. 29

<sup>19</sup> Id page 28

<sup>20</sup> Supra note 5 page 12

<sup>21</sup> Ibid

<sup>22</sup> Supra note 2 Article 47 of the FDRE Constitution

<sup>23</sup>Jeilu Oumer *The challenges of free primary education in Ethiopia Published by: International Institute for Educational Planning (IIEP) 2009 page 29*

Woredas and Municipalities and further to School level to improve direct response and service delivery.<sup>24</sup> However, at the International level they are not deemed to have legal obligations, rather responsibilities as defined or expected in national legislation, the human rights framework, and/or other avenues.<sup>25</sup> However, the nine regional states are central actors in the implementation of the right to primary education. Accordingly, implementation of the right to primary education is the shared responsibility of a multitude of institutions and actors but under International law, States (federal government) are the primary duty-bearer in Ethiopia.<sup>26</sup>

The measures bring significant progress in improvements of primary education at national level. However the existence of regional disparities among the regional states is remain continue. In other word the number of primary education aged children which are out of school in Pastoralists and Agro-pastoralists areas of the country is remain high.<sup>27</sup> Due to this, the government of Ethiopia recognizes these communities as emerging regional state and provide a special support to those regions to improve and achieve sustainable development goal on education in 2030. This is the continuation of special focus to reach the marginalized in different International commitment including the 1990 and 2000 Declaration on Education for All (EFA) as well as the current commitment of Sustainable Development Goals (SDGs).<sup>28</sup>

However, still the right to primary education in Ethiopia is requires a great effort for its full implementation mainly in less developed regions. Afar Regional State is among the marginalized four emerging autonomous Regions of the FDRE.<sup>29</sup>Therefore in Afar regional state the Regional

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<sup>24</sup> The Federal Democratic Republic of Ethiopia Education Sector Development Program III (ESDP-III) 2005/2006 – 2010/2011 (1998 EFY – 2002 EFY) program action plan (PAP) ministry of education Addis Ababa August 2005 (hear in after ESDP-III) page 23

<sup>25</sup> UNESCO 2019 Supra note 6 page 30

<sup>26</sup> Ibid

<sup>27</sup> Ministry of Education [MOE]. (2010). The five year Ethiopian education sector development program IV (2010/2011-2014/2015) (*hear in after ESDP IV*). (Addis Ababa: page 6

<sup>28</sup> Michael Wondemu *Quality Improvement of Early Primary Education in Ethiopia : A Mixed Methods Study of Save the Children Supported Schools in Amhara and Southern Nations, Nationalities, and Peoples Regions* 2017 <http://www.duo.uio.no/> University of Oslo page 11

<sup>29</sup> The revised afar regional constitution has established and recognized afar as regional administration, constitute of zones and woreda as well as kebele administrative units. *Revised Afar regional state Constitution enacted by the government of Afar Regional State in proclamation no 14/1994 article 45 (hear in after afar Constitution)*

Educational Bureau (REBs) is the prominent provider of primary education service in the regional jurisdiction.

However, the issue of primary educational more than just a national character rather the concept of primary educational policy as a field has multiple levels, one of which includes a global character under the increasing influence of International agencies like United Nations Educational, Scientific and Cultural Organization (UNESCO).<sup>30</sup>The right to primary education remains a major problem in Ethiopia despite the International and National legal and institutional frameworks for the protection of it. Therefore, a question arises as to how the international legal right to primary education is enforced in the emerging regional state in the federal state structure of Ethiopia. This research is therefore devoted to scrutinize the implementation of international legal right to primary education in Ethiopian emerging regional state in general and Afar particularly.

### **1.3 Research Questions**

This research is was conducts to answer the following questions.

- What does the right to primary education in international instrument looks like?
- How does the Ethiopia legal framework regulate the implementation of international legal right to primary education?
- Is Federal or Regional government has a predominant voice in deciding when and how international right to primary education is implemented?
- How the right to primary education is enforced in emerging regional state of Ethiopia particularly in the regional state of Afar?

### **1.4 Objective of the Study**

#### **1.4.1 The General Objective of the Study**

The general objective of this study research is providing an insight into how primary education can be governed and managed in a country with two or more regional governments like Ethiopia. Further to explore the way in which international legal right to primary education is implemented in Ethiopian emerging regional state of Afar.

#### **1.4.2 The Specific Objective of the Study**

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<sup>30</sup>DemekeYeneayhu *Ethiopian Education Policy Analysis: Using Foucault's Genealogy* April, 2011 page 16 <https://www.academia.edu/11891083/> (accessed Dec. 13, 2019)

This research will have the following specific objectives

- To explore the international legal right to primary education looks like.
- To assess how the Ethiopian legal framework regulates the right of primary education.
- To scrutinize the enforcement of primary education in emerging state of Ethiopia as a case of Afar regional state.

### **1.5 Research Methodology**

This research will apply qualitative research methodology. International human rights instruments related to primary education are reviewed. The methods employed included, first and foremost, discussion of relevant legal framework (FDRE Constitution), policy (ETP), and program (ESDPs). Moreover, Afar regional state legislation are also examined. Then, secondary data were employed from statistical publications of MOE mainly from 1999/2000-2017/18 and Afar (REB) annual educational abstract.

### **1.6 Significance of the Study**

This research is first of its kind in this area of legal study thereby detecting untouched legal issue. Contemporarily the existing Ethiopian legal framework governing the right to primary education is subject of lingering critics from different corners. Beyond this, as this research will have another insight towards the right to primary education in Ethiopian. Hence, it can serve as a benchmark and noble reference for those who want to study further research in relation this area of law.

### **1.7 Scope of the Study**

The scope of this research paper is only limited to study the way in which the implementation of the international legal right of primary education in Ethiopia emerging regional state of Afar. The scope of this examination encompasses the right to primary education and focuses on the emerging Afar regional state.

### **1.8 Limitation**

The quality of this study depended on acquiring relevant information and available reference materials. However, there is lack of relevant information and available reference materials. Especially lack relevant and access to reference materials hinder the researcher to undertake complete/full-fledged research.

### **1.9 Organization of the Study**

The first chapter of this research is keen to review the preliminary research. Thus, the general background, statement of the problem, the research question, research objective, significance of the research and other topics are discussed under this chapter. The second chapter deals with reviewing different international legal instrument in light of right to primary education. The third chapter deals with discussing and analyzing the right to primary education in Ethiopian legal framework. The fourth chapter focus on, its way of implementation in the emerging state of Ethiopia particularly Afar region and the output of the research will be naked. Finally, the concluding remarks will be forwarded.

## Chapter Two

### General Overview of Primary Education and the International Legal Framework Governing the Matter

#### 2.1 General over Views of the Right to Education

According to Aristotle “*Education is the process of training man to fulfil his aim by exercising all the faculties to the fullest extent as a member of society*”.<sup>31</sup> Further, more John Dewey defines as “*Education is a process of living through, a continuous reconstruction of experiences*”.<sup>32</sup> Education is not an end by itself and if it is properly exercised, it can serve as a means for development thereby reflecting the strength of a community. Education alone cannot hope to solve all development challenges, but a humanistic and holistic approach to education can and should contribute to achieving a new development model.<sup>33</sup> This means better the quality of education that a country has, the faster it is likely to develop.<sup>34</sup> In addition, education cannot be separated from human’s life<sup>35</sup>. According to Shah Waliullah, “*Education is the activity of developing the sense of good and evil so that an individual can choose the good and reject the evil*”.<sup>36</sup>

United Nation (UN) made education a universal human rights as early as 1948 (UDHRs), followed by the inclusion of a right to education in International legally binding treaties such as in the ICESCRs and CRC. Although the right to education clear up at regional level human right, instrument particularly ACHPRs and The African Charter on the Rights and Welfare of the Child (ACRWC) in Africa as well. As a result, States’ activities with regards to the right to education are not only limited to respecting people’s right to education but they also must respect the availability, accessibility, acceptability and adaptability of primary education.<sup>37</sup> Even if almost all core International as well as regional human instruments have enumerated the right to primary

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<sup>31</sup> Rabab Saeed *Definition of education; tradition and modern concept of education; aims of education* page 2 <https://www.academia.edu/2572414> (accessed at Nov. 13 2019)

<sup>32</sup> Ibid

<sup>33</sup> *Rethinking Education towards a global common good?*; Published in 2015 by UNESCO Publishing page 10

<sup>34</sup> Rita Johan & Johan Harlan *Education Nowadays* Gunadarma Universit International Journal of Educational Science and Research (IJESR) Vol. 4, Issue 5, Oct 2014 page 2

<sup>35</sup> Ibid

<sup>36</sup> Ibid supra note 31

<sup>37</sup> Yodit Zenebe supra note 10 page 1

education as a right, but none of them has provided clear definition of the term the right to primary education.

This chapter is designated to over the general overview of International legal right to primary education. Accordingly, nature and definition of primary education are incorporated under the topic of the chapter. The chapter also included the significance of granting the right to primary education as well as the ingredient elements constituting the right and the last topics cover the international, regional statutes of the right to primary education.

### **2.1.1 The Definition of the Right to Primary Education**

The right to primary education designed for children and young people before their first entry to the labour market.<sup>38</sup>The term primary education have other names such as elementary education or initial education. Article 13 of ISCED<sup>39</sup>, has defined the right to primary education as provides learning and educational activities typically designed to provide students with fundamental skills in reading, writing and mathematics and establish a solid foundation for learning and understanding core areas of knowledge and personal development.<sup>40</sup> Besides this different International laws and laws of different jurisdiction as well as different scholar that deals with the right of education defines the right to primary education in different words, but having similar implication or idea. Accordingly in Ethiopia primary education is defined as eight years duration, offering basic and general primary education to prepare students for further general education and training.<sup>41</sup>

### **2.1.2 The Nature of Right to Primary Education**

The right to primary education is not only (ESCRs) but also has the characteristics of being an instrumental and Civil and Political Rights (CPRs) as well. Hence, its exercise leads to the

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<sup>38</sup> UNESCO Eurostat *Data Collection on formal education Manual on concepts, definitions and classifications* Montreal, Paris, Luxembourg page 5 (2018)

<sup>39</sup> The International Standard Classification of Education (ISCED) is a framework for assembling, compiling and analyzing cross-nationally comparable statistics on education. ISCED is reference classification for organizing education programs and related qualifications by levels and fields of education. First developed in the mid-1970s by the United Nations Educational, Scientific and Cultural Organization (UNESCO), ISCED has been revised several times, including in 2011 and 2013. See International Standard Classification of Education (*hear in after ISCED*) 2011 Published in by: UNESCO Institute for Statistics (2012)

<sup>40</sup> Id page 30

<sup>41</sup> Federal Democratic Republic Government Of Ethiopia Education And Training Policy Addis Ababa April, 1994 ST. George Printing Press page 14

possibility of enjoying and enforcing rights such as the right to development and the right to work among other due to its empowerment effect. Primary education also regarded as a welfare right one can't self-provide of it and its full achievement is on the hand of different stake holder. In this case, majorities of the world state is the primary provider and has as one of its main duties is implementation of right to primary education.

The right to education indeed entails all forms of rights recognized under CPRs and ESCRs. Governmental obligation to respect parental freedom of choice or free establishment of schools typifies civil and political contents of the right to education.<sup>42</sup> However, the right explicitly design in the categories of ESCRs inferred this socio- economic nature .Moreover, the realization of the right to education, as does the realization of economic, social and cultural rights generally, requires considerable resources.<sup>43</sup> It was stated that the right to education, amongst others, requires an effort on the part of the state to make primary, secondary and higher education available. The right to education is routinely classified as an economic, social and cultural right; these are often deemed to be lacking remedies and are accordingly treated as quasi-rights or not-quite rights. As a consequence, denials and violations of the right to education are not addressed<sup>44</sup>

## **2.2 Significance of Primary Education**

Primary education was enshrined as a basic right for all in almost in all International human right instrument because it has very important role in economic, social, political and other affaires of the individual as well as society in general. Furthermore, primary education is central position in recent development frameworks indicates widespread recognition of its role as a catalyst for achieving all development goals including SDGs. This recognitions demonstrate the significance of primary education in accelerating both individual and social development of the world community. In this sub-section try to examines the importance of primary education to the individual and the communities respectively. Primary education is absolutely critical to a nation's development, providing on average the highest public returns to investment for the State. It serves as the bridge to higher education and a critical driver of economic growth.

### **2.2.1 The Role of Primary Education for Individual Wellbeing**

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<sup>42</sup> K. Tomaševski right to education primers no. 3 *Human rights obligations: making education available, accessible, acceptable and adaptable* Printed by NovumGrafiska AB, Gothenburg, 2001. Page 9

<sup>43</sup> Klaus Dieter Beitet *the Protection of the Right to Education by International Law* MartinusNijhoff Publishers Leiden / Boston 2006 Page 91

<sup>44</sup> K. Tomaševski Right to Education Primers No. 3 supra note 42 Page 8

Education in general primary education in particular is at the heart of both personal and community development; its mission is to enable each of us, without exception, to develop all our talents to the full and to realize our creative potential, including responsibility for our own lives and achievement of our personal aims.<sup>45</sup> In other word, primary education reduces the rate of poverty, through empowering every individuals including marginalized groups and helps each individual reach their full potential. It constitutes the basis for each person's human rights awareness, promotes civil and political enlightenment, facilitates each person's socio-economic success in life, and makes it possible for him or her to take part in cultural life.<sup>46</sup> According to the World Bank (WB), 'without education development will not occur'.<sup>47</sup>Especially for the marginalized, education can be a path to greater social mobility and a way out of poverty.<sup>48</sup>In general primary Education has the foundation to transform lives of the marginalized to the fullest level.<sup>49</sup>

Primary Education in all its forms (either formal or informal) is crucial to ensure human dignity of individual. Because the main aims of education as international human right instrument is directed to the realization holistic development of the full potential of the individual.<sup>50</sup> The ICESCRs which the Committee on Economic, Social and Cultural Rights (CESCRs) the most fundamental objectives of education is, the full development of the human personality and the sense of its dignity.<sup>51</sup>Moreover, the importance of the right to primary education reaches far beyond primary education itself. Many individual rights are beyond the grasp of those who have been deprived of education, especially rights associated with employment and social security. Primary education operates as a multiplier, enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or violated.<sup>52</sup>

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<sup>45</sup> Treasure Within Report To UNESCO of the International Commission on Education for the Twenty-first Century UNESCO Publishing Published in 1996 by the UNSCO Printed by Presses Universitaires de France, Vendôme page 19

<sup>47</sup> Kirsten Majgaard and Alain Mingat, *World Bank study, Education in Sub-Saharan Africa, A Comparative Analysis* Washington DC: World Bank (1988).available at: [www.worldbank.org](http://www.worldbank.org) (accessed Nov. 18,2019)

<sup>48</sup> EFA Global Monitoring Report *reaching the marginalized* Published in 2010 by the UNSCO Paris, *France page 135. (2010)*

<sup>49</sup> Ibid

<sup>50</sup> UN Committee on the Rights of the Child. 2001. General Comment 1: Article 29 (1): The Aims of Education, (Doc. CRC/ GC/2001/1.) (Hear in after CRC General Comment 1) para. 1.

<sup>51</sup> CESCR General Comment No. 13: The Right to Education (Art. 13) Adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights, para 4 8 December 1999

<sup>52</sup> . Tomaševski Right to Education Primers No. 3 supra note 42 Page 10

Indeed, Most States can try to ensure their economic, social, political, and cultural interests through education because the benefits to the individual can spill over to others community in general.

### **2.2.2. The Role of Primary Education for Societal Wellbeing**

Primary education have greatly contributed to shaping not only individuals but also society as a whole. Education has been considered as a vehicle for social change and a powerful tool for social, economic, political and technological development of any country.<sup>53</sup> The most important contribution of education is not only to upgrade the living standards of citizens but also to enable them to become better citizens.<sup>54</sup> .

As Klaus Dieter education is required to effectively exercise one's right to participate in political activity in a meaningful way, to the maintenance of democratic structures and for transmitting the values of society to the next generation. In addition, to bring significant economic returns for a country it helps societies to achieve lasting peace and sustainable development. Education also contributes to achieving the public good, developing and maintaining wealthy, open, transparent, tolerant, just, non- discriminatory, and inclusive societies that provide an environment conducive to the realization of human rights.<sup>55</sup>

### **2.3 Is Primary Education is Right or Privilege**

Most of international human right instruments establishes the right to primary education as universal right of every person in the world. Even if primary education is recognized as a right, some people see primary education as a right and others as a privilege.

The reason why primary education can be perceived as a right is that education is a well-recognized universal human right, which entails that everybody should pass through education no matter his sex, nationality or any other thing and cannot be taken away for any reason.<sup>56</sup> As Klaus Dieter

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<sup>53</sup>Amadioha, Samuel W. Primary Education in Nigeria: An instrument for Quality Control , Rivers State University of Science & Technology African Journal of Educational Research and Development, Vol 4, No. 2a, November, 2011 page 334-343

<sup>54</sup> Prof. Dr. Mimar Türkkahraman Akdeniz The Role Of Education In The Societal Development University, Educational Faculty Antalya, Turkey Journal Of Educational And Instructional Studies In The World, Volume: 2 Issue: 4 November 2012 page 40

<sup>55</sup> Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education(hear in after Abidjan Principles) the paragraph 1 of the preamble

<sup>56</sup> Article 26 of UDHR, article 13,14,2 of ICESCR, article 28, 29 of CRC UNSCO Constitutive act and regional human right instrument like ACHPR and ACRWC.

education should be seen as a requirement of human dignity and should, therefore, be recognized as a human right because the most important foundation for a human right is man's inherent dignity.<sup>57</sup> This implies that legally primary education is a human right and furthermore the government of most state in the world recognizes education is a right. In addition, to recognition as a right making primary school attendance compulsory and free is a way of guaranteeing that nobody can withhold children from going to school neither the State nor even the parents.<sup>58</sup> Further supported by Vernor Muñoz<sup>59</sup> right to education like all human rights is universal and inalienable, several conventions have enshrined it in international law, thereby placing binding commitments on ratifying States.<sup>60</sup>

Moreover, primary education is key to achieving all other human rights (interdependence of all human right to each other). This means the right to education is not only a human right in itself, but also an empowerment, multiplier, and transformative right.<sup>61</sup> In other word, without education individual is unable to develop as a person and to comprehend his potential.<sup>62</sup> Indeed the importance of education for society is one of the rational for primary education to be a fundamental human right.<sup>63</sup> Therefor the right to primary education is one of the human natural rights, which every person should have from childhood to when they are old, because it cannot be taken away like a privilege.

On the other hand, in some cases primary education can be revealed to be a privilege and justified by the fact that not everybody has access to education. The reason for this is because education is said to be a right but there is a critical hindrance which is the issue of ability mostly in less developed countries. In ths case, even if primary education is the basic and principal right and is considered a privilege in these country due to its non-accessibility to all.

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<sup>57</sup> Klaus Dieter supra note 43 page 27

<sup>58</sup> Ibid

<sup>59</sup> Vernor Muñoz was United Nations Special Rapporteur on the Right to Education A Human Rights-Based Approach to EFA a framework for the realization of children's right to education and rights within education page xi www. Unicef.org Paris France (2007)

<sup>60</sup> Ibid

<sup>61</sup> Ibid Abidjan Principles supra note 56

<sup>62</sup> Klaus Dieter supra note 43 page 26

<sup>63</sup> Ibid

Finally, some people see primary education as a right and others as a privilege but my point of view is that primary education is a right. Because in addition to its recognition in International human right instrument education plays a critical role in the development of a generation of individuals that is good and in turn contributes to the development of good citizens. Further, the reason for the right to primary education to be a privilege is related to the capacity of the community to afford education to all rather than Intentional renunciation.

In line with the above ideas, primary education is universally acknowledged to be as a fundamental human right which serve as cornerstone for democracy and indispensable to a thriving civil society. Nevertheless, the question which arise at this juncture is how the international and domestic law govern the issue of primary education. To this end, the gist of different global, regional and domestic human rights instruments such as ... (*the UDHRs, ICESCRs, CRC, ACHPRs ,ACRWC and other international commitments on the right to primary education respectively*) will be dissected to examine the right to primary education.

## **2.4 International Instruments Governing the Right to Primary Education**

A lot of prevailing International laws and *UN* documents have been created to promote and to protect the right of primary education. Generally as of 2018, the right to education is guaranteed at least in 48 International and Regional Instruments.<sup>64</sup> However, for the purpose of this paper only discussed few of them as follows.

### **2.4.1 Universal Declaration Human Rights**

The UDHRs is a human rights instrument which was drafted in 1948, becomes operative 10 of December 1948 is usually cited as the foundation and standard of international human right laws. Education has been formally recognized as a human right since the adoption of the UDHRs in 1948.<sup>65</sup> The UDHRs has incorporated the right to primary education as one of the fundamental human right basic for human life. Because it proclaims *everyone has the right to education*.<sup>66</sup> This right includes the right to *free Education, at least in the elementary and fundamental stages*.<sup>67</sup> This

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<sup>64</sup> UNESCO 2019 supra note 6 page 47

<sup>66</sup> Universal Declaration of Human Rights (hereinafter UDHR), G.A. Res. 217A, art. 26, U.N. GAOR, 3d Sess., 1st plan. mtg., U.N. Doc. A/810 (10 Dec. 1948) article 26. [www.un.org/udhrbook/pdf](http://www.un.org/udhrbook/pdf) (accessed Oct. 18, 2019)

<sup>67</sup> Ibid

implies that, the provision proclaims everyone's entitlement to free elementary and fundamental education. Besides, Primary school age children's right to formal schooling while illiterate adults and others who had not previously had an opportunity to complete or undergo formal primary education or outside formal educational System. Further, it declare elementary education shall be compulsory for all. Compulsory elementary education does not mean state exercise monopoly over education nor did it exclude parental freedom to choose education of their children rather Parents have a prior right to choose the kind of education that shall be given to their children.

Furthermore, the declaration stipulates the objectives of the right to education under article 29(2). Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.<sup>68</sup>The principle laid down in Article 26 of the UDHRs not only had enormous impacts on the elaboration of UN instruments, but the content of this article, is somehow modified form, appears in all major Regional human rights instruments as well.<sup>69</sup>

#### **2.4.2 International Covenant on Economic Social Cultural Rights**

The UDHR includes a comprehensive range of civil, cultural, economic, political and social rights in a single international human rights instrument, without making any distinction between them.<sup>70</sup> However, in 1966, States adopted the ICESCRs, to promote and protect ESCRs and ratified by 165 nations that echoes in key respects of the UDHR and became legally binding treaty.<sup>71</sup>Our country Ethiopia also ratified the covenant in June, 11 1993. The ICESCRs contains the most wide-ranging and comprehensive provision on the right to education in the entire international human rights law.<sup>72</sup> Article 13 is the single most comprehensive provision on the right to education in international law, which guarantees the right to education in general, and the right to primary

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<sup>68</sup> Ibid

<sup>69</sup> These includes: (a) the ICESCR (b) CRC (d) the ACHPR and other regional human right instrument. The UDHR is a vital document declaring, for the first time that incorporate different aspects of the human rights including the right to education.

<sup>70</sup> Office of the High Commissioner for Human Rights (OHCHR), "*Frequently Asked Questions on Economic, Social and Cultural Rights, Factsheet No. 33,*" <http://www.ohchr.org/Documents/Publications/FactSheet33en.pdf> December 2008, (accessed May 20, 2016).

<sup>71</sup> Ibid

<sup>72</sup> Rajendra P. Kundu *the Right to Education: Some Theoretical Issues* January 2005 Ambedkar University Delhi <https://www.researchgate.net/publication/237090561>(accessed Dec. 9, 2019) page 12

education in particular.<sup>73</sup> It is also the most textually elaborated provision of ICESCRs, reflecting its importance and the expansive normative scope of the right to education.<sup>74</sup> Generally, as of ICESCRs, the right to education is a fundamental human right by itself and it is central for the promotion and protection of all human rights.<sup>75</sup>

States parties agree that all education, whether public or private, formal or non-formal, shall be directed towards the aims and objectives identified in article 13 (1) ICESCRs.<sup>76</sup> Likewise, that of UDHRs the main purpose of education is *...the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding... further the activities of the UN for the maintenance of peace.*<sup>77</sup> This is further explained in its General Comment, of the committee on ESCRs also explains that a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.<sup>78</sup>

Therefore, it imposes legal binding obligation on states parties to respect its provision, and elaborates on many rights under UDHRs. The right to primary education is one of those internationally recognized human rights falling under the category of economic, social and cultural rights. Moreover, Art.13 of ICESCRs recognizes the right to primary education, which proclaimed that primary education should be compulsory and available freely to all. In this case as formulated in article 13 (2) (a), primary education has two distinctive features; it is compulsory and available free to all. Compulsory schooling means that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education .<sup>79</sup> The requirement that primary education be available free for all has been interpreted by the CESCRs as guaranteeing the availability of primary education without charge to the child,

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<sup>73</sup> International Covenant on Civil and Political Rights (ICCPR), Adopted and Opened for Signature, Ratification, and Accession by General Assembly Resolution 2200a (XXI) Of 16 December 1966, Entered into Force 23 March 1976, 999 U.N.T.S. 171 Article 19

<sup>74</sup> CESCR General Comment No. 13 supra note 51 para. 2

<sup>75</sup> Id para 1

<sup>76</sup> Ibid

<sup>77</sup> ICESCR.

<sup>78</sup> CESCR General Comment No. 13 supra note 51 para. 1

<sup>79</sup> General Comment No. 11: *Plans of action for primary education (article 14) (1999)* (Adopted by the CESCR at the Twentieth Session, E/C.12/1999/4, 10 May 1999) para. 6. <https://www.ohchr.org> (accessed Dec. 7, 2019)

parents or guardians.<sup>80</sup> Although progressive introduction of free education; the right of parents to ensure the religious and moral education of their children in conformity with their own convictions and to choose their children's schools, other than those established by the public authorities.<sup>81</sup>

### **2.4.3 Convention on the Rights of the Child**

The principles of primary education as human rights mentioned in different international human rights instruments and frameworks apply both to children and to adults.<sup>82</sup> However, CRC brings together children's human rights articulated in other international instruments as separate instrument only for children. In other word, it is binding and comprehensive international instrument dealing with the rights and responsibilities related to children only. Articles 28 and 29 cover the right to education for children's.

Art.28 of the CRC recognizes the right of children to education. Further it recognizes Primary education should be free and compulsory and a person should be able to continue his/her studies as far as he/she is able. Therefore, states are responsible to provide free and compulsory basic education and protect the child's dignity as indicated in the CRC. Since its adoption in November 1989, the Convention has been ratified by states across regions including our country Ethiopia acceded to the Convention on May 14, 1991: Proclamation No.10 (1992), A Proclamation to Provide for the Ratification of the Convention on the Rights of the Child.

The most detailed provision on the aims and objectives of the right to education in International law can be found in Article 29(1) of CRC and further explained by its general comment no 1 of UN committee on the right of child.<sup>83</sup> According to CRC, the States party to this convention agreed that the education of the child shall be directed to: *The development of the child's personality, talents and mental and physical abilities to their fullest potential.*<sup>84</sup>

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<sup>80</sup> Id, para. 7

<sup>81</sup> Baseline Study for a Comprehensive Child Law in Ethiopia Center for Human Rights Studies College of Law and Governance Studies Addis Ababa University page. 6 (2013)

<sup>82</sup> OHCHR ibid, supra note 70

<sup>83</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 1 (2001), Article 29 (1), The aims of education*, 17 April 2001, CRC/GC/2001/1, available at:

<https://www.refworld.org/docid/4538834d2.html> [accessed Nov. 4, 2019]

<sup>84</sup> Convention on the Rights of the Child (hear in after CRC) Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990 Article 29

Reaching the marginalized children out of primary education is to be the main focus of state parties to the convention. CRC establishes a binding obligation on governments to work towards fulfilling the right to education ‘progressively and on the basis of equal opportunity’.<sup>85</sup>

## **2.5 The Right to Education and African Charter on Human and People's Right**

In line with the International framework, the right to primary education is also confessed in African regional human rights instruments. The regional African human rights system is based on the ACHPRs, which entered into force on October 21, 1986, upon ratification by a simple majority of member states of the Organization of African Unity (OAU).<sup>86</sup> Article 17 of ACHPRs provides that every individual shall have the right to education. However, what is different from education right provisions provided in international and regional instruments, Article 17 of the ACHPRs does not elaborate on the content of the right to education. The African Commission in its Principles and Guidelines on the implementation of ACHPRs determines the scope of the right to education under Article 17 of the ACHPRs as encompasses pre-school, free and compulsory primary education, generally available and accessible secondary education, and merit based higher education.<sup>87</sup>

The ACRWC sets out a much broader and more comprehensive right to education than that provided for in the ACHPRs. The right to free and compulsory education directed at the promotion and development of the child’s personality and abilities and the preservation of African morals, values and cultures, and the rights to leisure, recreation and cultural activities were likewise recognized. Article 11 states that every child shall have the right to an education and prescribes measures that States must undertake as part of their efforts to achieve the full realization of this right, including regarding school discipline and pregnant girls. It defines the aims of education and recognizes the right of parents to choose the kind of education they want for their children in conformity with their religious and moral convictions.<sup>88</sup>

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<sup>85</sup> Id CRC article 28

<sup>86</sup> The African Charter on Human and Peoples’ Rights, (here in after ACHPR) June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 I.L.M. 59 (1982 available at: <http://www.africaunion.org/officia> . The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that was intends to promote and protect human rights and basic freedoms in the African continent.

<sup>86</sup> Abidjan Principles supra note 55 page 36

<sup>88</sup> UNESCO 2019 Supra note 6 page 65

## **2.6 International Commitments on Primary Education**

The major instruments include as a key development strategy for modern societies in which either exclusively focus on education or incorporates education related goal are includes 1990 and 2000 WDEFA, the Millennium Development Goals (MDG), and SDGs. For the reason that of the significances of primary education in the individual as well as social welfare, the right is further recognized by international commitments in addition to its recognition under international treaties.

### **2.6.1 The World Declaration on EFA and Marginalization from Primary Education**

To provide useful guides for governments, international organizations , educators and development professionals in designing and carrying out policies and strategies to improve basic education services the World declaration on EFA and its companion Framework for Action to Meet Basic Learning Needs, adopted by the World Conference on EFA at Jomtien, Thailand, in 1990. Further, the World Education Forum in Dakar also extended the Jomtien commitment, bringing a welcome emphasis on schooling quality while acknowledging that had not yet been reached universal primary completion.

These documents represent a worldwide consensus on an expanded vision of basic education especially primary education and a renewed commitment to ensure that the basic learning needs of all children, youth and adults are met effectively in all countries.<sup>89</sup>Under its preamble, Suggest that education is a fundamental right for all people, women and men, of all ages, throughout our world.

In the Dakar Framework EFA the participants, commit themselves for the achievement of EFA goals and targets for every society.<sup>90</sup> Furthermore, Forum in Dakar provided the opportunity to assess the achievements, lessons and failures of the past decade. There were 6 goals that covered education, schooling, training, and learning in a lifelong dimension from early childhood to adult

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<sup>89</sup> UNESCO, (1990). World Declaration on Education for All and Framework for Action to meet Basic Learning Needs, adopted by the World Conference on Education for All, (Jomtien, Thailand, 9 March 1990) article 1 : Available at: [www.unesco.org/education/efa/ed\\_for\\_all/background/jomtiendeclaration.shtml](http://www.unesco.org/education/efa/ed_for_all/background/jomtiendeclaration.shtml) , [ accessed on Sep. 23, 2019].

<sup>90</sup> Education for All: Meeting our Collective Commitments Adopted by the World Education Forum Dakar, Senegal, 26-28 April 2000 UNESCO 2000 Printed in France see : [www.unesco.org](http://www.unesco.org) (accessed Oct. 11, 2019)

literacy, and mainstreaming gender and quality issues.<sup>91</sup> The World Conference on EFA (1990) set the goal of universal primary education for the year 2000, a goal not met but subsequently reaffirmed for 2015 at the World Education Forum in 2000. Moreover, The Jomtien Declaration incorporated an explicit commitment to ‘under-served groups to provide access to education for traditionally marginalized groups, including *girls ... and nomadic populations ... cultural minorities*.<sup>92</sup> The Dakar Framework has a more implicit commitment, referring to “*children in difficult circumstances and those belonging to ethnic minorities*.”<sup>93</sup>

In general, the outcome of the World Conference on EFA (1990) was an agreement to universalize primary education and reduce illiteracy by 2000. Furthermore, the World Education Forum (2000), the commitment to EFA was re-affirmed with a six new goals and measurable targets were elaborated as part of the Dakar Framework for Action on EFA date of 2015.<sup>94</sup>

## **2.6.2 The Millennium Development Goals (MDGs)**

In line with education for all declaration, the international community and leading development institutions have agreed to the MDG, expressed in the Millennium Declaration, which commit them to ensuring that all girls and boys complete a full course of primary education and that gender disparity is eliminated at all levels of education by 2015<sup>95</sup>

MDGs reinforce education’s centrality in human development.<sup>96</sup> Further, MDG 2 represents a clear agreement by the world’s governments committed to achieving universal access to free, quality and compulsory primary education by 2015. However the scope of the global education agenda narrowed with the (MDGs) focus on primary education in lower income countries, the learning needs of youth and adults were somewhat neglected in the global education agenda during the

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<sup>91</sup> Agenda 2030 – *Education and Lifelong Learning in the Sustainable Development Goals* Heribert Hinzen / Sylvia Schmitt (Editors) DVV International 2016 Publisher: DVV International Institut für Internationale Zusammenarbeit des Deutschen Volkshochschul-Verbandes e. V. page 16

<sup>92</sup> Ibid Vernor Muñoz supra note 59

<sup>93</sup> paper prepared for the Education for All Global Monitoring Report 2010 *Reaching the marginalized educational Marginalization in National Education Plans* UNESCO - International Institute for Educational planning page 4 (2010)

<sup>94</sup> Ibid Vernor Muñoz supra note 59

<sup>95</sup> Id page 17

<sup>96</sup> Development Robert J. Didham, and Paul Ofei-Manu, *Advancing Education as a Goal for Sustainable IGES Issue Briefs on SDGs No. 2* page 3

period 2000-2015.<sup>97</sup> Many developing countries could have done much more to accelerate progress, notably through policies to overcome inequalities in education.<sup>98</sup>

### 2.6.3 The Right to Primary Education in SDGs

The right to education is high on the agenda of the international community since 1990. It is affirmed in numerous human rights treaties and recognized by governments as pivotal in the pursuit of development and social transformation.<sup>99</sup> In the year 2012 a process called Post 2015 started to analyse what had worked and what not for the MDGs as well as for EFA. Finally establishes SDGs are the new global architecture of the international community up to the year 2030. They were agreed upon by the UN in September 2015, following the MDGs which resulted from the UN Summit in the year 2000. Whereas the 8 MDGs were predominantly focusing on the so-called developing countries, the 17 SDGs have a clear global commitment for all nations and their people.<sup>100</sup>

In the domain of education, sustainable development goal four (SDG 4) calls on all UN Member States to “*ensure inclusive and equitable quality education and promote lifelong learning opportunities for all*”.<sup>101</sup> An education SDG 4 should include three dimensions: increasing access and attainment, improving educational quality, and inspiring transformative learning. SDGs Goal 4(1) by 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.

The adoption of the 2030 SDG articulates a much broader vision of the role of education in societal development; among these essential for the realization of most SDG 4 especially for the marginalized for 2030.<sup>102</sup>

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<sup>97</sup> Agenda 2030 supra not 67 page 16

<sup>98</sup> EFA Global Monitoring Report 2010. Reaching the marginalized. UNESCO/Oxford University Press. Page 54

<sup>99</sup> Vernor Muñoz supra note 59 page 2

<sup>100</sup> Id page 17

<sup>101</sup> United Nations (2015). “Transforming Our World: The 2030 Agenda for Sustainable Development.” United Nations General Assembly resolution A/RES/70/1)

[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1) (access Sep. 25, 2019)

<sup>102</sup> Agenda 2030 – Education and Lifelong Learning in the Sustainable Development Goals Heribert Hinzen / Sylvia Schmitt (Editors) page 6 DVV International 2016 Publisher: DVV International Institut für Internationale Zusammenarbeit des Deutschen Volkshochschul- Verbandes e. V. page 17

Like that of the previous international commitment the issue of equitable development of education to all is the main focus of the commitment. In this case it impose the state parties to reach the student out of school due to different reasons. Not only equal treatment with other but also requires leaving the field to compute with others. ‘Leaving no one behind’ is one of the principles of SDG for 2030, and one of the main contributions of the SDG 4 monitoring framework to this aim is that the disaggregation of education indicators by individual characteristics has been mainstreamed.<sup>103</sup>

## **2.7 Essential Components of the Right to Primary Education under International Law**

The preliminary report to the Commission on Human Rights, the Special Rapporteur on the right to education sets out four *essential features that primary schools should exhibit, namely availability, accessibility, acceptability and adaptability*.<sup>104</sup>

### **2.7.1 Availability**

Availability refers to the state obligation to ensure primary schools, other basic education establishments and settings are available to all school aged children, and that it is to be made compulsory by law and policy enforcement mechanisms. This obligation is depend on the developmental context within which they operate but most of institutions and programs are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water ... and so on.<sup>105</sup> While the State is not the only investor, International human rights law obliges it to be the investor of last resort to ensure that primary schools are available for all school age children.<sup>106</sup> In general, availability is referring to allocation of resources, qualification of teachers in relation with academic level, field of disciplines, the training and recruitment processes of teachers.

Availability embodies two different governmental obligations: the right to primary education as a CPRs requires the government to permit the establishment of educational institutions by non-state actors, while the right to primary education as a ESCRs requires the government to establish them,

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<sup>103</sup> Global education monitoring report Meeting Commitments; Are Countries On Track To Achieve SDG 4 [www.unesco.org/genreport](http://www.unesco.org/genreport) page 8 (2019)

<sup>104</sup> Ms. Katarina Tomasevski Economic, Social And Cultural Rights Preliminary report of the Special Rapporteur on the right to education, submitted in accordance with Commission on Human Rights resolution 1998/3 (E/CN.4/1999/49,) para. 50.

<sup>105</sup> CESCR General Comment No. 13 supra note 51 para. 1

<sup>106</sup> Ms. Katarina Tomasevski supra note 104 para. 51.

or fund them, or use a combination of these and other means so as to ensure that primary education is available.<sup>107</sup>

### **2.7.2 Accessibility**

The second State obligation relates to ensuring access to available public schools, most importantly in accordance with the existing prohibition of discrimination.<sup>108</sup> Non-discrimination in educational sector is not subject to progressive realization but has to be secured immediately and fully.<sup>109</sup> According to the CESCRs, accessibility is about the access of educational programs and institutions to everyone and it consists of three overlapping dimensions.<sup>110</sup>

The first dimension of accessibility is education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds listed under International law including ICESCRs is known as the principle of Non-discrimination.<sup>111</sup> If they are deprived of their right to access to curricula or extra curricula accesses owing to their association with a certain group, or denial of right to primary education are violation of International human rights.

The second dimension of accessibility is education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location or via modern technology called physical accessibility.<sup>112</sup> State parties to ICESCRs are obliged to make primary school close to all.

The third dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education. Whereas primary education shall be available “free to all”.<sup>113</sup> Generally, education has to be affordable to all known as economic accessibility. All of dimensions are infers that the right to primary education is a right to which all individuals without discrimination have to access.

### **2.7.3 Acceptability**

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<sup>107</sup> K. Tomaševski Right to Education Primers No. 3 supra note 43 Page 13

<sup>108</sup> Ms. Katarina Tomasevski supra note 104 para.57.

<sup>109</sup> Ibid

<sup>110</sup> CESCR General Comment No. 13 supra note 51 Para 6(b)

<sup>111</sup> Ibid

<sup>112</sup> Ibid

<sup>113</sup> Ibid

The Acceptability element of primary education is related to the form and substance of education, including curricula and teaching methods, have to be acceptable.<sup>114</sup> In other word primary education is subject to the educational objectives required by international human right instrument including article 13 (1) of ICESCRs. Acceptability includes respecting parental freedom to have their children educated in conformity with their Religious, Moral or Philosophical convictions has been affirmed in all general human rights treaties and is continuously subjected to litigation.<sup>115</sup>

#### **2.7.4 Adaptability**

Primary education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.<sup>116</sup> State parties to ICESCRs are compelled to provide primary education for the purpose of enhancement of human personality and dignity, to strengthen human rights and fundamental freedoms; to create conducive environment of free society, to promote understanding, tolerance and friendship among the Society.

### **2.8 International Obligation of Ethiopia Regarding the Right to Primary Education**

The right to primary education is internationally recognized human right, which have spillover effect on creating obligation on other person out of the beneficiary of the right to its full implementation. In this case, States are the principal duty bearers under International law in the implementation of obligation to fulfil, respect, and protect the right of primary education for all individuals within their jurisdiction. Furthermore, States obligations in relation to primary, secondary, and higher education are not identical. States have the primary responsibility to promote and ensure the right to primary education for all individuals in their territories and subject to their jurisdiction. The Right to primary Education is more or less, a ESCRs, entails state obligations of an immediate, minimum and progressive kind of obligation. Understanding legal obligations is important in order to clarify the specific steps states must or must not take.<sup>117</sup> This helps States properly implement their obligations under international law and allows stakeholders,

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<sup>114</sup> Ibid

<sup>115</sup> Ms. Katarina Tomasevski supra note 104 para. 65

<sup>116</sup> CESCR General Comment No. 13 Supra note 51 Para 6(b)

<sup>117</sup> UNESCO 2019 Supra note 6 page 135

such as Civil Society, to identify violations and hold States accountable when they fail to act as directed by International law.<sup>118</sup>

### **2.8.1 Immediate International Obligation of Ethiopia**

The Office of the High Commissioner for Human Rights provides further clarification: “*The treaties impose an immediate obligation to take appropriate steps towards the full realization of ESCRs*”. A lack of resources, or periods of economic crisis, cannot justify inaction, retrogression in implementation or indefinite postponement of measures to implement these rights. States must demonstrate that they are making every effort to improve the enjoyment of ESCRs, “*even when resources are scarce*.”<sup>119</sup> CESCRs makes clear that some obligations are not subject to resource constraints called immediate obligations.

They are obliged to prioritize the introduction of compulsory and free primary education.<sup>120</sup> The obligation to provide free primary education for all is an immediate obligation for all states. In addition, states immediate obligation on the right to primary education are required to establish an accessible educational system, and refrain from actions, which may prevent or limit its accessibility.<sup>121</sup>

CESCRs also identifies immediate obligations in relation to specific content of the right to education such as provide free and compulsory primary education, ensure parental freedom of education without interference from the state or non-state actors and the liberty of non-state actors to establish and direct educational institutions, in conformity with ‘*minimum educational standards*’.<sup>122</sup>

Prohibition of discrimination in education and obligation of states to act immediately to eliminate it, regardless of available resources stipulated in international human right instruments including Article 2 (2) of ICESCRs, as well as Article 26 of the ICCPRs and the entirety of the UNESCO<sup>123</sup>Moreover, CESCRs recognizes adoption of ‘*necessary measures to prevent diminish*

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<sup>118</sup> Ibid

<sup>119</sup> OHCHR *ibid*, supra note 70

<sup>120</sup> UNESCO 2019 Supra note 6 page 135

<sup>121</sup> CESCR General Comment No. 13 Supra note 51 paras. 51-52.

<sup>122</sup> Ibid

<sup>123</sup> General comment No. 20: *Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July

*and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination.*<sup>124</sup>

### **2.8.2 Progressive International Obligation of Ethiopia**

Progressive realization recognizes that certain aspects of the right to primary education can only realistically be achieved over a period of time, particularly for states with fewer resources. Accordingly, article 2(1) of ICESCRs places an obligation on states to progressively realize the right to education. The main reason is this set of rights is subject to progressive realization, in recognition of the fact that states require sufficient resources and time to respect, protect, and fulfill these rights.<sup>125</sup>

Moreover, obligations that progressive realization ‘*should not be misinterpreted as depriving the obligation of all meaningful content*’ as this would defeat the objective and purpose of ICESCRs, which is to, ‘*establish clear obligations for States parties in respect of the full realization of the rights in question.*’<sup>126</sup> Moreover, the presumption that states will progressively realize the right to primary education implies that states should not take deliberate backward steps by adopting measures that will repeal or restrict existing guarantees of the right to education. Hence, free fundamental education for all those who have missed the whole or part of their primary education and improvement of the quality of primary education are obligation requires progressive implementations.<sup>127</sup>

However, according to the CESCRs, steps towards the Covenant’s goals must be taken “*within a reasonably short time after the Covenant’s entry into force*” and “*such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations.*”<sup>128</sup> The Committee has also stressed that the Covenant imposes an obligation to “*move as expeditiously and effectively as possible towards that goal.*”<sup>129</sup> Both the CRC (article 4) and the ICESCRs (articles 2 and 13)

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2009, E/C.12/GC/20, available at: <https://www.refworld.org/docid/4a60961f2.html> [accessed 15 Mar. 2020]

<sup>124</sup> Id CESCR General Comment 20 para. 8

<sup>125</sup> UNESCO 2019 Supra note 6 page 138

<sup>126</sup> UN Committee on Economic, Social and Cultural Rights (CESCR). 1990. General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant) (Doc. E/1991/23.) (CESCR General Comment 3) para. 9.

<sup>127</sup> Ibid

<sup>128</sup> Ibid

<sup>129</sup> Id para. 2 and 9

require that States undertake all appropriate legislative, administrative and other measures to the maximum extent of their available resources for the implementation of education rights.<sup>130</sup>

### **2.8.3 Minimum core international obligation of Ethiopia**

Minimum core obligation prioritize certain content of the right to primary education, without which rights-holders are considered to be deprived of the right to primary education. Minimum core obligations are not explicitly mentioned in the text of ICESCRs. However, in its General Comment 3, the Committee confirmed that States parties have “*a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels*” of each of the rights enunciated in the Covenant, including “*the most basic forms of education*”.

According to the CESCRs in context of article 13, there are minimum core like obligations ensure the right of access to public educational institutions and programs on a non-discriminatory basis; ensure that education conforms to the aims of education provide universal, free, and compulsory primary education and adopt and implement a national educational strategy.<sup>131</sup> In this case FDRE incorporate the principle of non-discrimination and the aims of education provided under its legal frameworks governing primary education.

In general, some aspects of primary education as a core, immediate or progressive obligation, but legal obligation in relation to primary education is stronger than the other legal obligations related to education in general. Do to this all types of international obligation reinforce the urgent nature of the obligation regarding primary education.

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<sup>130</sup> Supra note 16 page 42

<sup>131</sup> CESCR General Comment No. 13 supra note 51 para. 57

## Chapter 3

### **Legal and Policies Framework Concerning on the International Right to Primary Education in the Federal State of Ethiopia.**

#### **3.1 Introduction**

The issue of primary education now a day is the primary concern of International Institution to be secure its achievement but also it is the primary focus to secure the sustainable development of Ethiopia. Accordingly, the FDRE Constitution and other Educational Policies and Strategies gives a special emphasis to primary education as a foundation for the achievement of sustainable development and poverty reduction. In this case under this chapter, as it is possible to understand from the title of the chapter the research focuses on the legal and policy frameworks of the FDRE govern the implementation of primary education in general and emerging regional State in particular. In this regard, it will attempt to assess the FDRE Constitution, ETP of the country and other national Programs that enacted for implementing the Policies and the Constitution.

#### **3.2 Primary Education in Ethiopia: Short Brief History**

##### **3.2.1 Pre 1990 Educational History**

The development of Ethiopian educational system was deeply rooted in religious education of which the two mainstreams were Christianity and Islam traditional educational system.<sup>132</sup> However, the arrival of the Jesuit missionaries in the first half of the 16<sup>th</sup> century and the arrival of others in the 19<sup>th</sup> century influenced the long existing conservative Ethiopian educational system.<sup>133</sup>

Likewise, Emperor Menelik II strongly believed that the building of Ethiopia as a modern state, as well as the strengthening of the then existing political power, necessitated the introduction of modern education.<sup>134</sup> Emperor Menelik II issued the first proclamation on education in 1906 and professed that all school-age children were required to go to school to get free

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<sup>132</sup> Attempts at Educational Reform in Ethiopia: A Top-Down or a Bottom-Up Reform? Seyoum Tefera, Ethiopian Journal of Education, Vol. 16, No.1, 1996, pp. 1-37 Reviewed by The Ministry of Education

<sup>133</sup> Ibid

<sup>134</sup> Alemayehu Bishaw and Jon Lasser Education in Ethiopia: Past, Present and Future Prospects African Nebula, Issue 5, 2012 page 53-69 see <https://www.researchgate.net/publication/337050045> (2012)

education.<sup>135</sup> Consequently, the first modern school was, the Menelik II School, it was established in 1908 at Addis Ababa.<sup>136</sup> In fact, the school was a language school, Students learned Amharic, various European languages, reading, writing, mathematics, science, and other subjects based on the policy objectives of the then regime of the country.<sup>137</sup> Because between 1908 and 1935, the aim of education was to master different languages to create better international relation with different foreign countries.<sup>138</sup> Likewise, the Ethiopian education system and its curricular components were primarily influenced by the French education system.<sup>139</sup>

Empress Zewditu Menelik (the daughter and immediate successor of Emperor Menelik II) is credited for launching education to all school-age children in the Amharic language and enact a proclamation in 1929 on the issue.<sup>140</sup> Further reinforced by Emperor Haile Selassie through opening a new school in his name and empowered different landlords to do the same in various provinces of the country.<sup>141</sup> However, the efforts of the two successive governments to expand modern education in Ethiopia, hoped by many to be the basis for the country's development, but it was interrupted by the Italian Occupation.<sup>142</sup>

Beside this, after Italian occupation, the system of modern education began to develop in Ethiopia under the leadership of Emperor Haile Selassie. However like that of the previous educational system, it was considered highly inequitable and not relevant to the lives of most Ethiopians<sup>143</sup>

The first one is the regime of emperor administration stay until 1974 and strongly believed in the centrality of education for development. Moreover, the regime after the occupation up to the end of the Haile Selassie rule had classified under two phase the first phase (1940s-1950s), during

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<sup>135</sup> Petros Woldegiorgis Woldesenbet Provision of and Participation in Primary Education in the Pastoralist Regions of Afar and Somali of Ethiopia Acta Universitatis Tamperensis 2106 Tampere University Press Tampere page 8 [www.research.gate.netpublication/](http://www.research.gate.netpublication/)(2015)

<sup>136</sup> Heike Roschanski Deprived Children And Education Ethiopia International Research on Working Children IREWOC, page 7 (December 2007)

<sup>137</sup> Saheed A. Adejumobi THE HISTORY OF ETHIOPIA page 33 see [accademia.edu/41784077/](http://accademia.edu/41784077/) (accessed Jan. 13, 2020)

<sup>138</sup> Ibid Alemayehu Bishaw and Jon Lasser supra note 134

<sup>139</sup> Ibid

<sup>140</sup> Ibid

<sup>141</sup> Ibid

<sup>142</sup> Ibid

<sup>143</sup> Ethiopia's Progress In Education: A rapid and equitable expansion of access page 5 see <http://all.African.com/download/resource/main/main/idatcs/0020257/pdf> (accessed Mar. 5, 2020)

which English became the medium of instruction and the educational system was mainly operated under British assistance. Its focus was on the production of teachers and various personnel for the state machinery. However, the second phase of development began with American assistance and Amharic replaced English as medium of instruction up to grade six. The primary, junior and senior secondary structure was adopted in 1962 stayed until 1974 and Attempts to produce national curriculum and to expand primary education were relatively made. On top of that Ethiopia hosted the UN-sponsored Conference of African States on the Development of Education in 1961, the Ethiopian education system was ranked bottom of all African nations (i.e. only about 10% of school-age children in the country attended school).<sup>144</sup>

In 1974, a military junta overthrew the Imperial Government and Dreg seized power.<sup>145</sup> The new government creates its own educational administration in addition to share with the old regime on its trust in education as a vehicle for modernization.<sup>146</sup> Furthermore, during the military government, two mass education programs were launched: the Campaign for Knowledge and Work in 1974, and the National Literacy Campaign (1979 and 1989).<sup>147</sup> The regime established a Marxist-Leninist education system.<sup>148</sup> From 1974/75 to 1985/86 the total number of primary schools increased from 3,196 to 7,900, and the number of students enrolled in primary schools increased to 2,450,000 but, only 5.3% of children were enrolled in secondary schools.<sup>149</sup>

### **3.2.2 Post 1990 Educational History**

In 1990 the current administration system is established a decentralized educational service delivery within a federalism system of government. In Ethiopia, the decentralization of education was a consequence of a change in the approach to government.<sup>150</sup> The purpose of the system is expanding the education sector, improving quality, and ensuring that educational content to harmonize with the country's development objectives. Therefore, in addition to the federal

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<sup>144</sup> Heike Roschanski Supra note 136 page 8

<sup>145</sup> Tebeje Molla *Higher Education Development and Knowledge Economy Optimism in Ethiopia* page 115 at [www.academia.edu](http://www.academia.edu) ( accessed Jan. 7, 2020)

<sup>146</sup> Id page 116

<sup>147</sup> Id page 117

<sup>148</sup> Yirga Gelaw Woldeyes *On The Relevance of Tradition to Education in Ethiopia* Published by: Black Swan Press, Curtin University <http://humanities.curtin.edu.au/research/black-swan-press/> page 113-130

<sup>149</sup> Heike Roschanski Supra note 136 page 8

<sup>150</sup> Republic of Yemen Education in Federal States: Lessons from Selected Countries A Study of Decentralization and School-Based Management for the Republic of Yemen June, 2015 page 7

government, each of the regional states has their own REB. These Bureaus are responsible for the administration and management of general education, technical and vocational education, and teacher training programs and institutions. While, the MOE is responsible for higher education in addition to formulate policy and guidelines that are implemented by the different REBs. Further, for the due implementation of the administration system, so many laws and policies related to education are enacted. To this end, the gist of different domestic legal instruments such as ... (*FDRE Constitution. ETP, and ESDP respectively*) will be dissected to examine the right to primary education.

### **3.3 FDRE Constitution Concerning the Right to Primary Education**

FDRE Constitution adopted in 1995 stipulates that FDRE as the nomenclature of the State. In this case, the Constitution establishes a Federal and Democratic State structure in addition to unequivocal recognition under article 50(1) and the following provisions of the Constitution.<sup>151</sup> In other word, structural organizations of the FDRE comprises the Federal Government and Autonomous Regional State with the power of legislative, executive and judicial.

Further, in this federal system, all sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia (NNPE) (Sovereignty of the people) and the Constitution is the expression of their sovereignty.<sup>152</sup> Accordingly, the Constitution is the supreme law of the state, which has a decisive role in terms of the protection of human rights as a whole at national level in Ethiopia. Meanwhile the Constitution is main legal document that has adequate power and responsibility to prepare the constitutional procedures and institutions that can supervise the appropriate implementation of legal instrument, which deals with the right to primary education.

Accordingly, the Constitution stipulates the obligation on the State to allocate ever-increasing resources to provide to the education and other social services.<sup>153</sup> As can be discerned from sub-article (4) of article 41 the Constitution education is one of the progressively funded social services in Ethiopia including primary education. Similarly, article 90 of the Constitution declares that to the extent the country's resources permit, policies shall aim to provide all Ethiopians access to

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<sup>151</sup> Supra note 2 Article 1 of the FDRE Constitution

<sup>152</sup> Id Article 8 of the FDRE Constitution

<sup>153</sup> Id Article 41 (4) of the FDRE Constitution

education.<sup>154</sup> Further stipulates that national standards and basic policy criteria for education shall be established and implemented.<sup>155</sup> These provisions of the Constitution establishes the constitutional right to education especially for the right to primary education.

Likewise, the Constitution clearly stipulates the rights of every citizen to equal access to publicly funded social services.<sup>156</sup> Since ensuring, the access of all citizens to social services is constitutional responsibility of the State, the pastoral and agro pastoral (less developed regions) can be the beneficiary of social services. On top of that, Article 25 of the Constitution is the other provision, which talks about equal protection of all citizens in general. In this article 25 sub article 1 the Constitution stated that all persons shall be entitled to equal and adequate guarantees without distinction of any kind such as race, nation, nationality, color, sex, language, religion, political or social origin, property, birth or other status.<sup>157</sup>In light of this, children and every young people with the region of less developed are entitled to enjoy their right to primary education without any discrimination based on their status.<sup>158</sup>

Because of this, it specified clear provisions for the citizens who needs special protection that enable the government bodies and other administrative authorities to make different types of positive discrimination including the right to primary education.<sup>159</sup>

In order to create suitable conditions to avoid and compensate the discrimination that faced them in the past the Government provide special assistance to NNPE least advantaged in economic and social development as per article 89(4) of the Constitution. In other word in addition to equal protection of ESCRs to all citizens there is constitutional responsibility to grantee special privilege to marginalized group due to their economic and social affair. Therefore, the recognition of special treatment of the marginalized extends up to children out of primary education unlike other.

On top of that, the Constitution, it is possible to use various International instruments, which are ratified by Ethiopia for the purpose of applying human rights including the right to primary

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<sup>154</sup> Id Article 90 of the FDRE Constitution

<sup>155</sup> Id Article 51 (3)) of the FDRE Constitution

<sup>156</sup> Article 41(3) of the FDRE Constitution

<sup>157</sup> Article 25 of the FDRE Constitution

<sup>158</sup> Article 90(2) of the FDRE Constitution

<sup>159</sup> Article 89(4) of the FDRE Constitution

education. Because International agreements, which are ratified by Ethiopia, are considered as an integral part of the law of the land based on the Constitution article 9 sub.4. Hence International instruments ratified by Ethiopia and which gives appropriate rights to primary education to all as well as for marginalized group need to be implemented as local laws. Moreover, the Constitution orders concerning the interpretation of fundamental right shall be in a manner conforming to the principles of International instrument. Therefore, the fundamental rights specified in the third chapter of FDRE Constitution need to be interpreted in a manner conforming to the principles of UDHR in accordance with article 13 sub.2 of the Constitution.<sup>160</sup>

Therefore, these principles are also applicable for the respect of the right to primary education for marginalized groups to acquire special support to bring them to equal footing with others. As indicated under various international instruments, children, who are parts of vulnerable group of human society, have the right to primary education. Further the main objective of the SDG of education on 2030 is bring all children in the world to access relevant primary education with the slogan of no one behind school. For the achievement of this objective recognize equity as the main principle and focus on the children's out of school for different reason. In this case different stakeholder are work with this principles to access those children's who are out of school.

### **3.4 The Right to Primary Education and the ETP (1994)**

Accession to ICESCRs requires that State party is obliged to have an overall developmental strategy for its school system. Further, the strategy encompass schooling at all levels, and requires States parties to prioritize primary education. Likewise, the previous education system has encountered challenges of relevance, access, quality and content. Therefore, to rectify this, the government has enact new ETP emanates from a national study conducted to identify the constraints to universal education in Ethiopia.<sup>161</sup>

In its preamble, the policy stressed the role of education in individual as well as societal development in the country. The main objective of the ETP is to confronting the deep-rooted problems of access, quality, relevance and equity of the education system, and providing quality education to all.<sup>162</sup> Further, develop the physical and mental potential and the problem-solving

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<sup>160</sup>Article 13 of the FDRE Constitution

<sup>161</sup> Education for All 2015 National Review Report Available at: [efa2015reviews@unesco.org](mailto:efa2015reviews@unesco.org) page 2

<sup>162</sup> ETP supra note 41 preamble par 3

capacity of individuals by expanding education and in particular by providing basic education for all.<sup>163</sup> Likewise, bring up citizens who respect human rights, stand for the well-being of people, as well as for equality, justice and peace, endowed with democratic culture and discipline are the main objectives of the policy.<sup>164</sup> Accordingly, the education structure was changed from the 6-2-4 structure to the 4-4-2-2 structure<sup>165</sup>, and the policy included features like the teaching of primary students in their mother tongue.<sup>166</sup>

The scope of the application of policy is being implemented in all educational institutions throughout the country. In this case the policy document applicable all over the country including the four emerging regional state of the Ethiopia. Moreover, the policy placed emphasis on reaching to out of school children, reducing enrollment gaps between regions and population in Ethiopia. Accordingly, the Policy stressed the need to provide special assistance and targeted support to out of school children, vulnerable groups and disadvantaged group. With regard to education support inputs, it has been mentioned that special attention will be given to those students who did not get educational opportunity due to different reason.<sup>167</sup> The policy recognizes the challenges faced by children from vulnerable section of the society in accessing primary educational opportunities.

Furthermore, the policy ascertained that special financial assistance will be given to those who have been deprived of international right to primary education in general.<sup>168</sup> The Government commits itself to take special measure regarding education of children who do not have access to international right to primary education. It is clear that the national education policy strongly promote and support the equitable inclusion of social groups, such as children and young people living in emerging regional state, in access to primary education. Therefore, equality of opportunity as regards education enunciated by Article 28 of the CRC and Article 3 of the ACRWC is integrated in the national ETP.

### **3.5 Primary Education in the Successive ESDPs**

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<sup>163</sup> Id article 2(1(1))

<sup>164</sup> Id preamble par. 1

<sup>165</sup> Id 3(2)

<sup>166</sup> Id 3(5)(1))

<sup>167</sup> Id 3(7)(7))

<sup>168</sup> Id 3(9)(4))

Since the overthrow of the military government in 1991, education in general and primary education in particular has been a development priority on the national agenda of Ethiopia. Further, Ethiopia educational Policy developed in 1994 was transformed into programmatic actions through the five year ESDPs for its better implementation throughout the nation. The general objective for all ESDPs is to improve education quality, relevance, and equity and expand access to education. However, the specific objectives of each ESDP is depends on the area of priority given by each of them. In this juncture, the researcher discusses each of ESDP in light of the right to primary education in emerging regional state.

Under ESDP I is the first ESDP its focus is expanding primary school and other facilities related to primary education. Indeed this program bring a great achievement in the expansion of primary education Ethiopia. The target of raising primary enrollment from 3.7 million in 1995/96 to 7 million for ESDP 1 was surpassed as enrollment reached 8.1 million, representing an average growth rate of enrollment of 12.8%.<sup>169</sup> However, the progress in primary education does not perfect rather it exists some challenges. The challenges in the implementation of the ESDP I leads to the preparation of ESDP II. ESDP II continued the trend of the ESDP I with an annual average growth rate of enrollment of 11.7% and primary school enrollment reached 11.4 million by 2004/05.<sup>170</sup> The main objective of the ESDP II was expanding the accessibility of primary education in the country. Under this program, the accessibility of primary education is increased.

Similarly, ESDP III has made significant progress in improving access to education at all level in addition to primary education. Though there were important improvements with regard to availability of educational institutions and trained teacher, poor quality of education coupled with limited educational opportunities of vulnerable section of the society remained to be the biggest challenges of the education sector.

Accordingly, the Government established ESDP IV (2010/11-2014/15) mainly emphasis on equity, quality and access to education for out of school children live in vulnerable and disadvantaged groups. Because of the consensus, of all ignorance of these groups is a barrier to the achievement of international commitment on universal primary education by 2015.<sup>171</sup> Further,

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<sup>169</sup> ESDP-III Supra note 24 Page 7

<sup>170</sup> Ibid

<sup>171</sup> Basic Education Sector Analysis Report Ethiopia August 2012 Japan International Cooperation Agency (JICA) International Development Center Of Japan Inc. (IDCJ) Page 7

under ESDP IV, the Government devoted itself to give attention to primary education of children who are still out of school because of their marginalization due to different reason. Indeed the government set a strategy for further expansion of access to primary education through a building of more school to reduce the distance. In addition to this, the government focus on providing a special support to disadvantaged groups such as financial and material support.

ESDP Vis the fifth medium-term plan, which serves as the central strategy document for the educational development in Ethiopia from 2015/2016-2019/2020.<sup>172</sup> The program is prepared in consideration of international agreements, such as educational for all, the sustainable development goals and the convention on the right of the child. Accordingly, the program gives a priority for access to equitable primary education as one of the target concern addressed by it. Further, for the achievement of the equitable primary education for all Ethiopian the program recognizes a special support to disadvantaged groups especially for emerging regional states.

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<sup>172</sup> Education Sector Development Programme V (ESDP V) 2008 - 2012 E.C. 2015/16 - 2019/20 G.C. Programme Action Plan Federal Ministry of Education Addis Ababa page 33(2015)

## Chapter Four

### The Statuses of Implementation of the Right to Primary Education in the Afar Emerging Regional State of Ethiopia

#### 4.1 Introduction

Understanding marginalization is one of the conditions for overcoming it.<sup>173</sup> Marginalization in primary education is a form of acute and persistent disadvantage rooted in underlying social inequalities.<sup>174</sup> Removing that injustice should be at the center of the national and international Education for All agendas.<sup>175</sup> The experience of marginalization in education today is frequently a consequence informal discrimination than formal discrimination.<sup>176</sup> It is embedded in social, economic and political processes that restrict life chances for some groups and individuals.<sup>177</sup> The lack of primary education restrict the scope people have for influencing decisions that affect their lives.<sup>178</sup>

The right to primary education requires a commitment to ensuring universal access, including taking all necessary measures to reach the most marginalized children.<sup>179</sup> Therefore, in Ethiopia mechanisms should also be developed to ensure availability of primary education for marginalized groups of children especially in areas of pastoralist and agro-pastoralist areas.

#### 4.2 Marginalization of Pastoralist and Agro Pastoralist Communities in Ethiopia

In addition to the past marginalization of pastoralists to acquire primary education, the above factors (i.e. the challenging environment and the way of livelihood) has been there on negative effect on the development of access to primary education. As a result, despite primary education is being assured for all Ethiopian children there are few school available to the children in emerging regional state with low quality.

Inequalities associated with specific livelihoods often contribute to national disparities.<sup>180</sup> The experience of pastoralists living in remote areas of Ethiopia, with children heavily involved in

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<sup>173</sup> EFA Global Monitoring Report *supra note 48 page 138*.

<sup>174</sup> *Id* page 135

<sup>175</sup> *Ibid*

<sup>176</sup> *Ibid*

<sup>177</sup> *Ibid*

<sup>178</sup> *Id* page 138)

<sup>179</sup> *Ibid* Vernor Muñoz *supra note 59 page 27*

<sup>180</sup> EFA Global Monitoring Report *supra note 48 page 143*

tending cattle and livelihoods that involve movement across countryside, face major barriers to primary educational opportunity. Those barriers of time and distance are sometimes reinforced by problems in education policy in past period (i.e. educational policy failure to offer relevant curricula, provide appropriate textbooks and respond to the realities of pastoral livelihoods). In this case in Ethiopia, pastoralist and agro-pastoralist groups are at the bottom end of the distribution for educational opportunity. Even those, children at school tend to drop out to support their household and participate in the seasonal migration. Actually, there is considerable barriers regarding the supply of quality primary education in emerging regions specially the remote parts of Afar region.

The Afar region is located in the northern eastern part of Ethiopia almost all of its population is pastoral and agro pastoral community.<sup>181</sup> Predominantly the regions are experienced hot and very challenging environmental condition. Consequently, the Afar pastoralist are participate in seasonal movement due to dictate the availability of grassland for grazing and water to their livestock. Moreover, in Afar the Gross Enrollment Rate (GER) in 2011 EC. 56.55% including ABE.<sup>182</sup> Almost half of the school age population between the ages of 7-14 is out of school. There is wide regional variation, with Afar having the lowest GER at 66%.<sup>183</sup> The target for the end of ESDP V in 2020 is 103%. However, the target is not achieved as of 2020 in Afar regional state.

#### **4.3 Efforts towards Improvement of Primary Education in the Emerging Regional State of Ethiopia.**

When governments met in 1990 at the World Conference on EFA in Jomtien, they recognized the need to overcome extreme inequalities holding back progress in primary education. They declared that ‘consistent measures must be taken to reduce disparities’ and called for active commitment to reach ‘underserved groups’, including, remote rural populations, and nomads.<sup>184</sup> Further, in 2000 the Dakar EFA reaffirmed the commitment to ‘explicitly identify, target and respond flexibly to the needs and circumstances of the poorest and the most marginalized’<sup>185</sup> Reaching marginalized

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<sup>181</sup> Afar Regional State beget briefing UNICEF 2007/08 – 2015/16 page 2  
<https://www.unicef.org/esa/sites/unicef.org.esa/files/2019-05/UNICEF-Ethiopia-2018-Afar-Regional-State-Budget-Brief.pdf> (2017)

<sup>182</sup> Afar regional state educational bureau Education Statistics Annual Abstract 2011 E.C. 2011 EC

<sup>183</sup> MOE Education Statistics Annual Abstract 2008 E.C. (2015/16) Federal Democratic Republic Of Ethiopia EMIS And ICT Directorate MOE 2010 E.C. (June 2018) Page 28

<sup>184</sup> UNESCO, 1990, supra note 89 Article 3.

<sup>185</sup> UNESCO, 2000 supra note 90, para. 52).

children in Ethiopian emerging regional state requires political commitment backed by practical policies. Indeed, the government of Ethiopia recognize the requirement of reaching the children out of school in those areas. Moreover, leavening the field from other regional state to address the unequal development of primary education. In this sub-section the researcher examines the measures has been taken by the government.

#### **4.3.1 Special Support to the Emerging Regional State in Ethiopia**

Under the Convention against Discrimination in Education, states must “*ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent*”.<sup>186</sup>Moreover, the SDG4 provide the mandate for a strong focus on equity in education, aiming to ensure that the most disadvantaged children and young people have the same opportunities as others.<sup>187</sup> Accordingly demands an inclusive and equitable quality education for everyone, under the principle of leaving no one behind school.<sup>188</sup>

Yet even in countries making strong progress in primary education, pastoralist children are often being left far behind.<sup>189</sup> Ethiopia is also not an exception the development of primary education in Ethiopian pastoralist and agro-pastoralist areas still limited. Likewise, the government of Ethiopia is doing its best to ensure accessibilities of free primary education to all citizens of Ethiopia. Due to this the net enrolment rate of primary education in nationwide is increased from 22.9 % in 1988 in to 111.4% in the year 2016/2017.<sup>190</sup>However, there is regional disparities on the access, quality and achievement of the right to primary education; due to the marginalization of pastoralists for a long time in addition to mobile lifestyle of pastoralists, has made the provision of primary education challenging. Because of this consensus the four Pastoral or semi-pastoral regions (Somali, Afar, Gambela and Benishangul Gumuz) recognized as emerging regional state.

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<sup>186</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education, adopted December 14, 1960, entered into force May 22, 1962, art. 4(b). [unesco.org/en/ev.php/](http://unesco.org/en/ev.php/) (accessed Mar. 5, 2020)

<sup>187</sup> Silvia Montoya Director, UNESCO Institute for Statistics Handbook on Measuring Equity in Education Published in 2018 by: UNESCO Institute for Statistics <http://www.uis.unesco.org> page 9 accessed Nov. 20, 2019)

<sup>188</sup> Ibid

<sup>189</sup> EFA Global Monitoring Report supra note 48 page 179

<sup>190</sup> MOE , 2009 E.C. supra note 175 page 26

The main objectives is to put the four emerging regional state in equal footing to reach the international as well as the national standards to improve the performance of primary education. Accordingly, the ESDP V recognize the requirement of special support to the emerging regional state and organized the special support in to three mechanisms. In other word the special support is applied in a multi-sectoral approach to the four emerging state in a three level (i.e. individual level, organizational level and enabling environment).<sup>191</sup>

Individual level capacity development is one of the special support conducted through providing short and long term training and development schemes focusing on the leadership ,planning ,reporting and information exchange.<sup>192</sup>These types of special support is recognized as one of the solution to achieve the full development of the right to primary education by different international stakeholders in the way called capacity building on the administration of education. <sup>193</sup>In this case, primary education is promoted directly or indirectly through individual development of personal.

Organizational level capacity development is the second component of the special support implemented through revising pastoral educational strategies and other guidelines, manuals and directives well be localized in their context of those emerging regional state educational development.<sup>194</sup> The main purpose of this level of capacity development is to avert the challenges of educational policy relevancy to them.

Providing Enabling environment is the other mechanism in which the emerging regional state acquires as a special support. This is includes providing basic equipment and financial support for the implementation of the right to primary education in the emerging regional state of Ethiopia.<sup>195</sup>

#### **4.3.2 Alternative Basic Education**

Education systems themselves are often unresponsive to pastoralist demands due to the inherently mobile livelihoods, towards seasonal calendars for grazing and water availability.<sup>196</sup> However Formal education planning, in contrast, is commonly organized around a fixed school

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<sup>191</sup> ESDP V supra note 164 page 84

<sup>192</sup> Ibid

<sup>193</sup> Roger Tsafack Nanfosso1 University of Yaoundé II, Cameroon World Journal of Science, Technology and Sustainable Development, Vol. 8, Nos 2/3, 2011 see:

<https://www.researchgate.net/publication/235253848> (2011) (accessed April 6 2020)

<sup>194</sup> Ibid

<sup>195</sup> Id page 85

<sup>196</sup> EFA Global Monitoring Report supra note 48 page 178

infrastructure and a fixed national schedule for the school term and school day.<sup>197</sup> Such planning fails to take into account the realities and demands of pastoral livelihoods.<sup>198</sup> To address this problem the government of Ethiopia establishes non-formal alternative basic education. Achieving the present level of primary education participation rate is unthinkable without using alternative modes of education delivery to the permanent location based school mode of delivery. As witnessed the rapid expansion of primary education participation in Ethiopia was partly because of innovative strategies that were crafted by the government of Ethiopia as stipulated in ESDP III.<sup>199</sup> These innovative strategies have been designed based on the circumstantial demands from emerging regions/communities of Ethiopia.

ABE is one mode of non-formal education recognized as an important sector contributing to the development of primary education in Ethiopian emerging regional state. In this regard, the constitutional provisions policies and programs in Ethiopia related to education strongly support and promotes the equitable inclusion of all regional state in which lagging behind in access to quality of primary education. On top of that, the government of Ethiopia initiate and support ABE, which designed as low cost alternatives to formal schools and reach vulnerable groups especially in the emerging regional state. Since ESDP III in 2002, ABE is integrated in educational plans of Ethiopia to realize the goal of universalizing access to primary education in Ethiopia by 2015, many actors had contributed their part in various ways.<sup>200</sup> The results of that study had paved the way for the adoption of ABE program into the country's education system.

ABE is very important to access primary education to those emerging regional state due to the flexible nature of curriculum and way of delivery. It is not exception to Afar rather it is tool to deliver primary education to remote pastoral and agro-pastoralist communities of all region. In this case, it helps to increase enrollment rate especially in the remote areas of Afar where no other primary school was available.

*The review of Afar Education Statistics Annual Report shows the total number of functional ABECs has remained stable across the years from 2002 to 2008 E.C. with 394 ABECs in*

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<sup>197</sup>Ibid

<sup>198</sup> Ibid

<sup>199</sup> ESDP-III Supra note 24 Page 7

<sup>200</sup> MOE Education Statistics Annual Abstract 2003 E.C. (2010/2011 G.C) EMIS, Planning and Resource Mobilization Directorate Addis Ababa, Ethiopia page 45 See: [www.moe.gov.et](http://www.moe.gov.et) (2011 )

*2002 and 423 ABECs in 2008 E.C... In comparison, the number of formal primary schools has been increasing, due to new constructions but also because of upgrades of ABECs, reaching, a total number of 637 primary schools, in 2008 EC.<sup>201</sup>*

ABE are very important than that of formal primary education in emerging regional state especially in Afar pastoralist community. Because, ABE are delivered in the contexts of that specific communities. Moreover, it take in consideration of the social economic and environmental challenges of the communities and the teacher has knowledge about them. This alternative education provision responds to different needs and contexts and, along with the special support programme to improve implementation capacity in the emerging regions, it has improved the enrolment of disadvantaged and previously under-served ethnic groups.<sup>202</sup>

#### **4.4 Decentralization of the Responsibilities of Implementation of the Right to Primary Education in Afar Regional State**

##### **4.4.1 National Level**

In Ethiopia, education is organized according to the overall system of federalism in the country. Due to this, Primary education in Ethiopia decentralized to each autonomous regional state. In other word, all the nine regional states and two city administrations have their respective REBs, under which Woreda Education Offices (WEOs) are organized.<sup>203</sup> This means the federal government have its own responsibility on the right to implementation of primary education in general. Moreover, MOE at national level responsible for sitting policies programs and guidelines. However, the implementation of the right to Primary education is the responsibility of each regional states.

##### **4.4.2 Afar Regional State Educational Bureau**

The REB is the MOE's equivalent educational implementing body for the regional state. Accordingly, each regional state have the power for enact legislations and implement based on their regional context.<sup>204</sup> Afar region have laws, plans and standards that govern the implementation of the right to primary education. The main legal instrument in the decentralization of the implementation of primary education in regional level is the Afar Regional State

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<sup>201</sup> Supra note 11 page 25

<sup>202</sup> Id page 15

<sup>203</sup> ESDP-III Supra note 24 Page 65

<sup>204</sup> Ibid

Constitution. Accordingly, the REB is responsible to prepare policies and strategic plans and implement it at jurisdiction of the regional government.<sup>205</sup>This is very important for effective development of primary education in the region, because School infrastructure is not the only problem for their less development rather curricula relevance contribute its own effect.

#### **4.4.3 The Woreda Educational**

The next level of decentralization is Zone is another tier of governance situated between the region and the Woreda with a limited administrative role. Further, the implementation of primary education is decentralized in to Woreda level according to article 74(1) of the Afar Regional State Constitution and the center role in the implementation of primary education is played at this level.<sup>206</sup> They monitor the delivery of instruction in schools and mobilize resources for the operation of schools.<sup>207</sup>*The devolution of power to regional states and then to the Woreda is a centerpiece of Ethiopia's strategy for ending poverty by improving accountability, responsibility and flexibility in service delivery and increasing local participation in democratic decision making on factors affecting the livelihood of the grassroots population.*<sup>208</sup>

Below the Woredas, the Kebele Education and Training Boards are the educational planning and management government organs at the community level.<sup>209</sup> In the grass roots level decision are passed at school level with in the participation of the Kebele communities. These types of decision-making helps to understand the practical action or the reality under the ground related to primary education.

The educational administration at each level is politically accountable to its government, and technically to the upper level of administration. However, the relationship between each administrative level is not hierarchical; accordingly, the Ministry of Education has no direct line authority over the Regional Bureau of Education.<sup>210</sup>

#### **4.5 Educational Development of the In the Emerging Regional State Afar**

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<sup>205</sup> Revised Afar Constitution supra note 29 article 45(2)a)

<sup>206</sup> ESDP-III Supra note 24 Page 65

<sup>207</sup> Ibid

<sup>208</sup> Government of Ethiopia Ministry of Federal Affairs emerging regions development programme (ERDP) page 5

<sup>209</sup> ESDP-III Supra note 24 Page 75

<sup>210</sup> Ibid

The educational achievement of Afar is in progress to achieve the national as well as international standards set in national educational programs and international commitments respectively. The federal MOE and afar regional educational bureau prepares annual educational abstract to review and to inform different stakeholder about the implementation of educational right of population in their jurisdiction. According to these annual abstracts the development of primary education in the Afar region summarized as follow in the table.

#### **Afar regional state primary education development trend in the ESDP I**

Year	Gross Enrollment Rate (GER)	Net Enrollment Rat (NER)	Number of School (NOS)
1988( 1995-1996)	8.4	14792	80
1989( 1996-1997)	8.4	14792	80
1990( 1997-1998)	8.4	14791	80
1991( 1998-1999)	7.1	16943	101
1992( 1999-2000)	9.7	22088	124

*Source: MOE annual educational abstract 1992*

#### **Afar regional state primary education development trend in ESDP II**

Year	GER	NER	NOS
1993( 2000-2001)	11.5	27832	131
1994( 2001-2002)	12.6	30735	142
1995( 2002-2003)	13.8	34175	156
1996( 2003-2004)	14.8	36890	187
1997 ( 2004-2005)	20.9	52671	205

*Source: MOE annual educational abstract 1993-1997*

#### **Afar regional state primary education development trend in ESDP III**

Year	GER	NER	NOS
1998( 2005-2006)	21.9	55,804	266
1999( 2006-2007)	22.2	57,922	278
2000( 2007-2008)	22.2	83,018	287

Source: MOE annual educational abstract 1998-2000 E.C

#### **Afar regional state primary education development trend in ESDP IV**

Year	GER	NER in %	NOS
2001( 2008-2009)	30.6	24.4	347
2002( 2009-2010)	39.3	28.2	366
2003( 2010-2011)	40.1	38.7	408
2004( 2011-2012)	43.7	44.29	476
2005( 2012-2013)	50.5	48.7	539
2006( 2013-2014)	74.4	60.1	559

Source: MOE annual educational abstract 2001-2006

#### **Afar regional state primary education development trend in ESDP V**

Year	GER	NER in %	NOS
2007( 2014-2015)	70.3	59.2	573
2008( 2015-2016)	60.24	55.49	579
2009( 2016-2017)	66.0	50.1	669
2010( 2017-2018)	66.9	51.5	678
2011( 2018-2019)	56.55	-	-

Source: MOE annual educational abstract 2007-2009 and Afar regional state educational annual abstract.

In general the overall goal of the primary education development is to achieve the SDG4 in 2030 and meet the objectives of the National Development Plan through supplying a qualified, trained work force with the necessary skills at primary educational levels. Access to primary education has increased at a rapid rate in line with sharp increases in the number of student, schools and in another aspect of primary education over the past two decade. This is due to also the introduction of ABE and the strengthening of innovative models such as mobile schools in the emerging regional state including Afar regional state. Further, important policy documents were developed for the improvement of primary education in less developed regional state. However still in the region there are so many school age Childers are out of school.

## **Chapter Five**

### **Conclusion and Recommendation**

#### **4.1. Conclusion**

International legal right to primary education is important for the individual as well as societal development of a given communities especially for less developed. Due to this most of international human right treaties as well as international commitments recognized as indispensable issue. State parties implement in the way appropriate to the political, social and economic contexts Ethiopia is also not an exception.

Primary education plays a very important role in the development the marginalized for different reason. Taking in to consideration of the 1995 FDRE Constitution and 1994 ETP, many Regions of the country have adopted their own respective regional educational policy, programmers and plane in accordance with the federal educational policy and plane. Moreover, the role of the federal government in the implementation of primary education is supportive role to regional state including the emerging regional state. In other word in Ethiopia, the regional level plays the most important role in the implementation primary educational but, the role of federal government is actually less central in the implementation of primary education at schools. According to Afar regional state constitution the implementation of primary education is decentralized in to autonomous woreda as well as to kebele level.

On top of that, in Ethiopia primary education is in positive progress to achieve national and international commitment. However, its development is not even on all regional state, to avert this inequality the government of Ethiopia recognizes four pastoral and agro-pastoralist regions as an emerging regional state. Averting this inequality and providing special measure to leave them with others is the aim of international treaties as well as International commitments. Accordingly based on this legislatives and programs of the country those emerging regional state acquires special support for leveling the field in the development of primary education. Primary education in the emerging regional state of Ethiopia is expanded, however still so many school aged children are out of school including Afar regional state.

## 4.2. Recommendation

After analyzing all the findings of the current Study, the researcher has come up with the following recommendations;

- It is of vital importance that the Regional Education Bureau of emerging regional state as well as all other stakeholders to put the issue of reaching the children out of school on their priority agenda. Close follow up is needed to realize full implementation of the primary education in all level of decentralization.
- MOE needs to communicate and provide close assistance particularly on how to reach the children which are out of school in emerging regional state. Communication is essential to bring coherence and integration in the development of primary education into a holistic system that addresses the needs of children out of school in the emerging regional state of Ethiopia.
- Internationally, national, and regional levels to create a common tool for monitoring and evaluation based on reliable data and statistics on commonly agreed performance indicators. Strong combination of all stakeholders supporting education at the national, as well as at regional levels can ensure the best conditions for success of primary education. Sharing or exchanging experiences from each other is important to take lesson from the others.
- On top of that the researcher suggest that primary education should unambiguous recognize as internationally binding legal right.

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